IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

TERRIANN WALKER, individually, and on behalf of others similarly situated, Plaintiff, v. PEOPLE'S UNITED BANK and DOES 1 through 100, Defendants.	CIVIL ACTION **No. 3:17-CV-00304 (AVC)** October 15, 2019

PLAINTIFF TERRIANN WALKER'S NOTICE OF UNOPPOSED MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiff Terriann Walker hereby moves this Honorable Court for entry of an Order to: (1) preliminarily approve the Settlement Agreement reached between Plaintiff and Defendant attached as Exhibit 1 to the Declaration of Taras Kick in Support of the Unopposed Motion for Preliminary Approval; (2) approve the proposed plan of notice to the Class; (3) appoint Epiq to provide the notice and administration program outlined in the motion and accompanying memorandum; and (4) set a schedule of dates as set forth in the motion and accompanying memorandum for further action on this Settlement Agreement, including a hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. This motion is made on the grounds that the settlement is the product of arm's-length negotiations by informed counsel and is fair, reasonable, and adequate and should be finally approved. Class Counsel met and conferred with Counsel for Defendant about the motion, and Defendant does not oppose the motion.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support Thereof, the accompanying Declaration of Richard McCune, the

accompanying Declaration of Taras Kick, the accompanying Declaration of Arthur Olsen, the accompanying Declaration of Terriann Walker, other documents and papers on file in this action, and such other materials as may be presented before or at the hearing on this motion, or as this Honorable Court may allow.

Dated: October 15, 2019

Respectfully submitted,

/s/ Richard D. McCune

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PLAINTIFF TERRIANN WALKER'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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MEMORANDUM

I SUMMARY

This is a putative class action alleging that People's United Bank ("PUB" or "Defendant" or "People's") charged overdraft fees based on what it called the "available balance" in customer accounts, which People's contends meant a subset of the actual account balance from which money has been deducted by placing holds on deposits and pending transactions which have not yet posted. Plaintiff contends the contracts at issue required People's to use the balance when determining and assessing overdraft fees, meaning the money actually in the account (sometimes also called "actual balance" or "ledger balance"). Plaintiff contends that People's failure to do so resulted in overdraft fees which should not have been charged, allegedly in violation of the terms of its contracts governing the overdraft programs. Plaintiff also alleges that Defendant violated Regulation E, 12 C.F.R. § 1005.17 ("Reg. E"), by enrolling bank customers in its overdraft program for subject transactions without obtaining their affirmative consent to do so based on a complete and valid disclosure of the terms of the program.

After substantial law and motion practice, as well as significant formal discovery, the Parties attended a mediation on August 28, 2019, with Honorable Gerald E. Rosen (Ret., U.S. District Judge) of JAMS, and accepted a mediator's proposal made by Judge Rosen. The settlement described below is the result of this accepted mediator's proposal made by Judge Rosen, and is now being brought to this Court for preliminary approval.

Specifically, under the proposed settlement PUB will pay $6,500,000 in new money, with no reversion of any residue to PUB, and also will waive more than $963,933 in uncollected eligible overdraft fees, for a total settlement value of in excess of $7,400,000. (*See* Settlement Agreement, attached to the Declaration of Taras Kick ("Kick Decl.") as Exhibit 1, at ¶ 1(t) and

1(w), (hereafter "Settlement Agreement").)

As discussed in more detail *infra*., the aggregate class damages of what Plaintiff believes would have been the most likely result had this case gone all the way through trial to verdict is $16,581,941, meaning the proposed settlement of $7,463,933 is approximately 45% of what Plaintiff believes was the most likely result at trial had she gone all the way to trial and prevailed. (Declaration of Arthur Olsen ("Olsen Decl."), at ¶¶ 7, 8, 9.) The total damages if one were to also include the Regulation E fees in addition to the Sufficient Funds fees, are $18,109,708 after accounting for overlap with the Sufficient Funds damages, meaning a proposed settlement of almost 42% if all possible damages are contemplated, including the Regulation E fee damages. (Olsen Decl., at ¶ 9.)

Subject to this Court's approval, the new money portion of the settlement will be used to provide restitution to class members, and pay the litigation costs, costs of notice and claims administration, and attorneys' fees in the amount of $2,466,666, which is one-third of the $7,400,000 proposed settlement.

The manner of distribution is very consumer friendly. All class members will receive a direct distribution without the need to make any claim whatsoever. (Settlement Agreement, at ¶ 8(d)(iv)(b).) The Settlement Fund shall be divided with $6,000,000 allocated to customers of the "Sufficient Funds Overdraft Class" and distributed from the Net Settlement Fund on a *pro rata* basis, and $500,000 allocated to the "Regulation E Overdraft Class" and distributed from the Net Settlement Fund on a *pro rata* basis. (Settlement Agreement, at ¶ 8(d)(iv)(a) and (b).) Further, all class members will be paid by direct deposit into their accounts if they are current PUB customers, or will be mailed a check if they no longer have an account with PUB. (Settlement Agreement, at ¶ 8(d)(iv)(d).) Finally, any money that remains after this distribution process, rather than revert to Defendant, instead will go to 501(c) non-profits to be proposed to

this Court and approved by this Court. (Settlement Agreement, at ¶ 12.)

As the proposed settlement meets all criteria for preliminary approval, Plaintiff's counsel respectfully requests that the Court preliminarily approve the settlement so that notice of a final approval hearing may be disseminated to the class at this time.

II THE HISTORY OF THIS CASE

As can be seen from the below summary, there can be no dispute that this case was very strongly litigated by both sides, and that substantial discovery was performed.

A. The Law and Motion Performed in this Case

Specifically, on February 21, 2017, named plaintiff Terriann Walker filed this putative class action complaint entitled *Walker v. People's United Bank,* in the United States District Court for the District of Connecticut, Case No. 3:17-CV-00304-AVC, alleging claims for Breach of Opt-In Contract, Breach of Account Agreement, Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust Enrichment/Restitution, Money Had and Received, Violation of the Electronic Fund Transfer Act (Regulation E) 12 C.F.R. §§ 1005, *et seq*., and Violation of the Connecticut Unfair Trade Practices Act, Connecticut Code§ 42-ll0(a), *et seq.* (the "Complaint"). (Kick Decl., at ¶ 7.) On June 8, 2017, Defendant filed a Motion to Dismiss, and related documents. (*Id.*) On June 29, 2017, Plaintiff filed a Memorandum in Opposition to the Motion to Dismiss, and related documents. (*Id.*) On July 13, 2017, Defendant filed a Reply to Plaintiff's Opposition to Motion to Dismiss. (*Id.*) On August 8, 2017, Defendant filed a Notice of New Authority in Support of Defendant's Motion to Dismiss Plaintiff's Class Action Complaint. (*Id.*) On August 10, 2017, Plaintiff filed a Response to Defendant's Notice of New Authority. (*Id.*) On September 29, 2017, Plaintiff filed a First Notice of New Authority In Support of Opposition to Defendant's Motion to Dismiss. (*Id.*) On October 5, 2017, Defendant filed a Second Notice of Additional Authority re Motion to Dismiss. On November 8, 2017, Defendant filed a Third

Notice of New Authority in Support of Motion to Dismiss. (*Id.*) On March 20, 2018, Plaintiff filed a Fourth Notice of New Authority In Support of Opposition to Motion to Dismiss. (*Id.*) On March 30, 2018, the Court issued its ruling granting in part and denying in part the Motion to Dismiss. (*Id.*)

On October 31, 2018, Plaintiff filed a Motion for Class Certification, and related documents. (*Id.*) On January 22, 2019, Defendant filed a Motion for Summary Judgment, and related documents, and an Opposition to Motion for Class Certification, and related documents. (*Id.*) On February 13, 2019, Plaintiff filed a Memorandum in Opposition to Motion for Summary Judgment, and related documents. (*Id.*) On February 20, 2019, Plaintiff filed a Reply to Defendant's Opposition to Plaintiff's Motion for Class Certification. (*Id.*) On March 4, 2019, Defendant filed a Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment.

On May 17, 2019, Plaintiff filed a Motion to Compel Defendant to Produce Percipient Witness For Deposition and to Produce Documents Responsive to Discovery Requests. (*Id.*) On June 21, 2019, Defendant filed a Memorandum in Opposition to Plaintiff's Motion to Compel Defendant to Produce Percipient Witness and Documents. (*Id.*) On July 3, 2019, Plaintiff filed a Reply to Defendant's Opposition to Motion to Compel Defendant to Produce Percipient Witness and Documents. (*Id.*)

On July 11, 2019, the Parties filed a Joint Motion to Stay pending the Parties engaging in mediation, and on July 12, 2019, the Court entered an Order granting in part and denying in part the Joint Motion to Stay.

B. The Formal Discovery Performed in this Case

On May 3, 2018, Plaintiff served her First Set of Requests for Production, Interrogatories, and Requests for Admission on Defendant. (*Id.*, at ¶ 8.) Defendant provided its objections and responses to Plaintiff's First Set of Discovery on July 12, 2018, and produced its first set of 2,176

pages of responsive documents. (*Id.*) On May 9, 2018, Defendant served its First Set of Interrogatories and Requests for Production on Plaintiff. (*Id.*) Plaintiff provided her objections and responses to Defendant's First Set of Discovery on July 11, 2018. On May 31, 2018, Plaintiff served Defendant with her Initial Disclosures. Plaintiff included 62 pages of documents with her disclosures. (*Id.*) On June 1, 2018, Defendant served Plaintiff with its Initial Disclosures.

On July 19, 2018 , Plaintiff served a Notice of Deposition on Defendant. (*Id.*) On August 9, 2018, Defendant produced its second set of approximately 21 pages of responsive documents to Plaintiff. On September 11, 2018, Plaintiff's deposition was taken by Defendant. (*Id.*) Plaintiff took the FRCP Rule 30(b)(6) depositions of Defendant's designated witnesses Sara Wilbur and Sherri Furce on September 13, 2018. (*Id.*) Between September 7 and September 18, 2018, Defendant produced additional sets of responsive documents, totaling approximately 2,711 pages. (*Id.*) Defendant continued to produce documents into early 2019 in response to the Parties' meet and confer efforts. (*Id.*)

C. The Mediation

On August 28, 2019, the Parties engaged in a mediation before the Honorable Gerald E. Rosen (Ret., U.S. District Judge) of JAMS. The negotiations were at all times arm’s length and adversarial. (Kick Decl., at ¶ 9.) Towards the conclusion of the mediation, because the Parties had not reached a settlement, Judge Rosen made a mediator’s proposal. (*Id.*) Both sides accepted the mediator’s proposal, and the proposed settlement being brought to this Court for approval at this time is the result of that accepted mediator’s proposal. (*Id.*) On September 3, 2019, the Court was informed of this settlement.

The proposed settlement which is now being presented to this Honorable Court for approval is documented by the Settlement Agreement which is attached as Exhibit 1 to the

concurrently filed Declaration of Taras Kick.

III ANALYSIS OF THE DATA

Plaintiff's database expert, Arthur Olsen, has performed a thorough analysis of Defendant's actual data pertaining to overdraft fees assessed on class members. (Olsen Decl., at ¶¶ 6- 10.) The class data contained detailed information regarding all overdraft fees assessed by PUB on debit card, check, and ACH transactions between February 21, 2011 and October 31, 2016. (*Id.*, at ¶ 6.) Among other things, the class data included account numbers, the date of each overdraft fee, the amount of each overdraft fee, information allowing the determination of the type of transaction which caused each overdraft fee, (either debit card, check, or ACH), and the ledger balance at the time when each transaction posted to the account. (*Id.*)

For the Sufficient Funds Class, Mr. Olsen identified 134,148 PUB accounts that were assessed at least one overdraft fee when the account holder had a positive ledger balance in his or her account that was sufficient to cover the transaction at issue between February 21, 2011 and October 31, 2016, after the application of any refunds already credited by PUB. (*Id.*, at ¶ 7.) There were 454,094 such fees totaling $16,581,941, and after elimination of overlap for fees which were also Regulation E overdraft fees, the total amounts to $16,150,262. (*Id.*, at ¶¶ 7, 9.)

Regarding the Regulation E Class, Mr. Olsen identified 14,575 PUB accounts that were assessed at least one overdraft fee for an ATM or non-recurring debit card transaction between February 21, 2016 and October 31, 2016, after the application of any refunds already credited by PUB. (*Id.*, at ¶ 8.) There were 52,958 such fees totaling $1,959,446 before accounting for overlap with Sufficient Funds Fee Overdrafts, and $1,527,767 after accounting for such overlap. (*Id.*, at ¶¶ 8, 9.)

IV TERMS OF THE SETTLEMENT

A. Class Definition

The class includes any customer of PUB who is in either of two classes, the "Sufficient Funds Class" or the "Regulation E Class." (Settlement Agreement, at ¶ 1(r) and (u).) The "Sufficient Funds Class" is defined as, "those customers of Defendant who were assessed and who paid an overdraft fee between February 21, 2011 and October 31, 2016, on any type of payment transaction and at the time such fee was assessed the customer had sufficient money in his or her ledger balance to cover the transaction that resulted in the fee." (Settlement Agreement, at ¶ 1(r).) The "Regulation E Class" is defined as, "those customers of Defendant who were assessed and who paid an overdraft fee for a non-recurring debit card payment transaction between February 21, 2016 and October 31, 2016." (Settlement Agreement, at ¶ 1(u).)

