

DISTRICT COURT, DENVER COUNTY,
COLORADO
Court Address: 1437 Bannock Street, Denver, CO
80202

SABA RAEL, individually and on behalf of all
similarly situated persons,

Plaintiff,

v.

RED ROCKS CREDIT UNION,

Defendant.

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Consolidated Case No.: 2020CV32226

Division: 409

**UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

I. INTRODUCTION

Subject to Court approval, Plaintiff Saba Rael (“Plaintiff”) and Defendant Red Rocks Credit Union (“RRCU”) are pleased to announce they have reached a class action settlement of this Lawsuit. The Class includes all persons (1) who entered into an automobile finance agreement with GAP protection in Colorado that was made with or assigned to RRCU; (2) who paid off their finance agreements before the maturity date (an “Early Payoff”); (3) whose Early Payoffs occurred during the Class Period of **October 1, 2014 to July 1, 2020**; and (4) who did not receive a GAP Refund.¹

In exchange for a release of the claims in this Lawsuit, RRCU (1) has directly paid full GAP Refunds to each Class member in the collective amount of **\$312,267.84**; (2) will pay full interest at a rate of 8% per annum compounded annually on the unpaid refund amounts for a collective total of **\$81,254.26**; and (3) has implemented and agreed to maintain changes to its refund practices so that GAP Refunds are made to all Colorado customers within a reasonable time after an Early Payoff. In total, RRCU has paid and will pay approximately **\$393,522.10** as a result of the filing of this Lawsuit and as consideration for the Settlement. This does not include the *hundreds of thousands of dollars* in refunds that will be paid by RRCU in the future due to the Settlement’s Business Practice Change.

Per the terms of the Settlement, RRCU has agreed to deposit the **\$81,254.26** in interest into a Settlement Fund to pay for (a) the cost of directly mailing Notice of this Settlement to the Class and administering the terms of the Settlement (estimated to be approximately **\$9,000**), (b) a Service

¹ Capitalized terms in this Motion shall have the same meaning as defined in the Settlement Agreement attached as **Exhibit 1**.

Award of **\$500** to Plaintiff Saba Rael for serving as the Class Representative; and (c) a Fee Award of **\$68,532** and an Expense Award of **\$3,722.44** to reimburse Class Counsel for the time and expenses incurred representing the Class, subject to final approval by the Court.

The Settlement provides a “complete win” for Plaintiff and the Class. RRCU has paid and will pay the *maximum* damages that each Class member could have obtained had they prevailed at trial. The Settlement’s Business Practice Change further ensures that GAP refunds will be promptly paid to all Colorado customers in the future, thereby obviating the need for injunctive relief.

Plaintiff respectfully requests the Court: (1) certify the proposed Class for settlement purposes only; (2) appoint Plaintiff and his counsel as the Class Representative and Class Counsel; (3) grant preliminary approval of the Settlement; (4) direct that Notice of the Settlement be provided to the Class in the form and manner set forth in the Settlement; (5) appoint Atticus Administration, LLC as the Settlement Administrator; and (5) set the relevant deadlines for a Final Approval Hearing. RRCU does not oppose this Motion.

II. STATEMENT OF FACTS

A. Factual Background.

Plaintiff entered in an automobile finance agreement (“Finance Agreement”) in Colorado that was assigned to RRCU. *See* Amended Complaint (“AC”), ¶ 13. As part of the Finance Agreement, Plaintiff paid for 84 months of Guaranteed Asset Protection (“GAP”) at a cost of \$449.82. *Id.*, ¶ 14. GAP is an insurance-like benefit that provides that if a customer’s car is “totaled” and the insurance payout on the vehicle is less than the amount owed under the Finance Agreement, then the creditor (RRCU) will waive the difference. *Id.*, ¶ 4.

Plaintiff contends that under Colorado law, if a customer pays off their Finance Agreement early, the creditor is required to issue a prorated credit or refund the cost of GAP coverage for the unused term of the Finance Agreement pursuant to 4 Colo. Code Regs. § 902-1:8(h). *Id.*, ¶ 7. This unused amount is referred to in the automobile finance industry and by the Colorado Legislature as “unearned” GAP fees. *Id.* Plaintiff alleges that the failure to issue a credit or refund of unearned GAP fees after an Early Payoff constitutes a breach of contract, because Colorado’s refund obligations are an implied term of every GAP Agreement. *See, e.g., McShane v. Stirling Ranch Prop. Owners Assoc., Inc.*, 393 P.3d 978, 982 (Colo. 2017) (“Contractual language must be interpreted in light of existing law, the provisions of which are regarded as implied terms of the contract, regardless of whether the agreement refers to the governing law.”).

Plaintiff paid off his Finance Agreement early on March 30, 2020, with approximately 42 months remaining on his contract term. AC, ¶ 14. RRCU failed to issue a credit or refund of the unearned GAP fees after the Early Payoff. *Id.*, ¶ 15. Plaintiff alleges this was part of a systemic problem that affected a larger class of RRCU’s Colorado customers. *Id.*, ¶¶ 9-10, 17-30.

B. Procedural History

On July 1, 2020, Plaintiff filed a class action complaint on behalf of himself and all similarly situated Colorado consumers seeking full GAP refunds plus interest and injunctive relief.

On September 4, 2020, RRCU filed an answer denying any wrongdoing.

On November 13, 2020, the Lawsuit against RRCU was consolidated under Case Number 20CV32226 with other similar actions against credit unions and finance companies for their alleged failures to issue GAP Refunds.

After a lengthy stay of the consolidated actions, on October 15, 2021, the Court conducted

a Case Management Conference and set the “at issue date” as October 7, 2021. The parties thereafter engaged in discovery and document production and began scheduling depositions.

Through the discovery, Plaintiff established that RRCU had not been paying GAP refunds to customers who entered into GAP Agreements with third parties that had been assigned to RRCU. *See* Declaration of Jason M. Frank (“Frank Decl.”), ¶ 11. In contrast, it appeared RRCU was regularly paying GAP refunds to customers who directly entered into GAP Agreements with RRCU. *Id.* The discovery further confirmed that after the filing of Plaintiff’s lawsuit, RRCU implemented changes to its refund practices so that RRCU would promptly issue GAP Refunds to all customers after an Early Payoff, including customers whose GAP Agreements were assigned to RRCU. *Id.*, ¶ 12. RRCU also began sending refund checks to past customers who had not previously received a GAP Refund. *Id.* Plaintiff’s damages expert, Dr. L. Scott Baggett, reviewed the data for these customers and confirmed that the refund amounts were correctly calculated using the Pro Rata Method required under 4 Colo. Code Regs. § 902-1:8(h). *Id.* The refund payments, however, did not include any interest, even though they had remained unpaid for years. *Id.*

On January 3, 2022, Plaintiff filed a motion to amend his complaint to, among other things, add an individual claim under the Colorado Consumer Protection Act (the “CCPA”), C.R.S. § 6-1-101 *et seq.* The Amended Complaint – which is the operative complaint in this Lawsuit – was deemed filed by this Court on February 1, 2022.

On February 28, 2022, RRCU filed an unopposed motion for an extension of time to file its responsive pleading to Plaintiff’s Amended Complaint so that the Parties could devote their time and efforts to good faith settlement negotiations.

On April 5, 2022, the Parties filed a Joint Notice of Class Action Settlement.

C. Settlement Negotiations.

The settlement negotiations in this matter have been lengthy, principled, and were conducted at arm's length. Frank Decl., ¶ 13. The parties initially explored the possibility of going to mediation in the Fall of 2020, but ultimately decided it was premature. *Id.* The parties began engaging in serious settlement discussions in February 2022 after receiving responses to Plaintiff's discovery. *Id.* On March 30, 2022, the parties reached an agreement on all material settlement terms for the Class, which was conditioned upon RRCU obtaining approval of the settlement from the Colorado Attorneys General's office. *Id.* After RRCU obtained that approval, the Parties negotiated the amount of the proposed Fee and Expense and Service Awards and thereafter entered a formal Settlement Agreement.

III. SUMMARY OF THE PROPOSED SETTLEMENT

The terms of the proposed Settlement are set forth in the Stipulation re: Red Rocks Credit Union Class Action Settlement and Release (the "Settlement") attached hereto as **Exhibit 1**.

A. Consideration for the Settlement's Release.

In exchange for a release of the claims in this Lawsuit, RRCU (1) has directly paid full GAP Refunds to each Class member in the collective amount of **\$312,267.84**; (2) will pay full interest at a rate of 8% per annum compounded annually on the unpaid refund amounts for a collective total of **\$81,254.26**; and (3) has implemented and agreed to maintain changes to its refund practices so that GAP Refunds are made to all Colorado customers within a reasonable time after an Early Payoff. In total, RRCU has paid and will pay approximately **\$393,522.10** as a result of the filing of this Lawsuit and as consideration for the Settlement. This does not include the *hundreds of thousands of dollars* in refunds that will be paid by RRCU in the future due to the

Settlement's Business Practice Change.

1. GAP Refunds.

Per the terms of the Settlement, RRCU will provide a declaration verifying it has directly paid full GAP refunds to the **1,330** Class members by either mailing them a check or depositing the money into their account at RRCU. Settlement, ¶ 77. Any uncashed refund checks have escheated or will escheat to the State in conformance with Colorado's unclaimed property laws. *Id.* Plaintiff's expert, Dr. Baggett, has reviewed the amount of each refund to verify the refunds were calculated using the Pro Rata Method required by 4 Colo. Code Regs. § 902-1:8(h).² Frank Decl., ¶ 17. In total, RRCU paid approximately **\$312,267.84** in GAP Refunds to the **1,330** Class members, which results in an average payment of approximately **\$235** per Class member ($\$312,267.84 / 1,330 = \234.79). *Id.*

2. Interest and the Settlement Fund.

In addition to the GAP Refunds, RRCU has also agreed to deposit **\$81,254.26** into a Settlement Fund to pay for the interest that accrued from the date of each Class member's respective Early Payoff to the date the GAP Refund check was issued, calculated at 8% per annum and compounded annually pursuant to C.R.S. § 5-12-102(1)(b). Settlement, ¶ 78. Subject to Court approval, the Settlement Fund will be used to pay (a) the cost of providing Notice and Administration of this Settlement (**\$9,000**), (b) a Service Award of **\$500** to Plaintiff Saba Rael for serving as the Class Representative; and (c) a Fee Award of **\$68,532** and an Expense Award of

² Dr. Baggett noted a few discrepancies that were subsequently addressed by RRCU. RRCU's counsel indicated these discrepancies were primarily the result of human errors that occurred when inputting data into RRCU's records. Frank Decl., ¶ 17. Any additional amounts owed to the Class due to these discrepancies have been paid or will be paid by RRCU in accordance with the terms of the Settlement.

\$3,722.44 to reimburse Class Counsel for their time and expenses incurred representing the Class, subject to final approval by the Court. *Id.*, ¶¶ 78-81, 110-113, Exs. A, B. In total, as a result of this Lawsuit and this Settlement, RRCU has paid and will pay approximately **\$393,522.10** (**\$312,267.84** in refunds plus **\$81,254.26** in interest). Frank Decl., ¶ 19.

3. Business Practice Change.

After Plaintiff filed this Lawsuit, RRCU implemented changes to its refund policies and procedures so that, from **July 1, 2020** forward, RRCU ensures that it will issue a GAP Refund to customers in Colorado within a reasonable time after receipt of an Early Payoff of the Finance Agreement. Settlement, ¶ 76. Customers are not required to take any action after an Early Payoff to receive the GAP Refund. *Id.* The GAP Refund amount is calculated using the Pro Rata Method unless otherwise required by law, and no cancellation fee will be charged unless expressly authorized in the customer's GAP Agreement. *Id.* These policies and procedures apply to all Colorado customers whose Finance Agreements with GAP protection have been or will be assigned to RRCU. *Id.* Under the proposed Settlement Agreement, RRCU agrees it will continue to issue a GAP Refund to its Colorado customers after an Early Payoff in conformance with 4 Colo. Code Regs. § 902-1:8(h). *Id.* RRCU's agreement to maintain this Business Practice Change is a material term of the proposed Settlement Agreement. *Id.* Cumulatively, this prospective relief is worth *hundreds of thousands of dollars* to future RRCU customers. Frank Decl., ¶ 19.

4. Attorneys' Fees & Costs.

Class Counsel have agreed that they will not request more than **\$72,254.44** in fees and expenses (combined) and that any amounts awarded by the Court will come out of the **\$81,254.26** Settlement Fund. Settlement, ¶¶ 80, 110.

To date, Class Counsel have incurred at least **208.5 hours** litigating this case for a total lodestar of **\$141,615**. See Frank Decl., ¶¶ 22, 24-26 and Declaration of Franklin D. Azar (“Azar Decl.”), ¶¶ 12-13. Class Counsel have also incurred **\$3,722.44** in expenses. Frank Decl., ¶¶ 25-26; Azar Decl., ¶¶ 14-15. Pursuant to the Settlement cap, Class Counsel will only be requesting **\$68,532** in fees (i.e., Class Counsel are discounting their total lodestar by over **51%**). Frank Decl., ¶ 23. This fee request results in a blended rate of approximately **\$324 per hour**. *Id.* It also equates to approximately **17.4%** of the total cash value paid as a result of the Lawsuit and the Settlement (**\$393,522.10**), not including the *hundreds of thousands of dollars* of future GAP Refunds that will be paid under the Settlement’s Business Practice Change. *Id.* Class counsel will file a separate Motion for Fees, Costs and Service Awards pursuant to the proposed schedule set forth in this motion, subject to approval by the Court.

5. Service Award.

The proposed Settlement provides that Class Representative may request a Service Award in the amount of **\$500** to be paid out of the Settlement Fund. Settlement, ¶ 113.

6. Notice and Administrative Costs.

The proposed Settlement provides that the cost of providing Notice of this Settlement to the Class and administering the Settlement will be paid out of the Settlement Fund. Settlement, ¶ 79. The proposed Settlement Administrator, Atticus Administration LLC (Atticus), has agreed to cap these costs at **\$9,000** based on the present terms of the Settlement. See Declaration of Christopher Longley (“Longley Decl.”), Ex. B.

B Release.

In exchange for the above consideration, Plaintiff and each Class Member will release

RRCU and its related entities and persons (the “Class Releasees”) from any claims arising from or relating in any way to the Class Member’s entitlement to a GAP Refund after an Early Payoff that occurred during the Class Period or interest on such GAP Refund (the “Class Released Claims”). Settlement, ¶ 72. Notwithstanding the foregoing, the Class Releasees do not include any third-party Dealers or GAP Administrators, including without limitation, those identified in the Class Members’ GAP Agreements or Finance Agreements. *Id.*

C. Notice Plan.

The Settlement provides that a post-card Notice of Settlement will be mailed to every Class member by the Settlement Administrator within fourteen (14) days after preliminary approval. Settlement, ¶¶ 89-90. A copy of the proposed Notice of Settlement is attached to the Settlement as **Exhibit A**. The Notice of Settlement will include a QR code that Class members can scan to link them to a Settlement Website maintained by the Settlement Administrator. *Id.* The Settlement Website will include a detailed Long-Form Notice that explains the Settlement’s terms and Class member’s rights and options. *Id.*, ¶ 92. A copy of the proposed Long Form Notice is attached to the Settlement as **Exhibit B**. *Id.* The Settlement Website will also include key pleadings, such as the Settlement, the Amended Complaint, the Motion for Preliminary Approval and supporting papers, the Motion for Fees, Costs and Service Awards and the Motion for Final Approval. *Id.*

Within thirty (30) days after mailing the Notice of Settlement, Class Members will have the right to mail a Request for Exclusion from the Class (“Opt-Out”) or file an Objection to the Settlement with the Court. Settlement, ¶¶ 94-103. The instructions for submitting Opt-Outs and Objections are detailed in the Long Form Notice and Settlement Agreement. *Id.*, Ex. B.

IV. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASS

A. The Proposed Settlement Class Should Be Preliminarily Certified.

As a prerequisite for directing notice of the Settlement to the Class, the Court should determine whether the Class meets the requirements for class certification. C.R.C.P. 23(e). Class certification requires that all four elements of Rule 23(a) and at least one prong under Rule 23(b) are satisfied. *LaBrenz v. Am. Family Mut. Ins. Co.*, 181 P.3d 328, 333 (2007).

1. The Proposed Settlement Class Meets the Requirements of Rule 23(a).

Rule 23(a) imposes four prerequisites for class certification: (1) the class is so numerous that joinder of all members is impracticable (“numerosity”); (2) there are questions of law or fact common to the class (“commonality”); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (“typicality”); and (4) the representative parties will fairly and adequately protect the interests of the class (“adequacy”). *Jackson v. Unocal Corp.*, 262 P.3d 874, 880 (Colo. 2011). All four prerequisites are satisfied here.

a. Numerosity.

Based on RRCU’s records, the proposed settlement class includes approximately **1,330** members, which readily satisfies the numerosity requirement. *See* C.R.C.P. 23(a)(1); *see also* *Vinh Nguyen v. Radiant Pharm. Corp.*, 287 F.R.D. 563, 569 (C.D. Cal. 2012) (“[A] proposed class of at least forty members presumptively satisfies the numerosity requirement.”).

b. Commonality.

Rule 23(a)(2)’s commonality requirement is satisfied if “there are questions of law or fact common to the class.” C.R.C.P. 23(a)(2); *see also* *LaBrenz*, 181 P.3d at 338. “[E]ven a single common question” satisfies this requirement. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359

(2011). The commonality requirement is satisfied when the class members' claims "depend upon a common contention," of such a nature that "determination of its truth or falsity will resolve an issue that is central to the validity of each [claim] in one stroke." *Id.* at 350.

In the present case, Plaintiff is challenging a single policy that affects all Class Members, i.e., RRCU's policy of failing to refund unearned GAP fees after an Early Payoff, including failing to pay interest on those unpaid amounts. The foundational common questions underlying each Class member's breach of contract claim are as follows:

- Does Colorado law require a creditor like RRCU to issue a refund of unearned GAP fees after an Early Payoff? *See* 4 Colo. Code Regs. § 902-1:8(h) (if a "consumer credit sale . . . is prepaid prior to maturity . . . the creditor must refund to the consumer the unearned fee or premium paid for GAP").
- Are Colorado's mandatory refund obligations an implied term of every Class member's GAP contract? *See, e.g., McShane*, 393 P.3d at 982 ("Contractual language must be interpreted in light of existing law, the provisions of which are regarded as implied terms of the contract, regardless of whether the agreement refers to the governing law.").
- Does RRCU owe interest on the unpaid GAP refunds? *See* C.R.S. § 5-12-102 (parties are entitled to interest at a rate of 8% per annum compounded annually from the date the moneys were "wrongfully withheld or after they become due to the date of payment").

These questions present common issues of law that will drive the resolution of this case and, thus, satisfy the "commonality" requirement. *Wal-Mart*, 564 U.S. at 350.

c. Typicality

Plaintiff's claims are typical of the Class because, like every other Class member, he did not receive a refund of his unearned GAP fees after an Early Payoff, nor did he receive any interest on those unpaid fees. AC, ¶¶ 14, 15; Declaration of Saba Rael ("Rael Decl."), ¶ 3. Thus, because Plaintiff suffered an injury from the same conduct endured by all other Class members, the

typicality requirement is satisfied. *Ammons v. Am. Family Mut. Ins. Co.*, 897 P.2d 860, 863 (1995) (The typicality requirement is usually met “[w]hen it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented . . . irrespective of varying fact patterns which underlie individual claims.”).

d. Adequacy.

Adequacy requires that “the representative parties will fairly and adequately represent the interests of the class” and do not have “interests antagonistic to the class.” *Steiner v. Ideal Basic Indus., Inc.*, 127 F.R.D. 192, 194 (D. Colo. 1987). The adequacy requirement “also requires this court to determine whether plaintiffs’ attorneys are qualified, experienced and able to conduct the proposed litigation.” *Id.* at 195.