B. The Settlement Amount

The value of the proposed settlement is in excess of $7,463,933. Specifically, under the proposed settlement, PUB will pay $6,500,000 of new money, with no reversion of any residue to PUB. (*See* Settlement Agreement, at ¶ 1(t).) Further, PUB has agreed to waive Sufficient Funds and Regulation E overdraft fees in the class period which it assessed but which had not yet been collected as of August 29, 2019, stating specifically as follows:

> **<u>UNCOLLECTED OVERDRAFT FEES</u>.** Upon the occurrence of the Effective Date, Defendant shall forgive the Uncollected Overdraft Fees as defined in paragraph 1(w) which are the Uncollected Overdraft 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 Overdraft Fees are inadvertently collected, then they shall be refunded by Defendant insofar as Defendant is aware of the Uncollected Overdraft Fees. If a customer with Uncollected Overdraft Fees attempts to open a new account or re-open a closed account, Defendant shall not require payment of the Uncollected Overdraft

> Fees as a condition to account opening insofar as Defendant is aware of the outstanding Uncollected Overdraft Fees.

(Settlement Agreement, at ¶ 9; *see also* Settlement Agreement, at ¶ 1(w).)

Expert Arthur Olsen has calculated the value of these uncollected overdraft fees which are being forgiven at $963,933 as of September 30, 2018. (Olsen Decl., at ¶ 10.) Therefore, the value of this settlement is in excess of $7,463,933.

C. Payments to Claimants

As stated, the Net Settlement Fund shall be divided with 7.7% of the Net Settlement Fund distributed to customers of the "Regulation E Class" on a *pro rata* basis, and 92.3% distributed to customers of the "Sufficient Funds Class" on a *pro rata* basis. (Settlement Agreement, at ¶ 8(d)(iv)(a) and (b).) Further, all class members will be paid by direct deposit into their accounts if they are current PUB bank customers, or will be mailed a check if they no longer have an account with PUB, with no need to make any claim whatsoever. (Settlement Agreement, at ¶ 8(d)(iv)(d).) For those class members who are paid by check, the class member shall have one-hundred eighty days (180) to negotiate the check, after which the payment will collect in the residue to be distributed to a *cy pres* recipient as approved by this Court. (Settlement Agreement, at ¶8(d)(iv)(d).)

The allocation between the two classes was arrived at as follows. Defendant's position in this case is that pursuant 15 U.S.C. §1693m(a), the maximum liability exposure of Defendant to the Regulation E Class was the lesser of 1% of the Defendant's net worth, or $500,000. Defendant bases its argument on the following from 15 U.S.C. §1693m(a):

> . . . in the case of a class action, such amount as the court may allow, except that (i) as to each customer of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant.

As $500,000 is 7.7% of the total new money component of $6,500,000, that is the manner in which the allocation between the two classes was in part arrived at.

D. *Cy Pres* Distribution

Under no circumstances will any of the money from this settlement revert to PUB. (Settlement Agreement, at ¶ 8(d)(v).) Rather, if there is any residue which remains in the Net Settlement Fund, rather than revert to Defendant, the Settlement Agreement instead provides for a *cy pres* distribution to 501(c) non-profits to be nominated by the Parties to this Court for review and approval. (Settlement Agreement, at ¶ 12.) These *cy pres* recipients will be proposed in the Motion for Final Approval.

E. Class Notice

The Settlement Agreement provides that, for class members who are current customers of PUB and who have agreed to receive notices regarding their accounts from Defendant by email, PUB will provide the claims administrator with the most recent email addresses it has for those class members, to which the claims administrator will email the notice in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. (Settlement Agreement, at ¶ 5(b).) For any emails that are returned undeliverable, the claims administrator will use the best available databases to obtain current email address information for those customers, update its database with those addresses, and resend the notice to them. (*Id.*)

For those class members who are not currently customers of PUB or who did not agree to receive notices regarding their accounts by email, the claims administrator will mail those customers a full long-form notice by first class United States mail to their best available mailing addresses. (Settlement Agreement, at ¶ 5(c).) The claims administrator will run the names and addresses provided by PUB through the National Change of Address Registry and update them

as appropriate. (*Id.*) If a mailed notice is returned with forwarding address information, the claims administrator shall re-mail the notice to the forwarding address. (*Id.*) 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. (*Id.*) Finally, the notice shall also be posted on a settlement website created by the claims administrator. (Settlement Agreement, at ¶ 5(d).)

The Notice is proposed to be substantially as shown in Exhibit 1 to the Settlement Agreement. (Kick Decl., Ex. 1.)

Plaintiff requested bids for administration services for this case from two very well-regarded claims administrators, and the lower bid came in from Epiq Class Action & Claims Solutions, Inc. ("Epiq"), with Epiq estimating a total cost of $129,928, and agreeing to cap its costs for the administration at $142,089. (Kick Decl., at ¶ 11.) This manner of notice when used in other overdraft fee class action cases prosecuted by these same Class Counsel with Epiq as the administrator has usually resulted in a notice reach of well in excess of 90%. (*Id.*)

F. Opt Out Procedure

Any class member who wishes to opt out can do so by mailing an exclusion letter by the Bar Date. (Settlement Agreement, at ¶ 13.)

G. Opportunity to Object

Any class member who wishes to object to the settlement terms can do so by mailing an objection to the Court and the settlement administrator. (Settlement Agreement, at ¶ 14.)

H. Attorneys' Fees and Costs

Under the terms of the Settlement Agreement, Class Counsel may apply for attorneys'

fees of up to one-third of the "Value of the Settlement." (Settlement Agreement, at ¶ 8(d)(i).) Although expert Arthur Olsen has quantified the value of the waived uncollected fees as of September 30, 2018, at $963,933 (Olsen Decl., at ¶ 10), the parties nonetheless agreed to use a lesser number for purposes of this quantification for fees, that being $900,000. (Settlement Agreement, at ¶ 1(w).) Therefore, Class Counsel will apply for one-third of $7,400,000 rather than the higher number calculated by Mr. Olsen.

The attorneys' fees sought here are well within the range of approval. Courts in the Second Circuit routinely award attorneys' fees of one-third or more of settlement funds in complex class action cases. *See Klein v. PDG Remediation, Inc.*, No. 95-cv-4954- DAB, 1999 WL 38179, at *4 (S.D.N.Y. Jan. 28, 1999) ("33% of the settlement fund . . . is within the range of reasonable attorney fees awarded in the Second Circuit"); *In re Med. X-Ray Film Antitrust Litig.*, No. CV-93-5904, 1998 WL 661515, *7 (E.D.N.Y. Aug. 7, 1998) (holding that class counsel's request for one-third of the $39.4 million settlement fund "is well within the range accepted by courts in this circuit. *Lauture v. A.C. Moore Arts & Crafts, Inc.*, No. 17-cv-10219, 2017 U.S. Dist. LEXIS 195147, at *3 (D. Mass. Nov. 28, 2017) (finding one-third fee award "appropriate because it mimics the market" and declining to perform a lodestar cross-check); *Roberts v. TJX Cos.*, No. 13-cv-13142-ADB, 2016 WL 8677312, at *13 (D. Mass Sep. 30, 2016) (approving fee award of one-third of the fund recovered); *Lapan v. Dick's Sporting Goods*, No. 13-cv-11390-RGS, Dkt. Nos. 220-21 (D. Mass. April 19, 2016) (approving thirty-three and one-third percent of settlement); *Barbosa v. Publishers Circulation Fulfillment, Inc.*, No. 08-cv-10873 (D. Mass. Nov. 25, 2009) (approving one-third fee award); *Swack v. Credit Suisse First Bos., LLC*, No. 1:02-cv-11943-DPW, Dkt. No. 114 (D. Mass. Jul. 18, 2006) (awarding 33%); *In re Relafen Antitrust Litigation*, 231 F.R.D. 52, 80-82 (D. Mass. 2005) (awarding 33.3% of $75

million settlement fund).)[1] Also, an award of one-third has been the most common award made in other similar overdraft fee class actions handled by Class Counsel.

Furthermore, should this Court wish to perform a lodestar cross-check, Class Counsel have a lodestar in this matter of approximately $1,166,715, not including local counsel's time, meaning a multiplier of approximately 2.11x would be requested, not including local counsel's time. (Declaration of Richard McCune In Support of Motion for Preliminary Approval, ("McCune Decl."), at ¶ 8; Kick Decl., at ¶ 12.) Multipliers of 3.5 have been deemed reasonable, *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (citing *In re Cendant*

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[1] Although the waiver of the more than $963,933 in uncollected overdraft fees is a monetary component of the settlement, courts routinely include even non-monetary value in a proposed settlement for purposes of an attorney fee award. For example, according to the Federal Judicial Center, "Courts use two methods to calculate fees for cases in which the settlement is susceptible to an objective evaluation. The primary method is based on a percentage of the actual value to the class of any settlement fund ***plus the actual value of any nonmonetary relief***." Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges, 3d. Ed., 35 (2010) (emphasis added). And according to the American Law Institute, "a percentage-of-the-fund approach should be the method utilized in most common-fund cases, ***with the percentage being based on both the monetary and nonmonetary value of the judgment or settlement.***" Principles of the Law of Aggregate Litigation, The American Law Institute, Mar 1, 2010 § 3.13 (emphasis added). Under this rationale, "[i]n calculating the overall settlement value for purposes of the 'percentage of the recovery' approach, Courts include the value of both the monetary and nonmonetary benefits conferred on the Class." *Poertner v. Gillette Co.*, 618 Fed. Appx. 624 (11th Cir. 2015) (approving percentage of common fund award and finding that "settlement's allocation of benefits was fair" by including "the value of the nonmonetary relief and cy pres award" as "part of the settlement pie;" rejecting objector's argument that analysis of a reasonable attorney fee should "exclud[e] the substantial nonmonetary benefit and the cy pres award"); *In re Nutella Mktg. & Sales Practices Litig.*, 589 Fed. Appx. 53, 57 (3d Cir. 2014) ("[f]or purposes of approving the settlement, an exact figure is not required to evaluate the settlement's nonmonetary benefits;" *Fleisher v. Phx. Life Ins. Co.*, Civil Action No. 11-cv-8405 (CM), 2015 U.S. Dist. LEXIS 121574, at *51-55 (S.D.N.Y. Sep. 9, 2015); *Pinto v. Princess Cruise Lines*, 513 F. Supp. 2d 1334, 1342-43 (S.D. Fla. 2007) ("Moreover, when determining the total value of a class action settlement for purposes of calculating the attorneys' fee award, courts usually consider not only the compensatory relief, but also the economic value of any prospective injunctive relief obtained for the class."); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (estimating the non-monetary value of the settlement at $115 million and checking the percentage of the attorneys fee against it).

Corp. PRIDES Litig., 243 F.3d 722, 742 (3d Cir.2001) (finding lodestar multiplier of 1.35 to 2.99 common in megafunds over $100 million); *NASDAQ Market–Makers*, 187 F.R.D. at 489 ("multipliers of between 3 and 4.5 have become common") (internal quotation marks omitted). Class Counsel will present further detail regarding the lodestar in the Motion for Final Approval. (McCune Decl., at ¶ 8; Kick Decl., at ¶ 12.)

As a part of the proposed settlement, Plaintiff is also moving for the Court to approve a service award to the class representative, Ms. Terriann Walker, of $15,000. Her substantial and meaningful work on behalf of the class is partially detailed in her concurrently filed declaration. Among other work, Ms. Walker, reviewed and gathered documents for the attorneys; reviewed the Complaint before it was filed; responded to formal written discovery, including requests for production of documents and special interrogatories; sat for deposition in this matter, and prepared for the deposition in person with her attorneys. (Declaration of Terriann Walker In Support of Motion for Preliminary Approval ("Walker Decl."), t ¶ 3.) She also personally flew from her home in Connecticut to Chicago, Illinois to be present for and participate in the mediation in this matter which took place before the Honorable Gerald E. Rosen (Ret., U.S. District Judge) of JAMS on August 28, 2019. (Walker Decl., at ¶ 3.)

Regarding costs, Class Counsel to date have incurred in excess of $100,000 in costs, plus costs of local counsel, and estimate they will incur additional costs to the time of final approval of this matter, and therefore request a not to exceed cap of $150,000 in litigation cost reimbursement. (McCune Decl., at ¶ 8; Kick Decl., at ¶ 13.) Class Counsel will provide a detailed itemization of the costs expended with the Motion for Final Approval and, of course, if they come in less than $150,000, the difference will go to the Net Settlement Fund and not to the law firms. Additionally, the firms of McCune Wright Arevalo, LLP and The Kick Law Firm, APC, the two proposed lead counsel, have agreed to share equally in the attorneys' fees, and this

was disclosed to and approved by the proposed class representative, Ms. Walker. (Walker Decl., at ¶ 4; Kick Decl., at ¶ 12.)

I. Release

In consideration for the settlement, class members are releasing only claims alleged in the Complaint. (Settlement Agreement, at ¶ 15.)

V ARGUMENT

A. The Settlement Should Be Preliminarily Approved

1. Class Action Settlement Procedure

Class action settlements are subject to a two-step approval process. First, the Court makes a preliminary evaluation of the fairness of the settlement. If the Court determines that the settlement appears to be fair, adequate and reasonable, then it should order that notice be given to the class members of a formal final settlement hearing. At that formal hearing, evidence may be presented in support of and in opposition to the settlement. The federal Manual for Complex Litigation, Second ("MCL 2d"), summarizes the preliminary approval criteria as follows:

> If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

MCL 2d § 30.44.

In addition to provisional certification of the proposed settlement class (*see* Section IV.B., *infra*.), consistent with the Federal Manual for Complex Litigation, Federal Rules of Civil Procedure, Rule 23(e) describes a three-step process for approval of a class action settlement:

1) Preliminary approval of the proposed settlement;

2) Dissemination of notice of the settlement to all affected class members; and

3) A formal fairness hearing, *i.e.,* the final approval hearing, at which class members may be heard regarding the settlement, and at which counsel may introduce evidence and present argument concerning the fairness, adequacy, and reasonableness of the settlement.

"First, the judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing." *Hochstadt v. Bos. Sci. Corp*., 708 F. Supp. 2d 95, 106–07 (D. Mass. 2010). "[B]efore making a final decision on the 'approval' of a settlement, a court must first make a 'preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms.'" *Id*. (citing *Nat'l Ass'n of Chain Drug Stores v. New England Carpenters Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009).

Preliminary approval is appropriate where "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class and falls within the reasonable range of approval*." O'Connor v. AR Resources, Inc.*, 3:08 cv 1703, 2010 WL 1279023, at *3 (D. Conn. Mar. 30, 2010) (citation omitted); *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Edwards v. N. Am. Power & Gas, LLC*, No. 3:14-CV-01714, 2018 WL 1582509, *7 (D. Conn. March 30, 2018) (J. Bolden); see also 4 Newberg on Class Actions § 13:13 (5th ed.) ("The general test—holding that a settlement will be preliminarily approved if it 'is neither illegal nor collusive and is within the range of possible approval'—contains both procedural and substantive elements. The procedural element focuses on the nature of the settlement negotiations and the possibility of collusion, while the substantive element focuses on the terms of the agreement itself.").

Rule 23(e) was amended effective December 1, 2018, to, among other things, specify that the focus of a court's preliminary approval evaluation is whether "giving notice [to the class] is

justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). Under newly revised Rule 23(e)(2), the Court can approve a proposed settlement if the Court finds that: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate;6 and (D) the proposal treats class members equitably relative to each other.

2. The Standard for Granting Preliminary Approval

This motion asks that this Honorable Court take the first step in this three-step process by preliminarily approving the Settlement Agreement of the parties.

As stated, Rule 23 was amended effective December 1, 2018, and Rule 23(e)(2) now establishes that where a settlement would bind class members, the court may approve it only after finding that it is fair, reasonable, and adequate after considering whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-customer claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

"The central concern in reviewing a proposed class-action settlement is that it be fair, reasonable,

and adequate." Advisory Committee Notes to 2018 Amendments to Fed. R. Civ. P. 23. "The goal of this amendment is not to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Id.* However, "[a]t the preliminary approval stage, the court is simply determining whether it is 'likely' these . . . requirements for settlement approval will be met at the final approval stage. 4, *Newberg on Class Actions* § 13:14 (procedural requirements), § 13:15 (substantive requirements) (5th ed.) (June 2019 Update).

Here, this proposed settlement well meets all of these criteria, as well as already existing Second Circuit law.

3. The Settlement Is Reasonable, Fair, and Adequate Given the Strength of the Case and the Risks of Litigation

As stated, PUB will pay $6,500,000 of new money, with no reversion of any residue to PUB, and also will waive at least $963,933 in uncollected eligible overdraft fees. (Settlement Agreement, at ¶¶ 1(t) and 1(w); Olsen Decl., at ¶ 10.)

The total damages of the two classes are calculated by expert Arthur Olsen at $16,581,941 for the Sufficient Funds Class and at $1,959,446 for the Regulation E Class, before reducing either of the two classes for overlap. (Olsen Decl., at ¶¶ 7, 8, 9.) Class Counsel believe the most likely amount that would have been awarded had the matter gone all the way to trial and had Plaintiff prevailed at the trial is $16,581,941. (Kick Decl., at ¶ 15.) This means that as a percentage, the proposed value of the settlement of $7,463,933 equals more than 45% of the most likely recovery, or more than 41% of all damages combined, including the Regulation E overdraft fee damages with no statutory cap applied against that Regulation E damages number whatsoever. (Olsen Decl., at ¶ 9.)

Courts have determined that settlements are, of course, reasonable where plaintiffs

recover only part of their actual losses. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), aff'd 899 F.2d 21 (11th Cir. 1990) ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate"). Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even - a thousandth of a single percent of the potential recovery." *Id.*; *see also City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972) (a recovery of 3.2 % to 3.7 % of the amount sought is "well within the ball park"), aff'd in part, rev'd on other grounds, 495 F.2d 448 (2d Cir. 1974); *In re Toys R US FACTA Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014) (approving settlement with *vouchers* (not cash) potentially worth a maximum of three percent (3%) *if all possible claims were actually made*.

Although Plaintiff does believe the liability in this case is strong, it is possible that a trier of fact might agree that the language in the contracts at issue actually did allow the Defendant to assess overdraft fees in the manner it did. (Kick Decl. at ¶ 14.) Further, to continue with the case would be expensive for both sides. (*Id.*) With regard to expected duration, the case still would have substantial legal work, all of which would also contain some risk for Plaintiff. For example, although Class Counsel believes the likelihood for certification is strong, there is always some risk in getting consumer class actions certified, even the ones which have the strongest merits for certification. (*Id.*) In this case, although the class certification motion was fully briefed, it had not yet been ruled upon. Further, Defendant had pending a motion for summary judgment. (*Id.*) Although it is fully briefed, and although Plaintiff believes the Opposition is strong, certainly Defendant disagrees, and the Motion has not yet been ruled upon. If Plaintiff did prevail on these two submitted motions, and if the case still did not resolve at that time, there would have been an expensive trial, and regardless of which party prevailed, there likely would be appellate practice, further delaying any possible actual receipt of money by the

class members, and further substantially increasing the number of attorney hours spend and the dollar amount spent on costs. (*Id.*) The cost of attorneys' fees to both sides from all of this activity would be substantial. (*Id.*)

Finally, this settlement in substance and structure is more favorable than the vast majority of class action settlements. There is no requirement to make a claim to receive money; for current bank customers the money will be direct deposited into their account and for former bank customers a check directly sent to them; the relief is in cash, not coupons; and, none of the money will revert to the Defendant. (Settlement Agreement, at ¶ 8(d).)

4. The Settlement Treats Class Members Equally

As already explained in Section IV.3., *supra*., under the settlement, all class members will receive a *pro rata* distribution based on the amount of eligible overdraft fees they incurred. (Settlement Agreement, at ¶ 8(d)(iv)(a) and (b)), with 7.7% of the Net Settlement Fund distributed to customers of the "Regulation Et Class" on a *pro rata* basis, and 92.3% distributed to customers of the "Sufficient Funds Class" on a *pro rata* basis. The allocation between the two classes was arrived at based on a pro rata allocation of the new money of $6,500,000 being paid by Defendant arising from the $500,000 statutory cap in 15 U.S.C. §1693m(a).

5. The Settlement Was Negotiated at Arm's Length

Rule 23(e)(2)(B) instructs the Court to consider whether the proposed settlement was negotiated at arm's length. The Court "must review the negotiating process leading up to the settlement for procedural fairness, to ensure that the settlement resulted from an arm's-length, good faith negotiation between experienced and skilled litigators." *Charron v. Wiener*, 731 F.3d 241, 247 (2d Cir. 2013) (citing *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803–04 (2d Cir. 2009). There is typically an initial presumption that a settlement is fair and reasonable when it was the result of arm's length negotiations between experienced, capable counsel after

meaningful discovery. McReynolds, 588 F.3d at 804 ("We have recognized a presumption of fairness, reasonableness, and adequacy as to the settlement where "a class settlement [is] reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery."); *Menkes v. Stolt-Neilsen S.A.*, 270 F.R.D. 80, 101 (D. Conn. 2010) ("the Second Circuit has recognized a presumption of fairness, reasonableness, and adequacy as to proposed settlements" where settlement resulted from arm's-length negotiations and plaintiffs' counsel possessed requisite experience and ability); *Kemp-Delisser v. Saint Francis Hospital and Medical Center*, No. 3:15-CV-1113 (VAB), 2016 WL 10033380, at *4 (D. Conn. July 12, 2016) (same); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, Case No. 05-MD-1720 (MKB) (JO), 2019 WL 359981, *19 (E.D.N.Y. January 28, 2019); *Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96 at 116 (2d Cir. 2005) (quoting Manual for Complex Litigation, Third, § 30.42 (1995)) Here, there is no doubt such discovery occurred.

The settlement was negotiated at arm's length. (Kick Decl., at ¶ 9.) In fact, the settlement is the result of a mediator's proposal by a very highly regarded retired federal judge. (*Id.*) As such, the presumption that the Settlement is fair is further strengthened. *Kemp-Delisser*, 2016 WL 10033380, at *4 (finding that "the proposed Settlement resulted from informed, extensive arm's-length negotiations, including participating in mediation with an experienced mediator"); *Roberts v. TJX Companies, Inc.*, No. 13-CV-13142-ADB, 2016 WL 8677312, at *6 (D. Mass. Sept. 30, 2016) ("the participation of an experienced mediator…also supports the Court's finding that the Settlement is fair, reasonable, and adequate"); *In re Viropharma Inc. Sec. Litig.*, No. CV 12-2714, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016) (the "participation of an independent mediator in settlement negotiations virtually insures [sic] that the negotiations were conducted at arm's length and without collusion between the parties").

Finally, the judgment of the Parties' counsel that the settlement is a fair and reasonable

resolution of the case should be given considerable weight. *Kemp-Delisser*, 2016 WL 10033380, at *4 (relying on the fact that "Class Counsel has concluded that the proposed Settlement is fair, reasonable, and adequate" in finding that the proposed settlement was fair, reasonable, and adequate); *Gulbankian v. MW Mfrs., Inc.*, Civil Action No. 10-10392-RWZ, 2014 WL 7384075, at *3 (D. Mass. Dec. 29, 2014) ("Class Counsel here are attorneys with extensive experience in consumer and building product class action litigation, and they insist that this Agreement is fair, reasonable and adequate. I give significant weight to this representation."); *Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000) ("When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight.").

Class Counsel in this case are experienced in litigating and settling consumer class actions and other complex matters. (McCune Decl., at ¶¶ 3-6; Kick Decl., at ¶¶ 2-3.) They also have a particular expertise in overdraft fee class actions. (McCune Decl., at ¶¶ 3-6; Kick Decl., at ¶¶ 2-3.) They have investigated the factual and legal issues raised in this action, and are in favor of the settlement. (McCune Decl., at ¶ 7; Kick Decl., at ¶¶ 9, 14.)

6. The Proposed Forms of Notice and Notice Programs Are Appropriate and Should Be Approved

The Settlement Agreement is attached as Exhibit 1 to the Declaration of Taras Kick. The proposed notice is attached as Exhibit 1 to the Settlement Agreement. The proposed form of notice and notice program here fully comply with due process and Federal Rules of Civil Procedure, Rule 23.

Rule 23(e) of the Federal Rules of Civil Procedure, which pertains to class action settlements, mandates that "notice of the proposed compromise shall be given to all customers of the class in such manner as the court directs." Fed. R. Civ. P. 23(e). Here, all of the class

members are receiving individual notice.

Further, the notice should “fairly, accurately, and neutrally” “apprise [] prospective [class] customers of the terms of the Proposed Settlement, the identity of persons entitled to participate in it and the options that are open to the [class] customers in connection with the proceedings.” *In re Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910, 924 (S.D.N.Y. 1991), aff'd, 960 F.2d 285 (2d Cir. 1992). *See also Ruiz v. McKaskle*, 724 F.2d 1149, 1153 (5th Cir. 1984) (approving district court’s notice plan that “fairly recited the [settlement] agreement’s terms and did not employ unnecessary legalisms.”). “The notice must “fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings.” *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982) quoting *Grunin v. International House of Pancakes*, 513 F.2d 114, 122 (8 Cir. 1975).

Under Rule 23(c)(3), the notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members. *Accord Kemp-Delisser v. Saint Francis Hosp. & Med. Ctr.*, No. 3:15-CV-1113 (VAB), 2016 WL 10033380, at *4 (D. Conn. July 12, 2016).

The proposed notice plan does that. (Kick Decl., Ex. 1; Settlement Agreement, Ex. 1.) The notice program thus goes well beyond other notice programs that have been approved. *See Edwards*, 2018 WL 1582509, *7 (D. Conn. March 30, 2018) (finding notice sufficient where a short form notice was distributed through mail, a long form notice that will be available on a settlement website, and a telephone number was available for class members who did not choose

to use the internet); *Macedonia Church*, 2011 WL 2360138, at *12 ("Notice to Class Members provided the best notice as practicable under the circumstances, as it was sent individually to all Class Members who were identified by the reasonable efforts of Class Counsel."). Notice should be disseminated here, given the arguments above, as it is "likely that the court will be able to approve the proposal after notice to the class and a final approval hearing." *See* Fed. R. Civ. P. 23 (e)(1) Advisory Committee's note to 2018 amendments.

B. The Proposed Settlement Class Should Be Certified

In granting preliminary approval of a proposed settlement, the Court also must determine that the proposed settlement class is appropriate for certification. MANUAL FOR COMPLEX LITIGATION § 21.632 (4th ed. 2004); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Class certification is proper if the proposed class, the proposed class representative, and the proposed class counsel satisfy the numerosity, commonality, typicality, and adequacy of representation requirements of Rule 23(a). Fed. R. Civ. P. 23(a)(1-4). In addition to meeting the requirements of Rule 23(a), a plaintiff seeking class certification must also meet at least one of the three provisions of Rule 23(b). Fed. R. Civ. P. 23(b). When a plaintiff seeks class certification under Rule 23(b)(3), the representative must demonstrate that common questions of law or fact predominate over individual issues and that a class action is superior to other methods of adjudicating the claims. Fed. R. Civ. P. 23(b)(3); *Amchem*, 521 U.S. at 615-16.