Here, Plaintiff and Class Counsel do not have any known conflicts of interests with the Class. Frank Decl., ¶¶ 21, 27; Azar Decl., ¶ 12; Rael Decl., ¶ 6. Plaintiff has retained experienced Class Counsel who have successfully litigated other class action cases concerning GAP refunds across the country. Frank Decl., ¶ 27.

2. The Proposed Class Satisfies the Requirements of Rule 23(b)(3).

Plaintiff’s proposed class action also meets the requirements of Rule 23(b)(3), which requires that (1) questions of law or fact common to the class members predominate over any questions affecting only individual members; and (2) a class action is superior to other methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3)

a. Common Issues Predominate.

The predominance inquiry focuses on “whether the proof at trial will be predominantly common to the class or primarily individualized.” *Jackson*, 262 P.3d at 889 (citing *Medina v.*

Conseco Annuity Assur. Co., 121 P.3d 345, 348 (Colo. App. 2005)). “Often, the issue most relevant to this inquiry is ‘whether the plaintiff advances a theory by which to prove or disprove ‘an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member’s individual position.’” *Id.*

Here, as established above, the common questions are ones that can be decided as a matter of law, because RRCU’s failure to issue GAP refunds to the Class was based on the same uniform policy that affected all class members. *Supra*, § IV.A.1.b. As such, the predominance requirement is satisfied, because the resolution of these issues will not turn on facts unique to individual class members. *Jackson*, 262 P.3d at 889.

b. Superiority.

Here, a class action is superior to other available methods for the fair and efficient adjudication of the controversy. *Livingston v. U.S. Bank, N.A.*, 58 P.3d 1088, 1090 (Colo. App. 2002). The superiority prong is satisfied when the class members’ relatively small damages would cause each claim to be too costly to litigate individually. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997). As set forth above, the average refund owed was approximately **\$235** per Class member. Frank Decl., ¶ 17. This amount is far too small to economically litigate on an individual basis. Moreover, having over 1,330 separate lawsuits is not practical. Thus, a class action is clearly superior to individual lawsuits.

In sum, all of the prerequisites for class certification are satisfied and the Court should certify the Class for settlement purposes only.

V. THE COURT SHOULD GRANT PRELIMINARY SETTLEMENT APPROVAL

A. Legal Standards for Settlement Approval

The standard for evaluating a proposed class action settlement under C.R.C.P. 23 is the same as under Fed. R. Civ. P. 23. *Thomas v. Rahmani-Azar*, 217 P.3d 945, 947 (Colo. App. 2009) (Because the Colorado class action statute is substantially identical, “federal case law is highly instructive.”). It is a two-stage process designed to ensure the fairness of any class action settlement. *Pliago v. Los Arcos Mexican Rests., Inc.*, 313 F.R.D. 117, 128 (D. Colo. 2016).

In the first stage, the Court “determines whether a proposed settlement is within the range of possible approval and whether or not notice should be sent to class members” so that they may have the opportunity to object to settlement’s terms at a final approval hearing or “opt-out” of the settlement entirely. *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010). “The object of preliminary approval is for the Court ‘to determine whether notice of the proposed settlement should be sent to the class, not to make a final determination of the settlement’s fairness’” and thus, “the standard that governs the preliminary approval inquiry is less demanding than the standard that applies at the final approval phase.” *Pliago*, 313 F.R.D. at 128. There is a strong policy favoring class action settlements, and the Court should approve a class action settlement that “is fair, adequate, and reasonable.” *Thomas*, 217 P.3d at 947.

B. The Settlement Is Fair, Reasonable, and Adequate.

In the Tenth Circuit, the following factors are analyzed in determining whether a settlement is fair, adequate and reasonable: (1) whether the proposed settlement was fairly and honestly negotiated; (2) the judgment of the parties that the settlement is fair and reasonable; (3) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; and

(4) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002). The proposed Settlement meets these standards.

First, the proposed Settlement was a product of serious arm's-length negotiations between the parties. Frank Decl., ¶ 13. Plaintiff conducted sufficient discovery to make an informed assessment of the strengths and weaknesses of the Class's claims, including reviewing hundreds of pages of documents about RRCU's refund policies, practices and procedures and analyzing the data for over 1,330 customers, with the assistance of a statistical and damages expert, to calculate the potential GAP refunds and interest owed to the Class. *Id.*, ¶¶ 10-12. Class Counsel is also highly experienced in this type of litigation, having spent over four years litigating GAP refund cases across the country, and briefing arbitration issues in the other Colorado GAP cases pending before this Court. *Id.*, ¶ 27.

Second, the parties believe the Settlement is a fair and reasonable compromise of this dispute. Frank Decl., ¶ 28. In fact, the Settlement provides the maximum relief each Class member could realistically obtain in damages if they prevailed at trial. *Id.* Not only did the Class receive full refunds, RRCU is also paying full interest at the maximum 8% interest rate per annum (compounded annually) provided by Colorado law. C.R.S. § 5-12-102. And, RRCU has changed its practices so that it will promptly provide GAP refunds in the future, thereby obviating the need for injunctive relief. This is a complete win for the Class.

Third, while Plaintiff believes the Class has strong claims, there is certainly a risk that the Court or trier of fact could conclude otherwise. Frank Decl., ¶ 29. There have been no Colorado cases interpreting the requirements of 4 Colo. Code Regs. § 902-1:8(h), including but not limited

to the issues of whether an assignee creditor, like RRCU, is the entity responsible for issuing the GAP refund and whether this regulation is incorporated by law into every GAP Agreement. Even if GAP refunds were required, RRCU has viable arguments that it is not required to pay interest on those amounts, and that the statute of limitations does not go back to July 1, 2014. *Id.* Moreover, approximately half of Class members are subject to arbitration agreements and could be forced to litigate their claims in an individual arbitration, which would not be economically practical given the small dollar amounts at issue. *Id.*, ¶ 30. Thus, getting full relief for the Class now is a far better alternative than incurring the risks and uncertainties of further litigation.

Fourth, as noted above, the value of an immediate recovery that provides full relief for the Class and future RRCU customers obviously outweighs the risk and expense of further litigation.

Fifth, Class counsel's fee request of **\$68,532** provides over a **51% discount** on their total lodestar, results in a blended rate of **\$324 per hour**, and is only **17.4%** of total amount RRCU has paid and will pay as a result of this Lawsuit and the Settlement (**\$393,522.10**). Frank Decl., ¶ 23. This is well below the customary fee requests approved in class action settlements, where courts typically award multipliers of 2 to 3 times the lodestar and the average award is one-third of the recovery. *See, e.g., Lucas v. Kmart Corp.*, No. 99-cv-01923-JKL-CBS, 2006 WL 2729260, at *6-7 (D. Colo. July 27, 2006); *see also id.* at *5 (noting that a blended rate of **\$330 per hour** was "conservative" for the Denver market back in 2006).

Sixth, a Service Award of \$500 falls well within the standard award approved in class action settlements as fair and reasonable. *See, e.g., Rhodes v. Nat'l Collection Sys., Inc.*, No. 15-cv-02049-REB-KMT, 2018 WL 2214649, at * 1 (D. Colo. May 11, 2018).

In sum, the proposed Settlement is fair, reasonable and adequate in all respects.

D. The Notice Is the Best Notice Practicable and Approval Is Warranted.

Before conducting a final fairness hearing, the Court must “direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” C.R.C.P. 23(c)(2). Here, each Class member will receive direct mail notice of the Settlement with the key information and deadlines, as well as a consumer-friendly link to a Settlement Website for further instructions. Settlement, Exs. A, B. The Notice follows the established format of a typical class action notice and includes the requisite information needed to apprise the members of the Class of the Settlement and explain their rights and options with respect thereto. Accordingly, approval of the Notice is warranted.

VI. PROPOSED TIMELINE

Pursuant to the Settlement, Plaintiff proposes the following dates and deadlines:

| <u>Event</u> | <u>Date</u> |
|---|---|
| Filing of Preliminary Approval Motion | June 6, 2022 |
| Mailing of Notice of Settlement | July 5, 2022 |
| Deadline to file Fees, Expense and Service Award Motion | July 22, 2022 (14 days prior to objection/exclusion deadline) |
| Exclusion Deadline | August 4, 2022 |
| Deadline for Atticus Administration, LLC to file Declaration re exclusions/objections, number of claims submitted | Within 21 days of exclusion/objection deadline, or August 25, 2022 |
| Deadline to file Final Approval Motion | August 25, 2022 |
| Final Approval Hearing | September 8, 2022 4:00 p.m. MT |

VII. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant this Motion.

Respectfully submitted this 6th day of June 2022.

FRANKLIN D. AZAR & ASSOCIATES, P.C.

Pursuant to C.R.C.P. 121 § 1-29(9), original is duly signed and on file at the office of Franklin D. Azar & Associates, P.C., and will be made available for inspection by other parties of the Court upon request.

s/Franklin D. Azar

FRANKLIN D. AZAR #13131

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ALEXANDER F. BEALE #52430

FRANK SIMS & STOLPER LLP

JASON M. FRANK (*pro hac vice*)

SCOTT H. SIMS (*pro hac vice*)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2022, a true and correct copy of the foregoing **UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT AND NOTICE TO CLASS, AND MEMORANDUM OF LAW IN SUPPORT THEREOF** was filed via Colorado Courts E-Filing and served upon:

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Stephanie Chateauneuf, Paralegal

EXHIBIT 1

DISTRICT COURT, DENVER COUNTY,
COLORADO

Court Address: 1437 Bannock Street
Denver, CO 80202

SABA RAEL, individually and on behalf of all
similarly situated persons,

Plaintiff,

v.

RED ROCKS CREDIT UNION,

Defendant.

Attorneys for Plaintiff and the Proposed Class:

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▲ COURT USE ONLY ▲

Consolidated Case No.:
2020CV32226

Division: 409

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**STIPULATION RE: RED ROCKS CREDIT UNION CLASS ACTION
SETTLEMENT AND RELEASE**

I. INTRODUCTION

1. This Stipulation re: Class Action Settlement and Release (the “Agreement” or “Settlement”) is made and entered as of the Effective Date between Plaintiff Saba Rael, individually and on behalf of the Class, and Red Rocks Credit Union (“RRCU”) (collectively, the “Parties”), through their respective counsel of record.