Because Plaintiff meets all of the Rule 23(a) and 23(b)(3) prerequisites, certification of the proposed Class is proper.

1. The Requirement of Numerosity Is Satisfied

The first Rule 23 prerequisite of class certification is numerosity, which requires "the class [be] so numerous that joinder of all customers is impractical." Fed. R. Civ. P. 23(a)(1). Plaintiff's expert has determined there are 442,427 members of the Sufficient Funds Class who

are not also members of the Regulation E Class, and that there are 41,291 members of the Regulation E Class who are not also members of the Sufficient Funds Class. (Olsen Decl., at ¶¶ 7, 8, 9.) Therefore, numerosity is easily met. *See Consol. Rail Corp. v. Town of Hyde Park,* 47 F.3d 473, 483 (2d Cir. 1995) (noting that numerosity is presumed when a class includes at least 40 members); *Mahon v. Chicago Title Ins. Co.,* 296 F.R.D. 63, 72 (D. Conn. 2013) (same).

2. The Requirement of Commonality Is Satisfied

The second requirement for certification requires that "questions of law or fact common to the class" exist. Fed. R. Civ. P. 23(a)(2). Commonality is demonstrated when the claims of all class members "depend upon a common contention . . . that is capable of classwide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Commonality demands only the existence of a "single common question." *U.S. v. City of New York,* 276 F.R.D. 22, 28 (E.D.N.Y. 2011) (quoting *Dukes*, 131 S. Ct. at 2556).

Here, not only do there exist common questions of law or fact, the common questions predominate over any individual ones. The theories underlying the class claims involve a uniform overdraft fee practice and uniform contractual terms. Defendant itself admits it uniformly and systematically used what it calls "available balance" to determine whether to assess an overdraft fee on a transaction, as opposed to utilizing the actual money in the account, or "actual balance." The operative terms regarding the overdraft fee program, and specifically the balance calculation to be used to determine the assessment of overdraft fees, as set forth in the Opt-In Contract and Account Agreement were provided to all class members. (Docket No. 1, ¶¶ 24, 25, 26, 27.) Determination of the meaning of the language in these two contracts will resolve the allegations for the Classes.

The commonality requirement is satisfied.

3. The Requirement of Typicality Is Satisfied

Rule 23 next requires that the class representative's claims be typical of those of the class members. Fed. R. Civ. P. 23(a)(3). The test for typicality is not demanding; it requires only that the class representative's "claim arises from the same course of events, and each class member makes similar legal arguments to prove defendants' liability." *In re Drexel Burnham Lambert Group, Inc.,* 960 F.2d 285, 291 (2d Cir. 1992); *see also* 1 Newberg on Class Actions § 3.13, at 3-76 (3d ed. 1992) ("A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory.") Further, representative claims need not be identical to class members' claims in order to be typical. *Aude v. Kobe Steel, Ltd.,* No. 17-CV-10085 (VSB), 2018 WL 1634872, at *3 (S.D.N.Y Apr. 4, 2018).

Plaintiff's claims are not only typical of those of the other putative class members, they are essentially identical: she was assessed overdraft fees when there was enough money in her account to pay for the transaction in question. (Walker Decl., at ¶ 2.) Moreover, Plaintiff entered into the same uniform agreements as did other class members, was opted into the same overdraft program as the other class members, and was assessed an overdraft fee by PUB's automated software system for improper overdraft fees just as it did for other Class members. Further, Plaintiff and the Classes seek redress via common legal claims. Therefore, typicality is satisfied.

4. The Requirement of Adequate Representation Is Satisfied

The final Rule 23(a) prerequisite requires that the proposed class representative has and will continue to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Resolution of two questions determines adequacy of representation: (1) does the named plaintiff have any conflicts of interest with prospective class members and (2) is class counsel qualified, experienced, and able to vigorously prosecute the interests of the class?

Duprey v. Connecticut Dept. of Motor Vehicles, 191 F.R.D. 329, 337 (D. Conn. 2000). As with the typicality requirement, this element requires that the interests of the named plaintiffs are aligned with the unnamed class members to ensure that the class representative has an incentive to pursue and protect the claims of the absent class members. *See Amchem*, 521 U.S. at 626 n. 20, 117 S.Ct. 2231 ("The adequacy-of-representation requirement 'tends to merge' with the commonality and typicality criteria of Rule 23(a), which 'serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'")

Proposed Class Counsel, Richard McCune of McCune Wright Arevalo, LLP, and Taras Kick of The Kick Law Firm, APC, both have significant class action, litigation, and trial experience, are competent, and have been competent in representing the classes. Both law firms representing the putative class have extensive experience in consumer class actions, and in particular, expertise in overdraft fee litigation. (McCune Decl., at ¶¶ 3-6; Kick Decl., at ¶¶ 2-3.) The interests of Plaintiff Terriann Walker are not antagonistic to those of the other class members; in fact, her interests are wholly aligned because she was charged overdraft fees when her checking account had a positive balance. Further, she understands that she is pursuing this case on behalf of all class members similarly situated and understands she has a duty to protect the absent Class members. (Walker Decl., at ¶ 2.) She has actively participated in the litigation, assisted Class Counsel by gathering documents and other information, by preparing for and sitting for her deposition, by personally attending the mediation which took place more than 800 miles from her Connecticut home, and, *inter alia*, also being prepared and willing to testify at deposition and at trial on behalf of the class, if necessary. (Walker Decl., at ¶ 3.)

5. The Proposed Settlement Class also Meets the Requirements of Rule 23(b)(3)

Once the prerequisites of Rule 23(a) have been met, a plaintiff must also demonstrate that she satisfies the requirements of Rule 23(b). To certify a class under Rule 23(b)(3), the plaintiff must show that (1) the common questions of law and fact predominate over questions affecting only individuals and (2) the class action mechanism is superior to other available methods for adjudicating the controversy. Fed. R. Civ. P. 23(b)(3

a. Common Questions of Law and Fact Predominate

As the Supreme Court most recently confirmed:

> When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.

Tyson Foods, Inc. v. Bouaphakeo, 136 S.Ct. 1036, 1045 (2016).

The predominance requirement questions whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. "The predominance requirement is met when the defendant's wrongful acts involve common practices and/or standardized documents, or when defendants put forth a common defense." *Cohen v. J.P. Morgan Chase & Co*., 262 F.R.D. 153, 159 (E.D.N.Y. 2009). "Or, to put it another way, common questions can predominate if a 'common nucleus of operative facts and issues' underlies the claims brought by the proposed class." *In re Nassau County Strip Search Cases*, 461 F.3d 219, 228 (2d Cir. 2006).

"Judicial economy factors and advantages over other methods for handling the litigation as a practical matter underlie the predominance and superiority requirements for class actions

certified under Rule 23(b)(3)." Rubinstein, et al., 2 Newberg on Class Actions § 4:24.

It is not disputed that the language used in the Account Agreement and Opt-In Contract is the same for all class members, and thus it would be far more efficient to decide those common issues via the class action mechanism. (Docket No. 1, ¶¶ 24, 25, 26, 27.) PUB does not dispute its practice of charging fees based on what it contends it called the available balance while the actual balance contains enough money to pay for a transaction. The predominating issue is whether the contracts permitted this. In short, the only task the trier of fact needs to perform in adjudicating the breach of contract claim is to determine the meaning of the contractual language. The determination of this predominating question would likely be dispositive of the case.

Predominance is met.

b. This Class Action Is the Superior Method of Adjudication

Rule 23(b)(3) also requires that a certifying court find that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Menkes v. Stolt-Nielsen S.A.*, 270 F.R.D. 80, 100 (D. Conn. 2010) (quoting *Amchem*, 521 U.S. at 617). "Accordingly, class treatment is often deemed superior in 'negative value' cases, *i.e.* where each individual class member's interest in the litigation is less than the anticipated cost of litigating individually." *Id.* Here, it is undisputed that each class member's claim is relatively small, making it uneconomic for individuals to pursue these claims on their own.

The desirability of concentrating the litigation in the present forum is illustrated by the fact that the amount of an individual overdraft fee in this case would be far less than the cost of

even filing the complaint. A large number of class members therefore have suffered damages in an amount that could not justify or sustain individual lawsuits, and the only real choice is thus between a class action and no action.

C. Proposed Schedule of Future Dates

The next steps in the settlement approval process are to notify the Class of the proposed Settlement, allow an opportunity for opt-outs and objections, and to hold a fairness hearing. The parties propose the following dates, assuming such dates are acceptable to the docket of this Honorable Court:

Claims Administrator Sends Notice and Website Goes Live	Twenty Days After Preliminary Approval
Last day to Opt Out	Thirty Days After Claims Administrator Sends Notice
Motion for Final Approval and Attorneys' Fees Filed with Court	Thirty-Five Days After Claims Administrator Sends Notice
Last day to Object	Fifteen Days After Motion For Final Approval and Attorneys' Fees is Filed With the Court
Last day to file responses to objections and Class Counsel's and Defendants' Replies in Support of Motion for Final Approval and Attorneys' Fees	Ten Days After Last Day to Object
Final Approval Hearing	If Convenient to this Court's Calendar, Twenty Days After Last Day to Object, or Whatever Date Is Convenient to this Court's Calendar
Filing by Claims Administrator of Final Report	Thirty Days After Time to Cash Checks has Expired

VI CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that the Court: (1) preliminarily approve the Settlement; (2) approve the proposed plan of notice to the Class; (3) appoint the Epiq to provide the notice and administration program outlined in this motion; (4) set a schedule of dates as set forth above for further action on this Settlement Agreement, including a hearing pursuant to

Rule 23(e) of the Federal Rules of Civil Procedure to determine whether the proposed Settlement is fair, reasonable, and adequate and should be finally approved.

Dated: October 15, 2019

Respectfully submitted,

/s/ Richard D. McCune
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Counsel for Plaintiff Terriann Walker and the Putative Classes

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be filed using the Court's CM/ECF system. Notice of this filing will be served on all parties of record by operation of the CM/ECF system, and said parties may access the filing through the ECF system.

/s/ Richard D. McCune

Richard D. McCune

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

TERRIANN WALKER, individually, and on behalf of others similarly situated, Plaintiff, v. PEOPLE'S UNITED BANK and DOES 1 through 100, Defendants.	CIVIL ACTION **No. 3:17-CV-00304 (AVC)**

DECLARATION OF TERRIANN WALKER IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Terriann Walker, declare as follows:

1. I am over the age of eighteen, have personal knowledge of the following, and if called as a witness could and would testify competently thereto.

2. I am the proposed class representative in this case, and have incurred overdraft fees from People's United Bank when I had enough money in my account to cover the transaction in question. I understand what this case is about, and have participated actively in it. As the proposed class representative in this matter, I understand my duties towards the absent class members, including that I have a fiduciary duty towards them and accordingly must look out for their best interests. I was never offered anything to become the class representative. I became the proposed class representative in this matter because I wanted to help other customers of People's United Bank who were charged what I believe are improper overdraft fees.

3. I understood and continue to understand that I also have a responsibility to actively participate in the case. I have done so. I have collected documents, conferred with my attorneys, and reviewed discovery. Specifically, before the case was filed, I reviewed and gathered documents for my attorneys. Prior to my attorneys filing this lawsuit, they gave me an opportunity to review the Complaint, and I did. Furthermore, I have responded to formal written discovery, including requests for production of documents and special interrogatories. I also sat for deposition in this matter, and prepared for the deposition in person with my attorneys, and also over the phone. I also personally flew from Connecticut to Chicago, Illinois to be present for and participate in the mediation in this matter which took place before the Honorable Gerald E. Rosen (Ret., U.S. District Judge) of JAMS on August 28, 2019. Would the case have gone to trial, I was prepared to appear at and participate in the trial, including testifying.

4. As stated, I have been in communication with my attorneys throughout this matter, including before its filing. Prior to filing this lawsuit, my attorneys disclosed that their two firms, McCune Wright Arevalo, LLP, and The Kick Law Firm, APC, would be sharing in any fees in this equally, and I approved that in writing.

5. I have discussed the settlement in this case with my attorneys, and I am in favor of it. Further, as stated, I was present at the actual mediation of this matter before the Honorable Judge Rosen on August 28, 2019.

I declare under penalty of perjury under the laws of the United States of America and the State of Connecticut that the foregoing is true and correct.

Executed this 14 day of October 2019, in Bridgeport, Connecticut.

Terriann Walker

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

TERRIANN WALKER, individually, and on behalf of others similarly situated, Plaintiff, v. PEOPLE'S UNITED BANK and DOES 1 through 100, Defendants.	CIVIL ACTION **No. 3:17-CV-00304 (AVC)** October 15, 2019

DECLARATION OF RICHARD MCCUNE IN SUPPORT OF PLAINTIFF'S NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Richard McCune, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and a shareholder with McCune Wright Arevalo, LLP. The following is based on my personal knowledge, and, if called as a witness, I could and would testify competently thereto.

2. I am a partner with McCune Wright Arevalo, LLP. My firm is a nineteen-attorney firm headquartered in Ontario, California with offices in Edwardsville, Illinois, Irvine, California, San Bernardino, California, Palm Desert, California, and Newark, New Jersey. We represent plaintiffs in consumer fraud class actions, product liability and other complex class action litigations in California and across the United States. I obtained my J.D. from the University of Southern California in June of 1987 and became a member of the California Bar in December of 1987. I have more than thirty-two years of litigation and trial experience and am AV rated. Over the last decade, I have focused my practice on representing consumers in class action litigation. Prior to that, I represented plaintiffs in a variety of complex litigation matters,

with particular emphasis in product liability actions.

3. I have been appointed class counsel in numerous state and federal class actions. A significant part of my practice since 2004 has been litigating the overdraft practices of financial institutions. In 2007, I was class counsel against Bank of America in an overdraft class action case that settled for $35 million. In 2010, I served as co-class counsel and co-trial counsel in a consumer fraud class action case against Wells Fargo Bank, N.A., on behalf of over one million customers who had been improperly assessed overdraft fees. That trial resulted in a $203 million bench trial verdict, and a permanent injunction issued forbidding Wells Fargo Bank, N.A. from continuing to misrepresent its overdraft practices. From 2009 to 2012, I was heavily involved in litigation against over 33 banks in an overdraft MDL in the Southern District of Florida (*In re: Checking Account Overdraft Litigation*, MDL No. 2036), that has generated over $1 billion in settlements. I was appointed class counsel in a $5 million settlement with Citibank, N.A. relating to its overdraft practices. I am currently appointed co-lead counsel in an overdraft MDL against TD Bank, N.A. (*In re: TD Bank, N.A., Debit Card Overdraft Litigation,* MDL No. 2613), that recently tentatively settled for $70 million. I am also currently involved in a number of active cases again state and national financial institutions related to their overdraft practices.

4. In 2011, I was class and trial class counsel in a consumer class action trial that resulted in a plaintiffs' verdict on behalf of a class of California Correct Craft, Inc. boat owners. My firm and I have been appointed class counsel in certified class actions in a number of other consumer fraud class actions, including cases against Correct Craft, Gateway Computers, Kaiser Steel Retirees Benefit Trust, Bank of America, N.A., Hewlett-Packard, American Honda Motor Co., Mazda Motors of America, Inc., and JP Morgan Chase Bank, N.A.

5. I currently have been appointed co-lead counsel in one MDL, serve on one MDL executive committee, and have been appointed as one of two settlement class counsel in a third MDL. I am appointed by Central District of California Judge James V. Selna to the Plaintiffs' Personal Injury and Wrongful Death Committee in *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation* (MDL No. 2151). Central District of California Judge George H. Wu appointed me to serve as settlement class

counsel in *In re: Hyundai and Kia Fuel Economy Litigation* (MDL No. 2424). I am currently appointed by South Carolina District Judge Bruce H. Henricks to serve as co-lead counsel in *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation* (MDL No. 2613).

6. In overdraft litigation, I have been appointed as class counsel or co-lead class counsel in contested class certification proceedings in *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation* (MDL No. 2613), United States District Court for the District of South Carolina, Greenville Division, Case No. 6:15-MN-02613; *Gutierrez, et al. v. Wells Fargo Bank,* United States District Court for the Northern District of California, Case No. C 07-05923 WHA; *Gunter v. United Federal Credit Union,* United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC; *Hernandez v. Point Loma Credit Union,* Superior Court of the State of California, County of San Diego, Case No. 37-2013-00053519-CU-BT-CTL; and *Smith v. Bank of Hawaii*, United States District Court for the District of Hawaii, Case No. 16-00513. I have been appointed as settlement class counsel or co-lead class counsel in *Fernandez v. Altura Credit Union,* Riverside County Superior Court, Case No. RIC1610873; *Behrens v. Landmark Credit Union,* United States District Court for the Western District of Wisconsin, Case No. 17-cv-101-JDP; *Hernandez v. Logix Federal Credit Union,* Los Angeles County Superior Court, Case No. BC628495; *Bowens v. Mazuma Federal Credit Union,* United States District Court for the Western District of Missouri, Case No. 15-00758-CV-W-BP; *Santiago v. Meriwest Credit Union,* Sacramento County Superior Court, Case No. 34-2015-00183730; *Fry v. MidFlorida Credit Union,* Case No. 8:15-CV-2743; *Ketner v. State Employees Credit Union of Maryland, Inc.,* Case No. 1:15-cv-03594; *Ramirez v. Baxter Credit Union,* 3:16-cv-03765; *Lynch v. San Diego County Credit Union,* San Diego County Superior Court, Case No. 37-2015-00008551; *Towner v. 1st MidAmerica Credit Union,* Case No. 3:15-cv-1162; *Lane v. Campus Federal Credit Union,* Case No. 3:16-cv-00037; *Gray v. Los Angeles Federal Credit Union,* Los Angeles County Superior Court, Case No. BC625500; *Moralez v. Kern Schools Federal Credit Union,* Kern County Superior Court, Case No. BCV-15-100538; *Manwaring v. Golden I Credit Union,* Sacramento County Superior Court, Case No. 34-2013-00142667; *Casey v. Orange County Credit Union,* Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC;

Gunter v. United Federal Credit Union, United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC and *Sewell v. Wescom Credit Union*, Los Angeles County Superior Court No. BC586014.

7. I have been personally involved in all aspects of the investigation, pleadings, law and motion, discovery and settlement negotiations in this case, and it is my belief that this settlement is in the best interest of the class taking into account both the risks and benefits of proceeding to trial and verdict in this case.

8. McCune Wright Arevalo, LLP's current costs in this matter to date are $92,073.35. The firm's fees to date at current rates are $684,715. I expect future work relating to preliminary and final approval, class notice, and the distribution of the settlement to be at least another $50,000 for a total actual and anticipated lodestar of $734,715.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of October 2019, at Ontario, California.

Richard McCune

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

TERRIANN WALKER, individually, and on behalf of others similarly situated, Plaintiff, v. PEOPLE'S UNITED BANK and DOES 1 through 100, Defendants.	CIVIL ACTION **No. 3:17-CV-00304 (AVC)** October 15, 2019

DECLARATION OF TARAS KICK IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Taras Kick, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and a shareholder with The Kick Law Firm, APC. The following is based on my personal knowledge, and, if called as a witness, I could and would testify competently thereto.

2. I have been a member of the California State Bar since 1989, the year I graduated from the University of Pennsylvania Law School. Prior to that, in 1986, I graduated from Swarthmore College, from which I earned a Bachelor of Arts degree in Economics and Psychology. I have served as class counsel in numerous national and state class actions, including being appointed lead counsel and a member of plaintiffs' executive committees. For over five years I was a member of the national Board of Directors of Public Justice, including its Class Action Preservation Committee. I am or have been a member of numerous other committees pertaining to consumer class actions, including the American Association for Justice Class Action Litigation Sub-Group; the Consumer Attorneys of California Class Action Group; the American Bar Association Committee on Class Actions & Derivative Suits; and, the State

Bar of California Antitrust and Unfair Competition Litigation section. From 2012 through September 2017, I was a Commissioner of the California Law Revision Commission, an independent state agency created by statute in 1953 to assist the Legislature and Governor by examining California law and recommending needed reforms, having been appointed by Governor Edmund G. Brown Jr. in 2012, and was Chair of the Commission from September 2015 through September 2016 (although my role in this case is independent of any aspect of my duties with the Commission and does not reflect one way or the other any positions of the Commission). The Kick Law Firm, APC primarily represents plaintiffs in consumer class actions.

3. The firm's class action experience includes, but is not limited to, the following cases: *Ketner v. SECU* Maryland, Civil No.:1:15-CV-03594-CCB (D. MD. 2017) (appointed co-lead counsel in federal consumer class action in the District of Maryland regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted on January 11, 2018); *Towner v. 1st MidAmerica Credit Union*, No. 3:15-cv-1162 (S.D. Ill. 2017) (appointed co-lead counsel in federal consumer class action regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted in November 2017); *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 (M.D. La. 2017) (appointed co-lead counsel in consumer class action in the Middle District of Louisiana regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted in August 2017); *Hernandez v. Point Loma Credit Union*, San Diego County Superior Court, Case No. 37-2013-00053519 (appointed co-lead counsel in consumer class action in state court in California, regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted); *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior Court, Case No. BC625500 (appointed co-lead counsel in California state consumer class action regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted in June 2017); *Moralez v. Kern Schools Federal Credit Union*, Kern County Superior Court, Case No. BCV-15-100538 (appointed co-lead counsel in California state consumer class action regarding alleged improper

overdraft fees by a credit union, with issues similar to this case, final approval granted in June 2017); *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior Court, Case No. 34-2013-00142667 (appointed co-lead counsel in California state consumer class action regarding alleged improper overdraft fees by a credit union, with issues similar to this case, final approval granted in December 2015); *Casey v. Orange County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC (appointed co-lead counsel in California state consumer class action regarding alleged improper overdraft fees by credit union, with issues similar to this case, final approval granted by the court in May 2015); *Southern California Gas Leak JCCP & Other Related Cases*, Case No. JCCP 4861, Los Angeles County Superior Court (appointed as interim co-lead counsel for the class action cases); *Howard v. Sage Software,* Los Angeles County Superior Court Case No. BC487140 (appointed lead counsel in multi-state consumer class action regarding alleged improper sales tax issues, final approval granted); *Kirtley v. Wadekar*, United States District Court for the District of New Jersey, Case No. 05-5383 (lead class counsel for nationwide class of purchasers of generic drugs); *Ford Explorer Cases*, Sacramento County Superior Court, JCCP Nos. 4266 & 4270 (co-class counsel and head of discovery committee for California class of car purchasers); *Pereyra v. Mike Campbell & Associates*, Los Angeles County Superior Court Case No. BC365631 (appointed lead class counsel for state-wide class of employees); *Alston v. Pacific Bell*, Los Angeles County Superior Court Case No. BC297863 (appointed lead class counsel for multi-state class regarding alleged improper telephone service related charges); *Oshaben v. Monster Worldwide, Inc., et al.*, San Francisco County Superior Court Case No. CGC-06-454538 (appointed lead class counsel for nationwide class regarding improper auto-renewal of subscription fees); *Cole v. T-Mobile USA, et al.*, Central District of California Case No. 06-6649 (appointed lead class counsel for an adversely certified state-wide class of 1.4 million cell-phone customers). Additionally, since 2014, I have taken two consumer class action cases to trial, with both trials resulting in judgments in favor of the consumer class. I was co-lead counsel in both of those cases.

4. Other attorneys at The Kick Law Firm, APC ("TKLF") who have worked on this matter include Robert Dart, a 2001 graduate of Duke University and 2004 graduate of the

University of Chicago Law School, who became a member of the Illinois State Bar in 2004, and a member of the California State Bar in 2009. After law school, Mr. Dart worked as a complex commercial litigator at Jenner & Block in Chicago, and after that he was a federal law clerk for The Honorable Aleta Trauger of the Middle District of Tennessee. After clerking, Mr. Dart worked as a complex commercial litigator at Quinn Emanuel Urquhart & Sullivan in Los Angeles. Since starting at TKLF in February 2016, Mr. Dart devoted the majority of his time to consumer class action cases against financial institutions involving overdraft fee disputes.

5. The Kick Law Firm, APC undertook this case on a contingent basis, with the understanding that we would not be compensated for our efforts unless the case was successful. To date, TKLF has not been paid for any of its time spent on this matter. The time spent on this matter by the firm's attorneys has required considerable work that could have, and would have, been spent on other billable matters. As a result of having accepted and been devoted to this case, it is my informed belief this law firm wound up not representing parties in cases it otherwise would have, and which in my opinion likely would have compensated this firm at its hourly rates requested in this matter.

6. TKLF worked cooperatively, efficiently and very effectively with co-lead counsel McCune Wright Arevalo on this matter. The firms made every reasonable effort to prevent the duplication of work or inefficiencies, and I believe were successful in this. Assignments were made for specific tasks and activities so that it was clear which firm had primary responsibility for each task.

7. The complaint in this action was filed on February 21, 2017, alleging claims for Breach of Opt-In Contract, Breach of Account Agreement, Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust Enrichment/Restitution, Money Had and Received, Violation of the Electronic Fund Transfer Act (Regulation E) 12 C.F.R. §§ 1005, *et seq*., and Violation of the Connecticut Unfair Trade Practices Act, Connecticut Code§ 42-ll0(a), *et seq*. (the "Complaint"). The gravamen of the allegation is that that Defendant had breached its contracts with its customers and violated Reg. E by charging overdraft fees for transactions

which, to be completed, required less money than was already in the customers' actual balances. (Docket No. 1.) On June 8, 2017, Defendant filed a Motion to Dismiss, and related documents. On June 29, 2017, Plaintiff filed a Memorandum in Opposition to the Motion to Dismiss, and related documents. On July 13, 2017, Defendant filed a Reply to Plaintiff's Opposition to Motion to Dismiss. On August 8, 2017, Defendant filed a Notice of New Authority in Support of Defendant's Motion to Dismiss Plaintiff's Class Action Complaint. On August 10, 2017, Plaintiff filed a Response to Defendant's Notice of New Authority. On September 29, 2017, Plaintiff filed a First Notice of New Authority In Support of Opposition to Defendant's Motion to Dismiss. On October 5, 2017, Defendant filed a Second Notice of Additional Authority re Motion to Dismiss. On November 8, 2017, Defendant filed a Third Notice of New Authority in Support of Motion to Dismiss. On March 20, 2018, Plaintiff filed a Fourth Notice of New Authority In Support of Opposition to Motion to Dismiss. On March 30, 2018, the Court issued its ruling granting in part and denying in part the Motion to Dismiss. On October 31, 2018, Plaintiff filed a Motion for Class Certification, and related documents. On January 22, 2019, Defendant filed a Motion for Summary Judgment, and related documents, and an Opposition to Motion for Class Certification, and related documents. On February 13, 2019, Plaintiff filed a Memorandum in Opposition to Motion for Summary Judgment, and related documents. On February 20, 2019, Plaintiff filed a Reply to Defendant's Opposition to Plaintiff's Motion for Class Certification. On March 4, 2019, Defendant filed a Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment. On May 17, 2019, Plaintiff filed a Motion to Compel Defendant to Produce Percipient Witness For Deposition and to Produce Documents Responsive to Discovery Requests. On June 21, 2019, Defendant filed a Memorandum in Opposition to Plaintiff's Motion to Compel Defendant to Produce Percipient Witness and Documents. On July 3, 2019, Plaintiff filed a Reply to Defendant's Opposition to

Motion to Compel Defendant to Produce Percipient Witness. On July 11, 2019, the parties filed a Joint Motion to Stay pending the parties engaging in mediation, and on July 12, 2019, the Court entered an Order granting in part and denying in part the Joint Motion to Stay.