2. This Agreement is subject to the terms and conditions set for below and the Final Approval of the Court. By entering this Agreement, the Parties intend to fully, finally, and forever resolve, discharge, and settle the claims described in the Release. If the Court does not enter an order granting Final Approval of the Settlement, or if the associated Judgment does not become Final for any reason, this Settlement Agreement shall be deemed null and void and shall be of no force or effect whatsoever.

II. DEFINITIONS

As used in the Settlement Agreement, the following terms have the meanings specified below:

1. “Action” means the lawsuit entitled *Saba Rael v. Red Rocks Credit Union* filed in District Court, Denver County, Colorado.

2. “Class” or “Class Member(s)” means all persons (a) whose Finance Agreements with GAP protection were governed by Colorado law and made with or assigned to RRCU; (b) who paid off or refinanced their Finance Agreements before the original maturity date (an “Early Payoff”); (c) whose Early Payoffs occurred during the period October 1, 2014 to July 1, 2020; and (d) who did not receive a GAP Refund from RRCU prior to the filing of the lawsuit on July 1, 2020. The Class does not include and specifically excludes any persons who meet the above

criteria but whose vehicles were repossessed by RRCU due to their failure to pay the money owed to RRCU under their Finance Agreement.

3. “Class Counsel” shall refer to Jason M. Frank of Frank Sims & Stolper LLP and Franklin D. Azar of Franklin D. Azar & Associates P.C.

4. “Class Information” means the information about each potential Class Member that RRCU is required to provide to the Settlement Administrator to maintain on a confidential basis, including the information set forth in Paragraph 87 of this Agreement.

5. “Class Notice” has the meaning set forth in Paragraphs 89 and 92 of this Agreement and shall include the Notice of Settlement that will be mailed to the Class, the Long-Form Notice that will be published on the Settlement Website, and the content of the Settlement Website.

6. “Class Period” means the October 1, 2014 through July 1, 2020.

7. “Class Released Claims” has the meaning set forth in Paragraph 72 of this Agreement.

8. “Class Releasers” has the meaning set forth in Paragraph 72 of this Agreement.

9. “Class Releasees” has the meaning set forth in Paragraph 72 of this Agreement.

10. “Class Representative” means Plaintiff Rael Saba.

11. “Counsel for RRCU” shall refer to Tamara Seelman of Gordon Rees Scully Mansukhani, LLP.

12. “Court” shall refer to the District Court, Denver County, Colorado.

13. “Day” or “Days” has the meaning ascribed to it in Colorado Rule of Civil Procedure 6, and all time periods specified in this Agreement shall be computed in a manner consistent with that rule. All references to days shall be interpreted to mean calendar days, unless otherwise noted.

14. “Dealer” means an automobile dealership that assigned a Finance Agreement to RRCU.

15. “Defendant” means RRCU.

16. “Early Payoff” means the payment in full of the Finance Agreement prior to its original scheduled maturity date.

17. “Effective Date” means the first date by which all of the events and conditions specified in Paragraph 116 of this Agreement have occurred and have been met.

18. “Exclusion/Objection Deadline” means the deadline for requesting exclusion from the Class or objecting to the Settlement, which shall be thirty (30) days from the date of the mailing of the Notice of Settlement.

19. “Execution Date” means the latest date associated with a signature on the fully executed Agreement as set forth on this Agreement’s signature pages.

20. “Fee, Expense and Service Award Application” means the application Class Counsel submits to the Court for (a) an award of attorneys’ fees and reimbursement of reasonable expenses incurred in connection with prosecuting the Action and (b) a Service Award to the Class Representative.

21. “Fee and Expense Award” means any amounts that are awarded by the Court in response to the Fee, Expense and Service Award Application.

22. “Final” means, with respect to any order of the Court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes “Final” when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Agreement, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order issued with respect to an application for attorneys’ fees and expenses consistent with this

Agreement shall not in any way delay or preclude the Judgment from becoming Final.

23. “Final Approval” has the meaning set forth in Paragraph 66 of this Agreement.

24. “Final Approval Order” has the meaning set forth in Paragraph 66 of this Agreement.

25. “Finance Agreement” means the retail installment sales contract or similar agreement entered into between a Class Member and Dealer for the purchase of a vehicle that was subsequently assigned to RRCU.

26. “GAP” means Guaranteed Asset Protection and/or Guaranteed Auto Protection.

27. “GAP Administrator” means the administrator identified in a GAP Agreement.

28. “GAP Agreement” means the addendum to the Finance Agreement that provides for GAP protection.

29. “GAP Refund” means a credit or refund of all or part of the purchase price for a GAP Agreement, which such amount is calculated on a pro rata basis based on the elapsed time from start date of the GAP Agreement to the date of the Early Payoff.

30. “Identification Number” means the unique identification number that will be assigned to each potential Class Member by the Settlement Administrator.

31. “Long Form Notice” means the written notice of the Settlement that will be published on the Settlement Website in substantially the same form and with substantially the same content as **Exhibit A**.

32. “Notice and Administration Costs” means the total cost incurred by the Settlement Administrator to provide the Class Notice and perform the administrative duties required by the Settlement, which such amount will not exceed \$9,000.00.

33. “Notice of Settlement” means the e-mail or post-card notice of the Settlement. When sent by mail, notice will be provided to the Class in substantially the same form and with substantially the same content as in **Exhibit B**.

34. “Notice Plan” has the meaning set forth in Paragraphs 86 through 92 of this Agreement concerning the proposed form of notice to the Class.

35. “Operative Complaint” means the Amended Complaint that was filed in this Action on January 5, 2022.

36. “Opt-Out” means a person who falls within the definition of the Class who has timely and validly elected to be excluded from the Class pursuant to the procedures set forth in Paragraph 95 of this Agreement. It does not include any person whose request for exclusion is challenged by RRCU and the challenge is not overruled by the Court or withdrawn by RRCU, any person whose communication

is not treated as a request for exclusion, and/or any person whose request for exclusion is not valid or is otherwise void.

37. “Opt-Out List” is the list of Class Members who submit valid and timely Requests for Exclusion from the Class as set forth in Paragraph 97 of this Agreement.

38. “Plaintiff” means Saba Rael, individually on behalf of himself and as representative of the Class.

39. “Preliminary Approval” has the meaning set forth in Paragraph 62 of this Agreement.

40. “Preliminary Approval Order” has the meaning set forth in Paragraph 62 of this Agreement.

41. “Pro Rata Method.” The “Pro Rata Method” means the following:

- (a) dividing the number of days that the GAP product was in use (i.e., the date of the Early Payoff minus start date of the GAP Agreement) by the total number of days in the original term of the Finance Agreement (i.e., the original scheduled maturity date of the Finance Agreement minus the start date of the Finance Agreement);
- (b) subtracting that figure from 1 to yield the “unused” percentage, and
- (c) multiplying the unused percentage by the total purchase price for the GAP Agreement. No cancellation fee shall be applied and/or included in this calculation.

42. “Remaining Amounts” means any monies that remain in the Supplemental Settlement Fund after the Settlement Administrator pays (a) the Notice and Administration Costs; (c) the Fee and Expense Awards approved by the Court, if any, and (d) the Service Awards approved by the Court, if any.

43. “Service Award” means the amount awarded by the Court, if any, to Plaintiff for his service as Class Representatives as described in Paragraph 113 of this Agreement.

44. “Settlement” means the settlement of the claims released by this Agreement.

45. “Settlement Administrator” means Atticus Administration, LLC, or such other entity selected by Class Counsel and approved by RRCU, which approval will not be unreasonably withheld.

46. “Settlement Fund” means the \$81,254.26 that will be deposited on behalf of RRCU into an account administered by the Settlement Administrator.

47. “Term Sheet” means the Term Sheet previously agreed to by the Parties.

48. “RRCU” means defendant Red Rocks Credit Union and all of its related companies.

49. “Vehicle” means the automobile that is covered by the GAP Agreement.

50. As used in this Agreement, the plural of any defined terms includes the singular thereof and vice versa, except where the context requires otherwise.

III. RECITALS

51. Plaintiff filed this Action on behalf of himself and a class of similarly situated consumers on July 1, 2020.

52. Plaintiff alleges that RRCU wrongfully collected and failed to refund unearned GAP fees after the Early Payoff of a customer's Finance Agreement with RRCU in purported violation of RRCU's contractual obligations under the GAP Agreement and/or 4 Colo. Code Regs. § 902-1:8(h). Plaintiff further contends this practice constitutes a violation of the Colorado Consumer Protection Act.

53. RRCU denies each and all of the claims and allegations of wrongdoing made by Plaintiff.

54. After the filing of this lawsuit on July 1, 2020, RRCU paid full GAP Refunds to all Class Members.

55. RRCU also changed its refund policies and procedures, such that RRCU ensured GAP Refunds were provided to its customers after an Early Payoff in Colorado.

56. This Settlement is a compromise of disputed claims. Nothing contained in this Agreement, no documents referred to herein, and no action taken to carry out

this Agreement may be construed or used as an admission by or against any of the Parties as to the merits or lack thereof of any of the claims or defenses asserted in this Action.

57. Plaintiff and Class Counsel have conducted substantial investigation and legal analysis in this Action so that they are fully apprised of the strengths and weaknesses of this case, and the costs and benefits of further litigation. In entering this Settlement, Plaintiff and Class Counsel have taken into account the uncertainty and risks of the further litigation, and the difficulties and delays inherent in such litigation, including potential appeals. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in this Action, both generally and in response to RRCU's defenses thereto, and the difficulties in establishing liability and damages for the Class. Plaintiff and Class Counsel have also taken into account the substantial benefits this Settlement will provide to the Class and future customers of RRCU. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable compromise of the issues in dispute, and is in the best interests of the Class.