8. On May 3, 2018, Plaintiff served her First Set of Requests for Production, Interrogatories, and Requests for Admission on Defendant. Defendant provided its objections and responses to Plaintiff's First Set of Discovery on July 12, 2018, and produced its first set of 2,176 pages of responsive documents. On May 9, 2018, Defendant served its First Set of Interrogatories and Requests for Production on Plaintiff. Plaintiff provided her objections and responses to Defendant's First Set of Discovery on July 11, 2018. On May 31, 2018, Plaintiff served Defendant with her Initial Disclosures. Plaintiff included 62 pages of documents with her disclosures. On June 1, 2018, Defendant served Plaintiff with its Initial Disclosures. On July 19, 2018, Plaintiff served a Notice of Deposition on Defendant. On August 9, 2018, Defendant produced its second set of approximately 21 pages of responsive documents to Plaintiff. On September 11, 2018, Plaintiff's deposition was taken by Defendant. Plaintiff took the FRCP Rule 30(b)(6) depositions of Defendant's designated witnesses Sara Wilbur and Sherri Furce on September 13, 2018. Between September 7 - 18, 2018, Defendant produced additional sets of responsive documents, totaling approximately 2711 pages. Defendant continued to produce documents into early 2019 in response to the Parties' meet and confer efforts.

9. Settlement negotiations at all times were at arm’s length, adversarial and devoid of any collusion. On August 28, 2019, the parties engaged in a mediation in Chicago, Illinois, before the Honorable Gerald E. Rosen (Ret.) of JAMS. The settlement described in the Motion for Preliminary Approval is the result of an accepted mediator’s proposal made by Judge Rosen which was accepted by both sides. The Settlement Agreement which is now being brought to this Court for approval is attached as Exhibit 1, and the proposed Notice is attached as Exhibit 1 to

the Settlement Agreement. I believe the proposed settlement is fair, adequate, and reasonable, and in the best interest of class members, and I recommend it.

10. Plaintiff Terriann Walker is typical of the settlement classes. She was charged overdraft fees on transactions when the balance of her account was positive. Ms. Walker was very involved in the case, including personally attending the mediation which took place in Chicago, even though she lives in Connecticut. I had numerous conversations with her about the case. This is in addition to having gathered documents whenever requested, and providing other information whenever requested. Ms. Walker also sat for deposition in this case, and prepared on at least two different days for that deposition.

11. Administration services for this case were put out to bid to two well-regarded claims administrators to provide the notice and administration services set forth in the Settlement Agreement, attached as Exhibit 1, and Epiq provided the lower of the two bids, with Epiq estimating a total cost of $129,928, and agreeing to cap its costs for the administration at $142,089. Using similar notice procedures in other overdraft fee class actions against credit unions, Plaintiff's counsel have accomplished successful direct notice well in excess of 90%.

12. The Kick Law Firm, APC, and McCune Wright Arevalo, LLP, have agreed to share equally in any attorney fees awarded in this matter, and class representative Ms. Walker has been aware of this at all times and agreed to this fee sharing in writing. The Kick Law Firm, APC's lodestar in this matter, inclusive of time estimated for future work related to the Motion for Final Approval and work with the administrator after final approval, is estimated at $432,000, and the lodestar of McCune Wright Arevalo, as reported in Paragraph 8 of the concurrently filed declaration of Richard McCune, is estimated at $734,715. Therefore, the combined lodestar of the two law firms to date, without counting time spent by local counsel, is estimated at $1,166,715. Class Counsel will present detail of the work performed with the Motion for Final

Approval should this Court wish to perform a lodestar cross-check on the fee request.

13. Litigation costs incurred to date on behalf of Plaintiff are $100,286.50, with $8,212.75 by The Kick Law Firm, APC. This total does not yet include costs expended by local counsel. Class Counsel will incur additional costs through the time of final approval of this matter, and therefore request a not-to-exceed cap of $150,000 in litigation cost reimbursement. If the costs come in under this, that will be presented at the time of the Motion for Final Approval, as all the costs will be detailed with the filing of the Motion for Final Approval.

14. Although I believe the liability in this case is strong, it is certainly possible that a trier of fact might determine that the language in the operative contracts allowed Defendant to assess overdraft fees as it did, and that is a risk. With regard to expected duration, the case would require substantial further work if the proposed settlement were not approved, and as a Plaintiff, there is risk at every juncture. There is a fully briefed Motion for Class Certification which is pending. Although I believe the likelihood for certification is strong, there is always some risk in getting consumer class actions certified, even the ones which have the strongest merits for certification. Further, there is also a fully briefed Motion for Summary Judgment filed by Defendant which is pending. If these two pending motions still did not resolve the case at that time, there would be a trial, and regardless of which party prevailed, there likely would be appellate practice, further delaying any possible actual receipt of money by the class members, and further substantially increasing the number of attorney hours spent and the dollar amount spent on costs. The cost of attorneys' fees to both sides from all of this activity would be substantial, and I estimate it to be more than an additional five hundred thousand dollars in attorney time and costs through trial only, and more if the matter went all the way through appeal. The risks and costs outlined in this paragraph are another reason why I am in support of the proposed settlement.

15. It is my estimate that, should this case have proceeded to trial, and the Plaintiff Class proved victorious, the total recovery most likely would have been $16,581,941. That dollar amount is what Plaintiff's database expert Arthur Olsen states in Paragraph 7 of his concurrently filed Declaration In Support of Preliminary Approval, and is the total amount of overdraft fees after reversals/credits charged against the class members when they had enough money in their accounts to cover the transaction in question during the class period.

I declare under penalty of perjury under the laws of the United States of America and the State of Connecticut that the foregoing is true and correct. Executed this 15th day of October 2019, at Los Angeles, California.

/s/ *Taras Kick*
Taras Kick

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

TERRIANN WALKER v. PEOPLE'S UNITED BANK, N.A.

United States District Court, District of Connecticut

Case No. 3:17-CV-00304-AVC

PREAMBLE

This Settlement Agreement and Release (the "Agreement") is entered into by and among plaintiff Terriann Walker ("Named Plaintiff") and all those on whose behalf she is prosecuting this action (each of them a "Plaintiff" and all of them "Plaintiffs"), on the one hand, and defendant People's United Bank, N.A. ("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 February 21, 2017, Named Plaintiff filed a putative class action complaint entitled *Walker v, People's United Bank, N.A.* in the United States District Court for the District of Connecticut, Case No. 3:17-CV-00304-AVC, alleging claims for Breach of Opt-In Contract, Breach of Account Agreement, Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust Enrichment/Restitution, Money Had and Received, and Violation of the Electronic Fund Transfer Act (Regulation E) 12 C.F.R. §§ 1005 *et seq*., and Violation of the Connecticut Unfair Trade Practices Act, Connecticut Gen. Stat. § 42-ll0(a), et seq. (the "Complaint").

B. On June 8, 2017, Defendant filed a Motion to Dismiss, and related documents.

C. Plaintiff filed a Memorandum in Opposition to the Motion to Dismiss, and related documents on June 29, 2017.

D. On March 30, 2018, the Court issued its ruling granting in part and denying in part the Motion to Dismiss ("Dismissal Ruling").

E. On August 28, 2019, the parties engaged in a mediation before the Honorable Gerald E. Rosen (Ret., U.S. District Judge) of JAMS. The settlement described below is the result of an accepted mediator's proposal made by Judge Rosen.

F. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Defendant nevertheless believes that this settlement is in its best interest. 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.

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

AGREEMENT

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

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

(a) "Bar Date To Object" will be the date set by the Court as the deadline for 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 To Opt Out shall be thirty (30) days after the date the Notice (defined below) must be delivered to the Class Members.

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

(d) "Class Counsel" shall mean Richard D. McCune of McCune Wright Arevalo, LLP and Taras Kick of The Kick Law Firm, APC.

(e) "Class Member" shall mean any member of Defendant who is in either the Regulation E Class or the Sufficient Funds Class.

(f) "Court" shall mean the United States District Court for the District of Connecticut.

(g) "Defendant's Counsel" shall mean Stuart M. Richter and Andrew J. Demko of Katten Muchin Rosenman LLP and James T. (Tim) Shearin of Pullman & Comley, LLC.

(h) "Effective Date" shall be thirty (30) days after the entry of the Final Approval Order provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) Thirty-five (35) days after entry of the Final Approval Order, if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then the earlier of Thirty (30) days after an Appellate Court ruling affirming the Final Approval Order; or (3) Thirty (30) days after entry of a dismissal of the appeal.

(i) "Eligible Overdraft Fee" shall mean "Regulation E Overdraft Charges" and "Sufficient Funds Overdraft Charges" assessed before November 1, 2016 that were not reversed within 30 days after they were assessed.

(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 8, below.

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

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

(p) "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, and shall refer to the form of Notice attached hereto as Exhibit 1.

(q) "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 Section 5 below.

(r) "Regulation E Class" shall mean those members of Defendant who were assessed and who paid an overdraft fee for a non-recurring debit card payment transaction between February 21, 2016 and October 31, 2016.

(s) "Regulation E Overdraft Charges" shall mean overdraft fees that were assessed on and paid by members of the Regulation E Class between February 21, 2016 and October 31, 2016 for any nonrecurring or one-time debit card transaction.

(t) "Settlement Fund" shall mean the six million five hundred thousand dollars ($6,500,000.00) to be paid by Defendant under the terms of this Agreement.

(u) "Sufficient Funds Class" shall mean those members of Defendant who were assessed and who paid an overdraft fee between February 21, 2011 and October 31, 2016, on any type of payment transaction and 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.

(v) "Sufficient Funds Overdraft Charges" shall mean overdraft fees that were assessed against and paid by any member of the Sufficient Funds Class between February 21, 2011 and ending on October 31, 2016, on any payment transaction when there was enough money in the member's ledger balance to cover the transaction in question.

(w) "Uncollected Overdraft Fees" shall mean Eligible Overdraft Fees assessed on a Class Member but not collected as of August 28, 2019. For purposes of this Agreement, the Parties agree that the Uncollected Overdraft Fees are estimated to be approximately $900,000.

(x) "Value of the Settlement" shall mean the Settlement Fund plus the Uncollected Overdraft Fees.

2. CHANGE IN ACCOUNT DISCLOSURES. Effective November 1, 2016, Defendant changed its customer account agreement and other disclosures to more clearly disclose the effects of holds on potential overdraft fees. In the Court's Dismissal Ruling, it held that the Account Agreement and the Regulation E Opt-In Form must be construed together (Dismissal Ruling, Dkt. #48, at 14). Therefore, the changes to the Customer Account Agreement and other disclosures made effective November 1, 2016 also resulted in the Defendant more clearly satisfying the requirements of Regulation E.

3. CLASS ACTION SETTLEMENT. Plaintiff shall propose and recommend to the Court that a settlement class be certified, which class 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. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

4. PRELIMINARY SETTLEMENT APPROVAL. Class Counsel shall use reasonable efforts to file a motion seeking a Preliminary Approval/Notice Order by October 15, 2019. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of each class for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified classes, 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 CLASSES.

(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 electronically, Defendant shall provide the Claims Administrator with the most recent email addresses it has for these Class Members. The Claims Administrator shall email the Notice 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 for class members, update its database with these emails, and resend the Notice.

(c) For those Class Members who are not current members of Defendant or who have not agreed to receive electronic notices regarding their accounts from Defendant, 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. To the extent the database is provided to Class Counsel, it shall be used only for purposes of implementing the terms of this Agreement, and shall not be used for any other purposes.

(f) The Notice shall be in a form approved by the Court and, substantially similar to the notice form attached hereto as Exhibit 1. 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 16, 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), 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 Plaintiff; (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) <u>Plaintiff's Fees and Costs</u>. Plaintiff's 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 not more than one-third (33-1/3%) of the Value of the Settlement plus reimbursement of reasonable litigation costs, to be approved by the court. 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) <u>Service Award</u>. Named Plaintiff may apply to the Court for a service award of up to fifteen thousand dollars ($15,000). Subject to the Court's approval, the service award shall be paid from the Settlement Fund ten (10) days after the Effective Date.

(iii) <u>Claims Administrator's Fees</u>. 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, may be paid within ten (10) days after the Effective Date or may be paid thereafter as requested by the Claims Administrator and approved by Class Counsel and Defendant's Counsel.

(iv) <u>Payments to Class Members</u>. Of the $6,500,000 Settlement Fund, $500,000 is allocated to the "Regulation E Overdraft Charges" and $6,000,000 is allocated to the "Sufficient Funds Overdraft Charges." In other words, 7.7% of the Settlement Fund is being allocated to the Regulation Class and 92.3% is being allocated to the Sufficient Funds Class. Based on this allocation, payments from the "Net Settlement Fund" shall be calculated for the "Sufficient Funds Class" and for the "Regulation E Class" as follows:

(a) The amount paid to each Regulation E Class Member shall be calculated as follows:

(.077 of the Net Settlement Fund/Total Regulation E Overdraft Charges) x Total Regulation E Overdrafts Charged of the Regulation E Class Member = Individual Payment

(b) The amount paid to each Sufficient Funds Class Member shall be calculated as follows:

(.923 of the Net Settlement Fund/Total Sufficient Funds Overdraft Charges) x Total Sufficient Funds Overdrafts Charged of the Sufficient Funds Class Member = Individual Payment

(c) Because members of the Sufficient Funds Class may also be members of the Regulation E Class, there may be circumstances where Eligible Overdraft Fees which are Sufficient Funds Overdraft Charges will also be Regulation E Overdraft Charges. 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. Thus, if a Class Member was charged $37 for an Eligible Overdraft Fee which is a Regulation E Overdraft Charge that is also a Sufficient Funds Overdraft Charge, then that member shall only be entitled to recover at most $37 for that fee.

(d) Payments to individual class members ("Individual Payments") shall be made no later than ten (10) days after the Effective Date, as follows:

For those Class Members who are customers of Defendant at the time of the distribution of the Net Settlement Fund, any checking or savings account they are then maintaining at Defendant, held by them individually, shall be credited in the amount of the Individual Payment they are entitled to receive.

For those Class Members who are not customers 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 pursuant to Section 12.

(v) In no event shall any portion of the Settlement Fund revert to Defendant.

9. UNCOLLECTED OVERDRAFT FEES. Upon the occurrence of the Effective Date, Defendant shall forgive the Uncollected Overdraft Fees as defined in paragraph 1(w) which are the Uncollected Overdraft 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 Overdraft Fees are inadvertently collected, then they shall be refunded by Defendant insofar as Defendant is aware of the Uncollected Overdraft Fees. If a customer with Uncollected Overdraft Fees attempts to open a new account or re-open a closed account, Defendant shall not require payment of the Uncollected Overdraft Fees as a condition to account opening insofar as Defendant is aware of the outstanding Uncollected Overdraft 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 a reasonable sample 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. The retainer agreement shall include provisions requiring that all Class Member data shall be strictly confidential and secured by the Claims Administrator by means of recognized data security measures, and shall not be disclosed other than as provided for under the terms of this Agreement or as ordered by the Court.

(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 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 or credits 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 or such earlier date as requested by Class Counsel, 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, within thirty (30) days after the Final Report, the total amount of uncashed checks, and residual amounts held by the Claims Administrator at the time of the Final Report, shall be paid by the Claims Administrator to one or more 501(c) non-profit entities chosen 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. GENERAL RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiff, on behalf of herself and each of the Class Members, hereby releases and forever discharges Defendant, and all of its past, present and future predecessors, successors, parents, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers and agents (collectively, the "Defendant Releasees") from any and all losses, fees, charges, complaints, claims, 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, fixed or contingent, which Named Plaintiff and Sufficient Funds Class Members and Regulation E 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 Complaint, including claims relating to any overdraft and/or nonsufficient funds fees assessed against said class members.

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 3 above;

(ii) The Court has entered the Final Approval Order as required by Sections 5 and 6 above; 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 Plaintiff, on behalf of the Class Members, represents that she has made such inquiry into the terms and conditions of this Agreement as she deems appropriate, and that by executing this Agreement, she believes the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(d) The Named Plaintiff represents that she has no conflicts or other personal interests that would in any way impact her 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 Connecticut.

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 Plaintiff 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) 557-1250
rdm@mccunewright.com

- And –

Taras Kick
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, California 90049
Telephone: (310) 395-2988
Taras@kicklawfirm.com

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

Stuart M. Richter, Esq.
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Telephone: (310) 788-4400
stuart.richter@kattenlaw.com

-And-

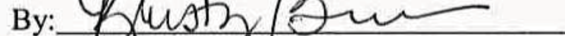
James T. (Tim) Shearin, Esq.
Pullman & Comley LLC
850 Main Street
P.O. Box 7006
Bridgeport, CT 06601-7006
Telephone: (203) 330 2240
jtshearin@pullcom.com

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: October 15, 2019

People's United Bank, N.A.

By: 

Its: General Counsel

Dated: October __, 2019

Teriann Walker, an individual on behalf of herself and those she represents

By:______________________________
Terriann Walker

APPROVED AS TO FORM:

Dated: October 15, 2019

KATTEN MUCHIN ROSENMAN LLP
Stuart M. Richter
Andrew J. Demko

PULLMAN & COMLEY LLC
James T. (Tim) Shearin, Esq.

Stuart M. Richter, Esq.
Katten Muchin Rosenman LLP
2029 Century Park East, Suite 2600
Los Angeles, California 90067
Telephone: (310) 788-4400

-And-

James T. (Tim) Shearin, Esq.
Pullman & Comley LLC
850 Main Street
P.O. Box 7006
Bridgeport, CT 06601-7006
Telephone: (203) 330 2240

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: October __, 2019

People's United Bank, N.A.

By:______________________________

Its:______________________________

Dated: October 14 2019

Teriann Walker, an individual on behalf of herself and those she represents

By:______________________________
Terriann Walker

APPROVED AS TO FORM:

Dated: October ___, 2019

KATTEN MUCHIN ROSENMAN LLP
Stuart M. Richter
Andrew J. Demko

PULLMAN & COMLEY LLC
James T. (Tim) Shearin, Esq.

By:____________________________
~~Stuart M. Richter~~ James T. Shearin
Attorneys for Defendant People's United Bank, N.A.

Dated: October ____, 2019

McCUNE WRIGHT AREVALO LLP
Richard D. McCune

THE KICK LAW FIRM, APC
Taras Kick

By:____________________________
Richard D. McCune
Attorneys for Plaintiff Terriann Walker

By:______________________________

Stuart M. Richter

Attorneys for Defendant People's United Bank, N.A.

Dated: October 15, 2019

McCUNE WRIGHT AREVALO LLP

Richard D. McCune

THE KICK LAW FIRM, APC

Taras Kick

By:______________________________

Richard D. McCune / Taras Kick

Attorneys for Plaintiff Terriann Walker

Exhibit 1

Terriann Walker
v.
People's United Bank, N.A.

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 PEOPLE'S UNITED BANK AND WERE CHARGED AN OVERDRAFT FEE BETWEEN FEBRUARY 21, 2011 AND OCTOBER 31, 2016, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT

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

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
APPROVE THE SETTLEMENT AND RECEIVE A PAYMENT; YOU NEED NOT DO ANYTHING	Unless you exclude yourself from the settlement (see the next paragraph), then you will receive a check or a credit to your account (depending on whether you are still a customer of People's United Bank, N.A. ("PUB").
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 PUB but you will not receive a payment. If you exclude yourself from the settlement but want to recover against PUB, you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT	You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, then you will receive a payment and you will not be able to sue PUB for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved.

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

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Terriann Walker v. People's United Bank, N.A.* in the United States District Court for the District of Connecticut, Case No. 3:17-CV-00304-AVC. The case is a "class action." That means that the "Named Plaintiff," Terriann Walker, is an individual who is acting on behalf of two groups. The first is all customers of PUB who were charged an overdraft fee for any payment transaction from February 21, 2011 and October 31, 2016, and at the time such fee was imposed, that person had sufficient funds in the ledger balance but not the available balance in his or her account to complete the transaction. The second group is all members of PUB who were charged an overdraft fee for a debit card transaction from February 21, 2016 through October 31, 2016. The persons in these groups are collectively called the "Class Members."

The Named Plaintiff claims PUB improperly charged overdraft fees when members had enough money in the ledger balances but not the available balances of their checking accounts to cover a transaction, and also alleges PUB did not properly opt customers into its overdraft program for debit card payment transactions. The complaint in the action alleged Breach of Opt-In Contract, Breach of Account Agreement, Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust Enrichment/Restitution, Money Had and Received, Violation of the Electronic Fund Transfer Act, and Violation of the Connecticut Unfair Trade Practices Act. The Named Plaintiff is seeking a refund of alleged improper overdraft fees charged to Class Member accounts. PUB 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. PUB maintains that its practice was proper and was disclosed to its customers, and therefore denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member.

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

You received this Notice because PUB's records indicate that you were charged one or more Eligible Overdraft Fees. 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 Plaintiff's lawyers' job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interests of the class as a whole and, in this case, it is her 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 PUB was contractually and otherwise legally obligated not to assess overdraft fees when the ledger balance was sufficient to pay for a transaction, and even if it was, there is uncertainty about whether the claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiff 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 PUB disputes the allegations in the lawsuit and denies any liability or wrongdoing, it enters into the settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation.

WHO IS IN THE SETTLEMENT

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

If you received this notice, then PUB'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) do nothing and automatically participate in the settlement; (2) exclude yourself from the settlement ("opt out" of it); or (3) participate in the settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

To participate in the settlement, you need not do anything; so long as you do not opt out or exclude yourself (described in Questions 16 through 18, below), a payment will be made to you, either by crediting your account if you are still a member of PUB or by mailing a check to you at the last address on file with PUB (or any other address you provide).

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 ________.

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, then 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?

PUB has agreed to create a Settlement Fund of $6,500,000. In addition, PUB has agreed to forgive eligible overdraft fees which were assessed as of August 28, 2019, that could be but have not yet been collected from Class Members, and this is estimated to be an additional $900,000 towards the Value of the Settlement.

As discussed separately below, attorneys' fees, litigation costs, a Service Award to the Named Plaintiff, 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. The balance of the Settlement Fund will be divided among all Class Members based on the amount of eligible overdraft fees they paid.

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

Class Counsel will request an attorney fee be awarded by the Court of not more than one-third of the Value of the Settlement. Class Counsel has also requested that it be reimbursed approximately $______ in litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

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

Class Counsel on behalf of the Named Plaintiff has requested that the Court award her $15,000 for her role in acting as the Named Plaintiff and 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 agreed to cap its expenses at $______.

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

No. As long as you do not opt out, a credit will be applied to your checking account if you are an existing member, or a check will be mailed to you at the last known address PUB 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 in Question 15, below.

14. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 21-23) on ______ to consider whether the settlement should be approved. If the Court approves the settlement, then payments should be made or credits should be issued within about 40 to 60 days after the settlement is approved. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I exclude myself from the settlement?

If you do not want to receive a payment, or if you want to keep any right you may have to sue PUB 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 *Walker v. People's United Bank, N.A.* 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:

Walker v. People's United Bank Claims Administrator
Attn:

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

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

17. 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

18. 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 Claims Administrator as follows:

CLAIMS ADMINISTRATOR
Walker v. People's United Bank Claims Administrator Attn:

19. 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 PUB. 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 PUB for the claims alleged in this lawsuit.

20. 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

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

The Court will hold a Final Approval or Fairness Hearing on ____ at the United States District Court for the District of Connecticut, 450 Main Street, Suite 125, Hartford, Connecticut 06103. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Named Plaintiff should get as a Service Award for acting as the class representative.

22. 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.

23. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 18, above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing."

IF YOU DO NOTHING

24. What happens if I do nothing at all?

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

THE LAWYERS REPRESENTING YOU

25. 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.

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

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

27. 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 for the United State District Court for the District of Connecticut.

GETTING MORE INFORMATION

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online at [WEBSITE] or at the Office of the Clerk of the United States District Court for the District of Connecticut, located at 450 Main Street, Hartford, Connecticut 06103, 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:

Walker v. People's United Bank, N.A.
Claims Administrator
Attn:

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

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

Taras Kick
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049
Telephone: (310) 395-2988
Taras@kicklawfirm.com

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

TERRIANN WALKER, individually, and on behalf of others similarly situated, Plaintiff, v. PEOPLE'S UNITED BANK and DOES 1 through 100, Defendants.	CIVIL ACTION **No. 3:17-CV-00304 (AVC)**

DECLARATION OF ARTHUR OLSEN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, Arthur Olsen, declare as follows:

1. I have personal knowledge of the following and if called as a witness could and would testify competently thereto.

Scope of Work

2. Based on my experience in the information technology ("IT") field and my prior work as a data management expert in other cases, I have been retained by Class Counsel to analyze the class data produced in connection with this action involving People's United Bank ("PUB").

Qualifications and Background

3. My qualifications and background are set forth in my consultant profile ("Profile") attached hereto as **Exhibit 1**. As set forth in my Profile, I am the principal of Cassis Technology, LLC, an IT consulting firm, and have over twenty years of professional experience in the IT field,

specializing in the areas of data analysis, database development, and database administration and support.

4. Prior to starting my own firm, I worked as a database engineer for Microsoft Corporation ("Microsoft"), and also worked under contract as a database administrator, developer, and administration support specialist for Hewlett-Packard Company ("Hewlett-Packard"). At Microsoft, I participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division, managed and supported numerous databases throughout the company, and received Microsoft's award for operational excellence for my database-related work. At Hewlett-Packard, I served as the primary database administrator for both Oracle and SQL Server systems that supported multiple Hewlett-Packard divisions, and also served as the lead analyst in charge of compiling, analyzing, and processing data from various internal database systems throughout Hewlett-Packard for use in litigation support.