58. RRCU has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Unless this Settlement is made, RRCU will devote substantial amounts of time, energy and resources to the defense of the

claims asserted by Plaintiff. RRCU has taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Despite continuing to contend that RRCU is not liable for any of the claims asserted by Plaintiffs, RRCU has, nevertheless, agreed to settle this Action in the manner and upon the terms set forth in this Agreement to put to rest the claims set forth in this Action. RRCU continues to assert that the claims in this Action have no merit and do not give rise to liability.

59. The Parties stipulate and agree that the fact of this Agreement, the terms in this Agreement, the documents filed in support of this Agreement, and any statement made in the negotiation thereof shall not be deemed or construed to be an admission or evidence of (a) any violation of any statute or law, (b) any liability or wrongdoing by RRCU, (c) any liability on any claims or allegations, (d) any merit to the affirmative defenses asserted by RRCU nor (d) the propriety of certifying a litigation class in any proceeding. This Agreement shall not be used by any person for any purpose whatsoever in this Action or any other legal proceeding, including but not limited to arbitrations, mediations, or subsequent litigations other than a proceeding to enforce the terms of this Agreement.

IV. DUTIES OF THE PARTIES WITH RESPECT TO PRELIMINARY APPROVAL AND FINAL APPROVAL

60. **Reasonable Best Efforts to Effectuate This Settlement.** The Parties (a) acknowledge that it is their intent to consummate this Agreement and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement.

61. **Certification of Class and Appointment of Class Counsel.** For settlement purposes only, the Parties agree to certification of the Class pursuant to the Colorado Rules of Civil Procedure (“Rules”) 23(a) and 23(b)(3). The Parties further agree to the appointment of Jason M. Frank of Frank Sims & Stolper LLP and Franklin D. Azar of Franklin D. Azar & Associates P.C. as Class Counsel pursuant to Rule 23(g). The Parties do not agree to, and Plaintiff does not pursue, class certification pursuant to Rule 23(b)(2). RRCU’s agreement to class certification under Rule 23(a) and 23(b)(3) is solely for the purpose of this Settlement and does not, and shall not, constitute, in this or any other proceeding, an admission by RRCU of any kind or any determination that certification of a class for trial or other litigation purposes in this Action or any other separate action is, or would be, appropriate. If the Settlement is not granted Final Approval or this Agreement is otherwise terminated or rendered null and void, the certification of the

Class shall be automatically vacated and shall not constitute evidence of or any determination that the requirements for certification of a class for trial or other litigation purposes in this Action or any other action are satisfied. In such circumstances, RRCU reserves all rights to challenge certification of any class or subclass for trial or other litigation purposes in this Action or in any other action on all available grounds as if no Class had been certified for purposes of the Settlement.

62. **Motion for Preliminary Approval.** As soon as practicable following the Execution Date, Class Counsel shall file an unopposed Motion for Preliminary Approval of this Settlement to the Court and shall apply for entry of a Preliminary Approval Order that would: (a) preliminarily approve this Settlement; (b) certify a conditional settlement Class for settlement purposes only pursuant to Rule 23(a) and 23(b)(3); (c) appoint Class Counsel; (d) appoint Plaintiff as the Class Representative; (e) appoint the Settlement Administrator; (f) approve as to form and content the proposed Notice of Settlement and Notice Plan; (g) direct the mailing of the Notice of Settlement to the Class; and (h) schedule the Final Approval Hearing. The Motion for Preliminary Approval shall ask the Court to find that the proposed form of and method for dissemination of notice to the Class constitutes valid, due, and sufficient notice to the Class; constitutes the best notice practicable under the circumstances; and complies fully with the requirements of Rule 23 and constitutional due process. The Motion for Preliminary Approval shall also request

the Court issue the Stay Order described in the following Paragraph. Plaintiff will provide a draft of the Motion for Preliminary Approval and [Proposed] Preliminary Approval Order to Counsel for RRCU before filing so that Counsel for RRCU will have the opportunity to review, comment and propose changes.

63. **Stay Order.** Upon the date that the Court enters the Preliminary Approval Order, Plaintiff and all Class Members shall be barred and enjoined from commencing, instituting, or continuing to prosecute any action or any proceeding of any kind (including, but not limited, to an action for actual damages, statutory damages, and/or exemplary or punitive damages) in any court of law, arbitration tribunal, administrative forum, or other forum of any kind worldwide, based on the Class Released Claims.

64. **Implementation of Notice Plan.** As discussed further in Section VII below, the Settlement Administrator will provide direct notice to the Class by mailing a copy of the Notice of Settlement to each potential Class Member pursuant to the schedule approved by the Court. In addition, a Settlement Website will be established by the Settlement Administrator, which will include, among other documents, the Long Form Notice, the Settlement Agreement, the Operative Complaint, the Motion for Preliminary Approval, the Court's Preliminary Approval Order, the Fee, Expense and Service Award Application, and the Motion for Final Approval.

65. **Fee, Expense and Service Award Application.** Within fourteen (14) days prior to the Exclusion/Objection Deadline, Plaintiff and Class Counsel shall file the Fee, Expense and Service Award Application. A copy of the application will be provided to the Settlement Administrator to publish on the Settlement Website.

66. **Motion for Final Approval and Entry of Final Judgment.** Not less than fourteen (14) Days prior to the date set by the Court to consider whether this Settlement should be finally approved, Class Counsel shall submit a Motion for Final Approval of the Settlement by the Court. Class Counsel shall seek entry of the Final Approval Order, which shall be approved as to form and content by RRCU prior to submission by Class Counsel, containing at least the following:

(a) Finding that the Court has personal jurisdiction over Plaintiff and all Class Members and that the Court has subject matter jurisdiction to approve this Settlement and Agreement;

(b) Certifying the Class, pursuant to Rule 23(a) and Rule 23(b)(3), solely for purposes of this Settlement;

(c) Fully and finally approving this Agreement and its terms as being fair, reasonable, and adequate within the meaning of Rule 23, and directing its consummation pursuant to its terms and conditions;

(d) Declaring this Agreement and the Final Approval Order to be binding on and to have res judicata and preclusive effect in all pending and future

lawsuits or other proceedings encompassed by the Class Released Claims maintained by or on behalf of the Class Releasers.

(e) Finding that the notice given to the Class Members pursuant to the Notice Plan and Class Notice (i) constituted the best notice practicable under the circumstances; (ii) constituted notice that was reasonably calculated under the circumstances to apprise Class Members of the pendency of the Action, of their right to object to or exclude themselves from the proposed Settlement as applicable, of their right to appear at the final approval hearing, and of their right to seek relief; (iii) constituted reasonable, due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) complies in all respects with the requirements of Rule 23, due process, and any other applicable law;

(f) Finding that Class Counsel and Plaintiff adequately represented the Class Members for purposes of entering into and implementing this Agreement and Settlement;

(g) Ruling on the Fee, Expense and Service Award Application;

(h) Directing that the Action and claims for damages be dismissed with prejudice and, except as otherwise explicitly provided for in this Agreement, without costs;

(i) Discharging and releasing the Class Releasees from all Class Released Claims;

(j) Permanently barring and enjoining the institution and prosecution, by Class Releasors and/or any other Person, of any and all of the Class Released Claims;

(k) Approving the Opt-Out List and determining that the Opt-Out List is a complete list of all Persons who have timely and validly requested exclusion from the Class, and accordingly, who shall neither share in nor be bound by the Final Approval Order and Judgment;

(l) Determining that this Agreement and the Settlement provided for therein and any proceedings taken pursuant to it are not and should not in any event be offered or received as evidence of a presumption, concession, acknowledgment, or an admission of liability or of any wrongdoing by RRCU or the Class Releasees or of the suitability of these or similar claims to class treatment for litigation, trial, or any other purpose except settlement; provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate this Agreement;

(m) Reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation, and enforcement of this Agreement;

(n) Authorizing the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this

Agreement as shall be consistent in all material respects with the Final Approval Order and not limit the rights of the Parties or Class Members; and

(o) Containing such other and further provisions consistent with the terms of this Agreement to which the Parties expressly consent in writing.

67. RRCU will not oppose Final Approval of the Settlement if it does not void or revoke this Agreement pursuant to Paragraph 119 and so long as it is consistent with the terms set forth in this Agreement.

68. Following entry of the Court's Final Approval Order, the Parties will each act to assure the timely execution and fulfillment of provisions of this Agreement, including but not limited to the following:

(a) Should an appeal be taken from the Final Approval Order, all Parties will support the Final Approval Order on appeal.

(b) The Parties will reasonably assist the Settlement Administrator as needed or requested in the process of resolving any claims, questions or concerns submitted by Class Members.

(c) Class Counsel will ensure that the Settlement Administrator will certify to the Court completion of all payments required to be made by this Agreement.

V. RELEASES

Upon the Effective Date, and pursuant to the Court's entry of the Final Approval Order, Plaintiff and the Class Releasers provide the following Releases:

72. **Plaintiff and Class Release of RRCU.** Plaintiff and each and every Class Member, individually or together, and each and every one of their former, present, or future agents, predecessors, successors, heirs, legatees, executors, administrators, insurers, assigns, trustees, spouses, and domestic partners acting on their behalf ("Class Releasers") releases and fully discharges RRCU, and each of its former, present, or future agents, insurers, predecessors, successors, subsidiaries, parent company(ies), affiliates, officers, directors, and employees and attorneys ("Class Releasees") from any and all past and/or present claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, whether class, individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, and/or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, under the laws of any jurisdiction, which they, whether directly, representatively, derivatively, or in any

other capacity, ever had, now have, or hereafter can, shall, or may have, arising from or relating in any way to the Class Member's entitlement to a GAP Refund after an Early Payoff that occurred during the Class Period or interest on such GAP Refund (the "Class Released Claims"). Notwithstanding the foregoing, the Class Releasees do not include any Dealers or GAP Administrators, including without limitation, those identified in the Class Members' GAP Agreements or Finance Agreements.

73. **No Future Actions Following Release.** The Class Releasors shall not after the Effective Date seek (directly or indirectly) to commence, institute, maintain, or prosecute any suit, action, or complaint of any kind (including, but not limited to, claims for actual damages, statutory damages, restitution, and exemplary or punitive damages) against Class Releasees (including pursuant to the Action), based on the Class Released Claims, in any forum worldwide, whether on his or her own behalf or as part of any putative, purported, or certified class or as part of an action by any other plaintiff on his or her behalf.