5. I have experience working on several litigation consulting projects. For example, I previously provided trial testimony and was qualified as an expert witness in a consumer lawsuit against Wells Fargo relating to its overdraft practices and fees, which ultimately resulted in a judgment of over $200 million against Wells Fargo. *See Gutierrez v. Wells Fargo Bank*, N.A., 730 F. Supp. 2d 1080 (N.D. Cal. 2010). In its Order awarding restitution to the class members, the court found that I had done a "professional and careful job" in connection with this work:

> This order finds that plaintiffs' expert Arthur Olsen has convincingly shown that it is entirely practical to re-run the computerized data in storage for each class members' account and determine how many overdrafts were added by the high-to-low practice for debit-card transactions during the class period. Indeed, he has already done so, using various alternate posting sequences. This has been done by him on an account-by-account, day-by-day, and transaction-by-transaction basis, using the bank's own real-world data. Court orders were needed to provide him access to this data, but after much work and time, this order finds that Expert Olsen has done a professional and careful job in laying out the impacts of various alternative posting protocols. This work has not only demonstrated the enormous impact of the high-to-low scheme, but it has demonstrated that it is possible, in

> considering relief and restitution, to add back to depositors' specific accounts the amounts that were wrongfully taken by Wells Fargo, using posting protocols that this order finds would have tracked the ordinary and reasonable expectations of depositors.

Id. at 1138.

Analysis

6. In connection with the present action, I have reviewed the class data produced by PUB. The class data contained detailed information regarding all overdraft fees assessed by PUB on debit card, check, and ACH transactions between February 21, 2011 and October 31, 2016. Among other things, the class data included account numbers, the date of each overdraft fee, the amount of each overdraft fee, information allowing the determination of the type of transaction which caused each overdraft fee, (either debit card, check, or ACH), and the ledger balance at the time when each transaction posted to the account.

7. For the Sufficient Funds Class, based on the data provided, I have identified 134,148 PUB accounts that were assessed at least one overdraft fee when the account holder had a positive ledger balance in their account that was sufficient to cover the transaction at issue between February 21, 2011 and October 31, 2016, after the application of any refunds already credited by PUB. There were 454,094 such fees totaling $16,581,941.

8. For the Regulation E Class, based on the data provided, I have identified 14,575 PUB accounts that were assessed at least one overdraft fee for an ATM or non-recurring debit card transaction between February 21, 2016 and October 31, 2016, after the application of any refunds already credited by PUB. There were 52,958 such fees totaling $1,959,446.

9. Some of the overdraft fees that were assessed by PUB were included in both the Sufficient Funds Class and the Regulation E Class. This is illustrated in the following chart, which breaks down all fees at issue into one of three categories: (a) fees that fall only in the Sufficient

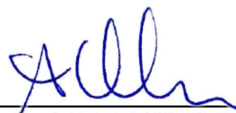
Funds Class detailed in paragraph 7; (b) fees that fall only in the Regulation E Class detailed in paragraph 8; and (c) fees that fall into both the Sufficient Funds Class and the Regulation E Class.

	Number of Fees	Total of Fees
Sufficient Funds Class Only	442,427	$16,150,262
Regulation E Class Only	41,291	$1,527,767
Both Classes	11,667	$431,679
Total Net Fees At Issue	**495,385**	**$18,109,708**

10. With regard to both classes, under the Settlement Agreement, I understand that PUB has agreed to forgive and release any claims it may have to collect any Sufficient Funds Overdraft Charges and Regulation E Overdraft Charges that have been assessed by PUB, but not collected and subsequently charged-off as of August 28, 2019. However, the charge-off data has only been produced through September 30, 2018. Therefore, of the total fees included in either the Sufficient Funds Class or the Regulation E Class, $963,933 were not collected and subsequently charged-off as of September 30, 2018.

I declare under penalty of perjury under the laws of the State of Connecticut that the foregoing is true and correct.

Executed this 15th day of October, 2019, at Seattle, Washington.



Arthur Olsen

EXHIBIT 1

IT CONSULTANT PROFILE: ARTHUR OLSEN

BACKGROUND

Specializing in the areas of data analysis, database development, and database administration, Mr. Olsen has nearly 20 years of professional IT experience. He has a strong background in both Oracle and Microsoft database technologies, with a focus in developing large-scale applications and designing reporting solutions for publicly traded corporations. Additionally, he has had valuable experience in analyzing and processing massive amounts of data for use in litigation support.

SKILLS

- Considerable experience compiling, analyzing and processing data in support of corporate and class-action litigation.
- Extensive training and experience creating functional designs and logical data models.
- Proficient in the wide range of database development and administration technologies including: Microsoft SQL Server; Oracle RDBMS; and Teradata RDBMS.
- Relevant experience designing, implementing and maintaining large scale database solutions on Oracle and SQL Server, including both online transaction based systems and data warehouses.
- Reporting specialist with experience developing custom reporting solutions based on financial systems such as Microsoft Dynamics and Oracle Financials, as well as custom applications.

AWARDS

- Award for Operational Excellence | Microsoft
  Recognized for outstanding contribution to the design and implementation of the data warehousing solution for the Microsoft Licensing division.

CERTIFICATIONS

- Oracle Certified Professional
- Certified Oracle Database Administrator

EXPERIENCE

Data Expert: Litigation Specialist | retained by various law firms

- Data expert supporting massive multi-district class action litigation, (MDL No. 2036 – *In Re: Checking Account Overdraft Litigation*).
- Processed and analyzed data in support of class action litigation, (*Arnett v. Bank of America, N.A.*, D. Or. Case No. 3:11-CV-01372).
- Processed and analyzed data in support of class action litigation, (*Sheila I. Hofstetter et. al. v. JP Morgan Chase Bank, N.A.,* N.D. Cal. Case No. CV-10-1313 WHA).
- Processed and analyzed data in support of class action litigation, (*Veronica Gutierrez et. al. v. Wells Fargo Bank, N.A.*, N.D. Cal. Case No. 07-05923 WHA), that resulted in a $203 million class restitution award.

Database Engineer: Reporting Specialist | under contract at various clients

- Developed a custom Chart of Accounts management solution that integrates with Microsoft Great Plains for small to mid-size companies.
- Designed and implemented several custom financial reporting solutions, including one for a Fortune 500 company, based on Microsoft Business Intelligence, MOSS, and Excel Services.
- Architected a solution for a large corporation that integrated with Oracle Financials and automated the process of calculating inventory reserves.

Database Administrator, Developer & Litigation Support Specialist | under contract at Hewlett Packard, Cupertino, CA

- Primary Database Administrator responsible for both Oracle and SQL Server support for three divisions, including 20+ applications spread out over a total of 30+ development, test and production servers.
- Lead analyst responsible for compiling, analyzing and processing data from various systems throughout HP for use in litigation support.
- Participated as the principal authority in the composition and implementation of SQL Server database standards across the three divisions, including security models, backup and recovery plans, programming standards, and general database naming conventions.

Database Engineer | Microsoft Licensing, Inc., Reno, NV

- Participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division. System included nearly twenty data sources and several thousand end users, including select customers who accessed the system remotely via the Internet.
- Developed numerous DTS packages to pull delta information from various source systems, process and denormalize data and push it to one of several data repositories.
- Created and documented plans for database maintenance, backup and recovery, and high availability.

Database Engineer | under contract at Microsoft Corporation, Redmond, WA

- Lone Oracle database administrator and general Oracle resource for all teams associated with an enterprise level online end user billing system, including: Management, Development, Testing, Production Support and Infrastructure.
- Primary owner of a 24 x 7 production database that resided on a DEC Alpha failover cluster.
- Designed replication model using Oracle replication to satisfy extensive reporting requirements.
- Tuned SQL statements as written by members of the development team. Developed PL/SQL triggers, stored procedures, SQL scripts and NT scripts as needed to enhance applications and to correct problems as discovered.
- Acted as liaison between Microsoft and Oracle for all technical issues related to the databases, and between Microsoft and Digital for all technical issues related specifically to the Alpha cluster.

EDUCATION

- Microsoft Internal Training – Redmond, WA | March 2000
  Instructor led SQL Server training, including courses on Database Architecture and Administration, Database Tuning, and Microsoft's TSQL
- ARIS Education Center – Bellevue, WA | June 1996
  Oracle DBA Program, including courses on Relational Database Design, Database Architecture and Administration, SQL and PL/SQL, Application Tuning, Database Tuning, and Advanced Database Concepts
- University of Washington – Seattle, WA | June 1989
  BA in Business Administration with a concentration in Finance.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

TERRIANN WALKER, individually, and on behalf of others similarly situated, Plaintiff, v. PEOPLE'S UNITED BANK and DOES 1 through 100, Defendants.	CIVIL ACTION **No. 3:17-CV-00304 (AVC)** October 15, 2019

[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

The Court, having considered Plaintiff's Motion for Preliminary Approval of Class Settlement, and all supporting documents thereto (collectively, the "Motion"), and the Settlement Agreement and Release dated as of August 15, 2019 (the "Settlement Agreement"), rules as follows:

1. Defined terms in this Order shall have the same meaning given such terms in the Settlement Agreement.

2. This Court finds on a preliminary basis that the class as defined in the Settlement Agreement ("Settlement Class") meets all of the requirements for certification of a settlement class under the Federal Rules of Civil Procedure and applicable case law. Accordingly, the Court provisionally certifies the Settlement Class, which is composed of the following two classes:

The "Sufficient Funds Class," which is defined as, "those customers of Defendant who were assessed and who paid an overdraft fee between February 21, 2011 and October 31, 2016, on any type of payment transaction and at the time such fee was assessed the customer had sufficient money in his or her ledger balance to cover the transaction that resulted in the fee."

The "Regulation E Class," which is defined as, "those customers of Defendant who were assessed and who paid an overdraft fee for a non-recurring debit card payment transaction between February 21, 2016 and October 31, 2016."

3. The Court provisionally appoints Terriann Walker as the Class Representative of the Settlement Class.

4. The Court appoints Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator under the terms of the Settlement Agreement.

5. For purposes of the Settlement Agreement, the Court further provisionally finds that counsel for the Settlement Class, Richard McCune of McCune Wright Arevalo, LLP, and Taras Kick of The Kick Law Firm, APC, are qualified, experienced, and skilled attorneys capable of adequately representing the Settlement Class, and they are provisionally approved as Class Counsel.

6. This certification of a preliminary Settlement Class under this Order is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of the Defendant in this Action that any other proposed or certified class action is appropriate for class treatment pursuant to the Federal Rules of Civil Procedure or any similar statute, rule or common law. Entry of this Order is without prejudice to the rights of Defendant to oppose class certification in this action should the settlement not be approved or not be implemented for any reason or to terminate the Settlement Agreement as provided in the Settlement Agreement.

7. The Court provisionally, and solely for purposes of this settlement, finds that the members of the Settlement Class are so numerous that joinder of all members would be impracticable, that the litigation and proposed settlement raise issues of law and fact common to

the claims of the Class Members and these common issues predominate over any issues affecting only individual members of the Settlement Class, that the claims of Terriann Walker (the "Named Plaintiff") are typical of the claims of the Settlement Class, that in prosecuting this Action and negotiating and entering into the Settlement Agreement, the Named Plaintiff and her counsel have fairly and adequately protected the interests of the Settlement Class and will adequately represent the Settlement Class in connection with the settlement, and that a class action is superior to other methods available for adjudicating the controversy.

8. The Court has reviewed the Settlement Agreement and the attached Notice of Pending Class Action and Proposed Settlement ("Notice") (Exhibit 1 to the Settlement Agreement) and finds that the settlement memorialized therein falls within the range of reasonableness and potential for final approval, thereby meeting the requirements for preliminary approval, and that the Notice should go out to the Settlement Class in the manner described in the Settlement Agreement. The settlement appears to be reasonable in light of the risk inherent in continuing with litigation. The Court also notes that the settlement is a non-reversionary one where no money will be returned to the Defendant. The Court also notes that the settlement was arrived at after an arm's length negotiation involving experienced counsel.

9. The Court finds that the methods of giving notice prescribed in the Settlement Agreement meet the requirements of the Federal Rules of Civil Procedure and due process, are the best notice practicable under the circumstances, shall constitute due and sufficient notice to all persons entitled thereto, and comply with the requirements of the Constitution of the United States, and all other applicable laws.

10. For the purposes stated and defined in the Settlement Agreement, the Court hereby sets the following dates and deadlines:

Claims Administrator Sends Notice and Website Goes Live	Twenty Days After the Date of this Order
Last day to Opt Out	Thirty Days After Claims Administrator Sends Notice
Motion for Final Approval and Attorneys' Fees Filed with Court	Thirty-Five Days After Claims Administrator Sends Notice
Last day to Object	Fifteen Days After Motion for Final Approval and Attorneys' Fees Is Filed with the Court
Last day to file responses to objections and Class Counsel's and Defendants' Replies in Support of Motion for Final Approval and Attorneys' Fees	Ten Days After Last Day to Object
Final Approval Hearing	Twenty Days After Last Day to Object
Filing by Claims Administrator of Final Report	Thirty Days After Time to Cash Checks has Expired

11. The Court hereby approves and adopts the procedures, deadlines, and manner governing all requests to be excluded from the Class, or for objecting to the proposed settlement, as provided for in the Settlement Agreement.

12. All costs incurred in connection with providing notice and settlement administration services to the Class Members shall be paid from the Settlement Fund.

13. If the settlement is not approved or consummated for any reason whatsoever, the Settlement Agreement and all proceedings in connection therewith shall terminate without prejudice to the status quo ante and rights of the parties to the action as they existed prior to the date of the execution of the Settlement Agreement, except as otherwise provided in the Settlement Agreement.

Good cause appearing therefore, IT IS SO ORDERED.

Dated: October ____, 2019

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The Honorable Alfred V. Covello
United States District Court Judge