74. **Covenant Not to Sue.** Class Releasors hereby covenant not to sue the Class Releasees with respect to any Class Released Claims, including any claims that Class Releasors, or any of them, does not know or suspect to exist in his or her favor at the time of the release that if known by him or her, might have affected his or her settlement with and release of the Class Releasees, or might have affected his or her decision not to object to or opt out of this Settlement. Class Releasors shall be

permanently barred and enjoined from instituting, commencing, or prosecuting any claims against the Class Releasees of any kind (including, but not limited to, for actual damages, statutory damages, restitution, and exemplary or punitive damages) based on the Class Released Claims. The Class Releasers contemplate and agree that this Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained preventing any action from being initiated or maintained, in any case sought to be prosecuted on behalf of any Class Releasers (including, but not limited to, for actual damages, statutory damages, and exemplary or punitive damages) based on the Class Released Claims.

75. **Dismissal.** Subject to Court approval, all Class Releasers shall be bound by this Agreement, and all of their claims shall be dismissed with prejudice and released, even if they never received actual notice of the Action or this Settlement.

VI. SETTLEMENT CONSIDERATION TO THE CLASS

In full, complete, and final settlement of any and all claims in the Action, RRCU agrees as follows:

76. **Business Practice Change.** On July 1, 2020 and in September 2021, RRCU implemented changes to its refund policies and procedures so that from July 1, 2020 forward, RRCU ensures GAP Refunds are paid to customers in Colorado

within a reasonable time after receipt of an Early Payoff. Customers are not required to take any action after an Early Payoff to receive the GAP Refund. The refund amount is calculated using the Pro Rata Method unless otherwise required by law, and no cancellation fee will be charged unless expressly authorized in the customer's GAP Agreement. These policies and procedures apply to all customers whose Finance Agreements with GAP Agreements have been or will be assigned to RRCU. RRCU agrees it will continue to provide GAP Refunds after an Early Payoff in Colorado in conformance with 4 Colo. Code Regs. § 902-1:8(h). RRCU agreeing to maintain this business practice change is a material term of Settlement to be enforced pursuant to this Agreement. The Parties agree that RRCU is not agreeing to, nor will there be any, injunctive relief pursuant to this Settlement and the Settlement will not be approved under Rule 23(b)(2).

77. **Refunds to the Class.** RRCU has paid full GAP refunds to the Class. RRCU will provide an affidavit to Class Counsel and the Settlement Administrator attesting that it has provided full GAP Refunds to all Class Members, either by mailing a check to the Class Members' last known address or by depositing such funds in the Class Members' account. Class Counsel confirmed the refund amount was calculated, on a systemic basis, using the Pro Rata Method set forth in 4 CCR 902-1, Rule 8(h). The affidavit will further provide that the funds for any checks that were returned or not cashed are already subject to Colorado's unclaimed

property/escheatment rules governing RRCU and that RRCU can reissue a check to a Class Member upon request by that Class Member. The affidavit will be deemed sufficient proof that the Class Members received their GAP Refund.

78. **Settlement Fund.** Within fourteen (14) days after Final Approval of the Settlement, \$81,254.26 will be paid on behalf of RRCU into a non-reversionary Settlement Fund to pay the interest owed on the GAP Refunds, plus any Notice and Administration Costs, Fee and Expense Awards and Service Awards approved by the Court. This amount is equal to the alleged interest owed on the GAP refunds measured from the date of the Early Payoff to the date the refund issued, calculated at 8% per annum and compounded annually pursuant to CO. Rev. Stat. s. 5-12-102(1)(b).

79. **Notice and Administration Costs.** The Notice and Administration Costs shall be paid from the Settlement Fund. The Settlement Administrator has agreed that the Notice and Administration Costs will not exceed \$9,000.00, unless specifically approved by the Court and the Parties.

80. **Fee and Expense Awards.** Any Fee and Expense Awards approved by the Court shall be paid from the Settlement Fund.

81. **Service Award.** Any Service Award approved by the Court shall be paid from the Settlement Fund.

82. **Operation of Settlement Fund.** The Settlement Fund will first be used to pay (a) Notice and Administration Costs; (b) any Fee and Expense Awards approved by the Court; and (c) any Service Award approved by the Court. The Remaining Amount in the Settlement Fund after the deduction of any Notice and Administration Costs, Fee and Expense Awards and Service Award approved by the Court, if any, will be distributed to Class Members on pro-rata basis based on the amount of interest allegedly owed to them.

83. **Bankruptcy.** In the event a Class Member is in a bankruptcy proceeding, then RRCU or the Settlement Administrator may pay any compensation under this Settlement Agreement to the bankruptcy trustee or otherwise as required under any applicable bankruptcy law, rules, and/or court orders.

84. **Approved by the Colorado Attorney General.** This Settlement is conditioned upon approval by the Attorney General for the State of Colorado and the Attorney General's release of any potential claims or actions against RRCU for penalties relating to any alleged violation of 4 CCR 902-1, Rule 8(h) by RRCU. By executing this Agreement, the Parties acknowledge that this condition has been met and is satisfied.

85. **Agreement To Be Bound.** All members of the Class shall be subject to and bound by the provisions of this Agreement, the Class Released Claims, and the Judgment with respect to all Class Released Claims regardless of whether such

Class Members obtain payment pursuant to the Settlement.

VII. NOTICE PLAN AND ADMINISTRATION OF SETTLEMENT

86. **Identification of Class Members.** RRCU shall identify the members of the Class by relying on data and information reasonably available to RRCU.

87. **Class Information Provided to Settlement Administrator.** Within fourteen (14) days after the filing of the Motion for Preliminary Approval, RRCU shall provide to the Settlement Administrator with the following information for each Class Member: (a) the customer's name; (b) the customer's account number; (c) the customer's last known mailing address; (c) the name of the Dealer; (d) the name of the GAP Administrator; (e) the start date for the customer's Finance Agreement; (f) the original scheduled maturity date for the customer's Finance Agreement; (g) the date of the Early Payoff; (h) the date RRCU issued the customer a refund; and (i) the amount of the GAP refund issued.

88. **Updating Addresses.** The Settlement Administrator will use reasonable efforts to update and confirm the accuracy of the Class Members' contact information through the USPS change of address system prior to mailing the Notice of Settlement.

89. **The Notice of Settlement.** The Notice of Settlement will be a post-card notice in substantially the same form and with substantially the same content as

Exhibit B (the “Class Notice”). The Notice of Settlement will be customized for each potential Class Member so that it includes, among other information, a unique Identification Number for each potential Class Member. When mailed, the Notice of Settlement will also include a QR code that Class Members can scan to link them directly to the Settlement Website.

90. **Mailing Notice of Settlement.** Within fourteen days (14) days after the Court issues its Preliminary Approval Order, or by any alternate deadline ordered by the Court, the Settlement Administrator will provide notice to the Class. The Notice of Settlement will be sent via first-class mail.

91. **Undeliverable Notices.** Any Notices of Settlement that were sent by mail and returned to the Settlement Administrator as non-delivered on or before the Exclusion/Objection Deadline shall be sent to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved (which will be provided by RRCU to Settlement Administrator upon request) and shall re-mail the Notice of Settlement. If, after performing a skip-trace search, the Notice of Settlement is still returned to the Settlement Administrator as

non-deliverable, the Settlement Administrator will have no further obligation to undertake efforts to obtain an alternative address.

92. **The Settlement Website.** Within fourteen days (14) days after the Court issues its Preliminary Approval Order, or by any alternate deadline ordered by the Court, the Settlement Administrator will establish a Settlement Website, with a URL acceptable to the Parties subject to RRCU's final right of approval, which will not be unreasonably withheld. The Settlement Website will include, among other documents, the Long Form Notice, the Settlement Agreement, the Operative Complaint, the Motion for Preliminary Approval, the Court's Preliminary Approval Order, the Fee, Expense and Service Award Application, and the Motion for Final Approval. The Settlement Administrator will take down the Settlement Website after the Settlement is Final, and all payments have been completed to the Class.

93. **No Liability for Distribution of the Settlement Fund.** The Parties shall not have any liability with respect to the distribution of payments; the determination, administration, or calculation of claims; or any losses incurred in connection with any such matters. In addition to the Releases set forth herein, the Class Releasers hereby fully, finally, and forever release, relinquish, and discharge the Class Releasees, and their counsel from any and all such liability. No Person shall have any claim against the Settlement Administrator based on the distributions made substantially in accordance with this Agreement.

VIII. REQUEST FOR EXCLUSIONS

94. **Requests for Exclusion/Opt-Outs.** Any Class Member who wishes to Request Exclusion from the Settlement or “Opt-Out” of the Class must do so on or before the Exclusion/Objection Deadline specified in the Class Notice in the manner laid out in the Class Notice.

95. **Requirements for Requesting Exclusion.** To Request Exclusion from the Settlement, a Class Member must mail a Request for Exclusion with the Settlement Administrator with a post-mark date no later than the Exclusion/Objection Deadline. To be valid, the Request for Exclusion must include all information specified in the Long Form Notice, including the Class Member’s name, Identification Number, address, signature and date along with the following statement:

“I wish to opt-out of the class action settlement of the lawsuit entitled *Saba v. Red Rocks Credit Union*. I understand that by requesting exclusion, I will not be eligible to receive any payment from the Settlement of this matter and it will be my responsibility to pursue any claims I may have, if I so desire, on my own and at my expense.”

96. **No Mass or Class Opt-Outs.** Class Members may only Request Exclusion from the Settlement on an individual basis and so-called “mass” or “class” opt-outs shall not be allowed and shall be of no force or effect.

97. **The “Opt-Out List.”** No later than five (5) Days after the Exclusion/Objection Deadline, the Settlement Administrator shall provide Class Counsel and Counsel for RRCU a complete and final list of all individuals who Request Exclusion from the Settlement. Class Counsel will file with the Court a complete list of these individuals with the Motion for Final Approval, including the name, city, and state of the person Requesting Exclusion from the Settlement (the “Opt-Out List”).

98. **RRCU’s Reservation of Rights and Challenges to Requests for Exclusion.** With respect to any individual who Requests Exclusion from the Settlement, RRCU reserves all legal rights and defenses. RRCU may challenge the validity of any Request for Exclusion by filing a motion with the Court within fourteen (14) days after the Settlement Administrator provides Counsel for RRCU a complete and final list of all individuals who Requested Exclusion from the Settlement. The Court shall have jurisdiction to resolve any disputes regarding the validity of any Request for Exclusion. Any decision by RRCU not to dispute a Request for Exclusion shall not be a waiver, determination, or preclusive finding against the Class Releasees in any proceeding.

IX. OBJECTIONS TO THE SETTLEMENT

99. **Objections.** Class Members who wish to object to any aspect of the Settlement including the Fee, Expense and Service Award Application, must file with the Court a written statement signed by the Class Member containing their objections prior to the Exclusion/Objection Deadline and abide by the requirements laid out in the Class Notice. The written objections must also be mailed to the Settlement Administrator with a post-mark date no later than the Exclusion/Objection Deadline.

100. **Requirements for the Objection.** The written objections must include all information specified in the Long Form Notice including but not limited to the following:

- (a) The Class Member's name, address and telephone number.
- (b) The Class Member's Identification Number.
- (c) A statement that the Class Member objects to the Settlement in lawsuit entitled *Saba v. Red Rocks Credit Union*.
- (d) A description of all objections to the Settlement, the reasons for said objections, and any legal authority supporting those objections.
- (e) A statement describing whether the objection applies only to the individual Class Member, to a specific subset of the Class or to the entire Class.
- (f) The Class Member's signature.

101. **Additional Requirements if a Lawyer is Asserting an Objection.** If a lawyer is asserting an objection on the Class Member's behalf, the lawyer must also (a) file a notice of appearance with the Court on or before the Exclusion/Objection Deadline; (b) file a sworn declaration attesting that the lawyer represents the Class Member and specifying the number of times during prior five-year period that the lawyer has objected to a class action settlement on his or her own behalf or on behalf of a class member.

102. **Notice of Intent to Appear.** If the Class Member or his or her attorney wishes to appear at the Final Approval Hearing, they must file a Notice of Intention to Appear with the Court on or before the Exclusion/Objection Deadline indicating that they would like to speak at the hearing. If the Notice of Intention to Appear is not timely filed with the Court, then the Class Member and his or her attorney may be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

103. **No Right to Object.** Only individuals who qualify as Class Members and do not Request Exclusion from the Settlement shall have the right to object to the Settlement. If an individual does not provide proof that they qualify as a Class Member or if the individual previously Requested Exclusion from the Settlement, the individual shall not have standing to object to the Settlement.

104. **Appeal of an Overruled Objection.** Because any appeal by an objecting Class Member to the Settlement, Fee and Expense Award or Service Award may delay the payments under the Settlement, each objecting Class Member must elect within thirty (30) days of the Final Approval Order to (a) not appeal; (b) appeal only the objecting Class Member's portion of the Settlement, Fee and Expense Award or Service Award approved by the Court, in which case the appeal would be severed from the rest of the case and would not delay the Judgment for all other Class Members; or, (c) if the objecting Class Member purports to appeal on behalf of the entire Class (for which he or she has not been appointed to represent and would likely be in conflict with), or does not definitively or timely choose option (b) above, each such objecting Class Member that appeals agrees to put up a cash bond to be set by the Court sufficient to reimburse RRCU and Class Counsel's appellate fees, RRCU and Class Counsel's expenses, and the lost interest for one year to the Class caused by the likely delay. Any award or payment of attorneys' fees made to the counsel of an objecting Class Member shall be made only by Court order and upon a showing of a substantial benefit conferred to the Class. Any award of attorneys' fees by the Court will be conditioned on the objecting Class Member and his or her attorney stating under penalty of perjury that no payments shall be made to the objecting Class Member.

X. DUTIES OF THE SETTLEMENT ADMINISTRATOR

105. The Settlement Administrator shall be responsible for the following tasks:

i. Receiving the Class Information from RRCU and maintaining the Class Information in a secure and confidential manner to protect the privacy of the potential Class Member.

ii. Conducting a National Change of Address (“NCOA”) search to obtain up-to-date address information for potential Class Members prior to disseminating the Notice of Settlement.

iii. Disseminating the Notice of Settlement.

iv. Securing a URL for the Settlement Website with a name approved by the Parties.

v. Establishing and maintaining the Settlement Website in conformance with the terms of this Agreement, including but not limited to ensuring the publishing the documents required to be included on the Settlement Website as set forth in Paragraph 92 of this Agreement.

vi. Establishing a toll-free telephone number, email address and mailing address for Class Members to contact the Settlement Administrator.

vii. Recording an automated message that provides information about the Settlement for Class Members who contact the Settlement Administrator via telephone.

viii. Maintaining appropriate staffing to respond to inquiries from Class Members, including answering telephone calls.

ix. Promptly mailing the Notice of Settlement to Class Members.

x. Promptly mailing any mailed Notices of Settlement returned to the Settlement Administrator as undeliverable to the forwarding address affixed thereto, or, if no forwarding address is provided, using skip-tracing or other best practices to locate the potential Class Member's current address and re-mailing the Notice of Settlement thereto.

xi. Printing and disseminating the Long Form Notice by first-class mail to every Class Member who requests a hard copy of the Long Form Notice.

xii. Providing the Court with a declaration confirming compliance with the Notice Plan, which such declaration will be filed by Class Counsel.

xiii. Furnishing promptly to Counsel for the Parties copies of any Requests for Exclusion, Opt-Out Forms, objections, or other written or electronic communications from each Class Member that the Settlement Administrator receives;

xiv. Keeping track of each Request for Exclusion and Opt-Out Form, including maintaining the original mailing envelope in which the Request for Exclusion or Opt-Out Form was mailed and reporting to Counsel for both sides the total numbers and identities of those who have Requested Exclusion or returned completed Opt-Out Forms.

xv. Apprising Class Counsel and Counsel for RRCU of the activities of the Settlement Administrator via a weekly report, including status reports regarding the Class Notice, Requests for Exclusion, and completed Opt-Out Forms received, and promptly providing copies to Class Counsel and Counsel for RRCU of all electronic or written communications between the Settlement Administrator and any Class Member.

xvi. Within twenty-one (21) days after the Exclusion/Objection Deadline, providing a declaration to the Court with a list of all individuals who Requested Exclusion from the Class and/or Objected to the Settlement.

xvii. Removing the Settlement Website from the Internet promptly if the Settlement is terminated or if the Court denies final approval of the Settlement, and, in any event, within one-hundred and eighty (180) days after the Effective Date.

xviii. Responding timely to communications from Class Counsel or Counsel for RRCU.

xix. Performing such other tasks as the Parties mutually agree or that are specified in this Agreement.

106. The Settlement Administrator shall keep all information it obtains relating to the identification and contact information of Class Members strictly confidential pursuant to the Protective Order previously entered in this case and use it only for the sole purposes described herein and shall return all such information to Counsel for RRCU upon completion of the Settlement administration tasks. Furthermore, upon completion of its duties, the Settlement Administrator shall return to Class Counsel and Counsel for RRCU all documents related to the Action, including all documents it received in connection with this case from the Parties, Class Members, Class Representatives, or any other individuals (including, but not limited to, objections, Requests for Exclusion, and Opt-Out Forms).

107. Class Counsel and Counsel for RRCU will provide the Settlement Administrator with a copy of this Settlement Agreement which identifies and lists duties to be performed by the Settlement Administrator, as described above.

108. The Settlement Administrator shall provide Class Counsel and Counsel for RRCU a copy of its engagement agreement as well as all invoices relating to the administration of the Settlement.

109. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be resolved jointly by Class Counsel and Counsel for

RRCU consulting in good faith. If the Parties are unable to reach agreement, either may raise the disagreement with the Court.

XI. FEE, EXPENSES AND SERVICE AWARDS

110. **Attorneys' Fees and Expenses.** Class Counsel may submit an application to the Court for payment of Fee Award plus reimbursement of reasonable expenses incurred in connection with prosecuting this Action up to a combined cap of \$72,254.26.

111. **Payment of Fee and Expense Award.** Any Fee and Expense Awards approved by the Court shall be paid by the Settlement Administrator from the Supplemental Settlement Fund within thirty (30) days of the Effective Date. The Fee and Expense Awards shall be paid to Frank Sims & Stolper LLP, which may further pay such funds to Class Counsel, subject to the terms herein. Class Counsel agrees that the combined total of any attorneys' fees, costs and incentive awards will not exceed the total amount in the Settlement Fund. To the extent that the combined total of any attorneys' fees, costs, incentive awards and administrative costs approved by the Court are less than the amounts deposited into the Settlement Fund, such amounts will be paid to the Class on a pro rata basis. For example, for illustrative purposes only, if the combined total of attorneys' fees, costs, incentive awards and administrative costs is 75% of the total interest payments, then each

Class Member would receive a check for 25% of their individual interest payment.

112. **No Liability for Fees and Expenses of Class Counsel.** Neither the Class Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to any payment(s) to Class Counsel pursuant to this Agreement and/or to any other Person who may assert some claim thereto or any Fees and Expense Award that the Court may make in the Action, other than as set forth in this Agreement. Similarly, neither the Class Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Fees and Expense Award that the Court may make in the Action.

113. **Plaintiff's Service Award Application.** Class Counsel and Plaintiff may submit application(s) to the Court for a Service Award as part of the Fee, Expense and Service Award Application. Class Counsel and Plaintiff agree that the request for Service Awards shall not exceed five hundred dollars (\$500.00). RRCU agrees not to oppose such a request of up to five hundred dollars (\$500.00) to compensate Plaintiff for his time, effort, and risk in prosecuting this litigation and achieving this Settlement. Any Service Award which is awarded by the Court shall be paid from the Settlement Fund. Any Service Award shall be paid by the Settlement Administrator from the Settlement Fund within thirty (30) Days of the Effective Date.

114. The Fees, Expense and Service Award Shall Not Impact the Effectiveness of this Agreement. The procedure for and the allowance or disallowance by the Court of any Fees, Expense or Service Awards are not part of the Settlement set forth in this Agreement and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to the Fees, Expense or Service Awards, or any appeal from such awards or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fees, Expense or Service Award shall constitute grounds for cancellation or termination of this Agreement.

115. Potential Impact on Settlement Fund and Cap on RRCU's Liability. The Parties understand and agree that the combined total of the Notice and Administration Costs, plus any Fee and Expense Awards and Service Award approved by the Court may potentially encompass the entire amount in the Settlement Fund. In that event, there will be no distribution to the Class for interest payments under this Settlement; however, each Class Member will have already received their full GAP Refund without any deduction for any legal fees and expenses and administrative costs incurred as part of this Action. In no event will RRCU be responsible for paying, nor may RRCU be compelled to pay, any

additional amounts under this Settlement other than the amount initially deposited into the Settlement Fund, the GAP Refunds already paid to the Class and any future GAP Refunds owed pursuant to the Business Practice Change set forth in Paragraph 76 above.

**XII. CONDITIONS OF SETTLEMENT AND EFFECT OF
DISAPPROVAL, CANCELLATION, OR TERMINATION**

116. **Effective Date.** The Effective Date of this Agreement shall be conditioned on the occurrence of all of the following events:

i. RRCU no longer has any right to terminate this Agreement, nor is there a possibility of termination of this Agreement as set forth herein or, if RRCU does have such right, RRCU has given written notice to Class Counsel that it will not exercise such right.

ii. The Court has entered the Final Approval Order.

iii. The Class Released Claims and the Action are dismissed with prejudice pursuant to the Final Approval Order; and

iv. The expiration of any appeal periods and/or resolution of all appeals have occurred in accordance with the following:

(i) If no appeal is taken from the Final Approval Order, the

date after the time to appeal therefrom has expired; or

(ii) If any appeal is taken from the Final Approval Order, the date after all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing *en banc*, and petitions for certiorari or any other form of review, have been finally disposed of, such that the time to appeal therefrom has expired, in a manner resulting in an affirmance without material modification of the relevant order or judgment.

117. Depositing Money into the Settlement Fund and Occurrence of Effective Date. Within fourteen (14) days after Final Approval of the Settlement, \$81,254.26 will be transferred on behalf of RRCU to the Settlement Administrator to be held in an account maintained by the Settlement Administrator as the Settlement Fund. Upon the occurrence of Effective Date, and all of the events referenced in Paragraph 116 above, the Settlement Administrator shall promptly issue the appropriate payments as set forth in this Agreement and the Court's Final Approval Order.

118. Failure of Effective Date to Occur. If all of the conditions specified in this Section are not met, then this Agreement shall be cancelled and terminated and any funds deposited with the Settlement Administrator shall be returned to RRCU, subject to and in accordance with the provisions set forth herein unless the Parties mutually agree in writing to proceed with this Settlement Agreement. The

effectiveness of the Settlement is expressly conditioned on the Settlement Agreement being approved by the Court and any appellate court reviewing the Settlement without it being rejected or required to be materially modified by any Court ruling or any order resulting from an appeal or other review. If the Settlement is not finally approved by the Court and any appellate court reviewing it without material modification, this Agreement shall terminate and cease to have any effect.

119. **Termination.** Plaintiff, through Class Counsel, and RRCU shall have the right, but not the obligation, to terminate this Agreement if: (a) the Court rejects, modifies, or denies approval of any portion of this Agreement or the proposed Settlement that results in a substantial modification to a material term of the proposed Settlement; or (b) the Court, or any appellate court(s), does not enter or completely affirm, or alters, narrows or expands, any portion of the Final Approval Order, that results in a substantial modification to a material term of the proposed Settlement. However, the Parties agree to act in good faith to secure Final Approval of this Settlement and to attempt to address in good faith concerns regarding the Settlement identified by the Court and any appellate court. The terminating party must exercise the option to withdraw from and terminate this Agreement, as provided in this Section, by a signed writing served on the other Parties no later than ten (10) days after receiving notice of the event prompting the termination. If, but only if, this Agreement is terminated pursuant to this Section then:

i. The Parties will be returned to their positions *status quo ante* and this Agreement shall be null and void and shall have no force or effect and all of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Plaintiff, RRCU or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no Party's substantive or procedural rights are prejudiced by the settlement negotiations and proceedings.

ii. Neither this Agreement, the fact of its having been made, nor the negotiations leading to it, shall be admissible or entered into evidence for any purpose whatsoever.

120. **Other Orders.** No Party shall have any obligation whatsoever to proceed under any terms other than those substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any Fee, Expense and Service Award Application, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any Party. Without limiting the foregoing, RRCU shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Settlement, upon becoming Final, does not provide for the dismissal with prejudice of the Action and the Class Released Claims.

XIII. NO ADMISSION OF LIABILITY

121. **Final and Complete Resolution.** The Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Action, and to compromise claims that are contested, and it shall not be deemed an admission by any Party as to the merits of any claim or defense or any allegation made in the Action.

122. **Federal Rule of Evidence 408.** The Parties agree that this Agreement, its terms, and the negotiations surrounding this Agreement shall be governed by Federal Rule of Evidence 408 and any state-law equivalents and shall not be admissible or offered or received into evidence in any suit, action, or other proceeding, except upon the written agreement of the Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to give effect to, declare, or enforce the rights of the Parties with respect to any provision of this Agreement.

123. **Use of Agreement as Evidence.** Whether or not this Agreement becomes Final or is terminated pursuant to its terms, the Parties expressly agree that neither this Agreement nor the Settlement, any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claims released by this Agreement, any allegation or defense asserted in the Action,

or any violation of any statute or law or of any wrongdoing or liability of RRCU, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other proceeding; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault, or omission of the Class Releasees in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement; provided, however, that the Class Releasees may file this Agreement (including the Exhibits), the Final Approval Order, and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

XIV. REPRESENTATIONS AND WARRANTIES

124. This Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Rule 23. Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless

otherwise ordered by the Court, or if Final Approval is not achieved, Plaintiff and RRCU represent and warrant that they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. This includes the obligation to (a) oppose non-meritorious objections and to defend this Agreement and the Settlement before the Court and on appeal, if any; (b) seek approval of this Agreement and of the Settlement by the Court; (c) move for the entry of the orders required to effectuate Preliminary and Final Approval; and (d) join in the entry of such other orders as are necessary to effectuate this Agreement.

125. Any Fees and Expense Awards that Plaintiff and Class Counsel may seek upon application to the Court pursuant to this Agreement shall include all attorneys' fees and litigation costs that Plaintiff, Class Counsel, and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, employees, and affiliates of Class Counsel, seek or may have any right or claim to in connection with the Action and the Class Released Claims.

126. Plaintiff represents and warrant that other than Class Counsel, as that term is defined herein, there is no other Person having any interest in any award of

attorneys' fees, expenses, or litigation costs in connection with the Action, Agreement, or Settlement.

127. Plaintiff and RRCU represent and warrant that he, she, it, or they have full authorization and capacity to enter into this Agreement and to carry out the obligations provided for herein. Each Person executing this Agreement on behalf of a Party, entity, or other Person(s) covenants, warrants, and represents that he, she, or it has been fully authorized to do so by that Party, entity, or other Person(s). Plaintiff and RRCU represent and warrant that he, she, it, or they intend to be bound fully by the terms of this Agreement.

128. Plaintiff and RRCU represent and warrant that they have not, nor will they, unless expressly authorized to do so by the terms of this Agreement, (a) attempt to void this Agreement in any way; (b) Opt-Out of the Settlement under this Agreement; (c) solicit or encourage in any fashion a member of the Class to Opt-Out; or (d) solicit or encourage in any fashion any effort by any Person to object to the Settlement under this Agreement.

129. If any Person breaches the terms of any of the representations and warranties in this Section, the Court shall retain jurisdiction over this matter to entertain actions by a Party against such Person for breach and/or any Party's request for a remedy for such breach.

130. Class Counsel represent and warrant that they (a) will not seek out or solicit, and (b) have no present intention to pursue individual or class claims against RRCU or any of the Class Releasees with respect to matters within the scope of the Class Released Claims unless this Settlement is not granted Preliminary or Final Approval by the Court. The Parties understand and agree that nothing in this Paragraph imposes or shall be construed to prohibit or restrict Class Counsel from representing persons who seek representation for such claims subsequent to the date of this Agreement.

131. Class Counsel represent and warrant to RRCU that they have the authority to execute this Agreement on behalf of Plaintiff, and themselves, and thereby to bind Plaintiff, to all terms and conditions of this Agreement, and, subject to Court approval, to bind all Class Members to the terms and conditions of this Agreement.

XV. MISCELLANEOUS PROVISIONS

132. **Voluntary Settlement.** The Parties agree that the terms of the Settlement as described herein were negotiated in good faith by the Parties with the assistance of an independent mediator and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

133. **Subsequent Events Impacting Administration.** In the event that there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing agreement, as shall be ordered by the Court.

134. **Claims in Connection with Administration.** No Person shall have any claim against the Plaintiff, RRCU, Counsel for RRCU, Class Counsel, the Settlement Administrator, or the Class Releasees or their agents based on the administration of the Settlement substantially in accordance with the terms of this Agreement or any order of the Court or any appellate court.

135. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiff shall be binding upon all Class Members.

136. **Authorization to Enter Settlement Agreement.** The undersigned representatives of RRCU represent that they are fully authorized to enter into and to execute this Agreement and any modifications or amendments to this Agreement on behalf of RRCU. Class Counsel, on behalf of Plaintiff and the Class, represent that they are, subject to Court approval, expressly authorized to take all actions required or permitted to be taken by or on behalf of the Class pursuant to this Agreement to

effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to this Agreement on behalf of the Class that they deem appropriate.

137. **Notices.** All notices and responses to notices under this Agreement shall be in writing. Each such notice or response shall be given in the notice to the Class; and, if directed to any Class Member, shall be addressed to Class Counsel at their email addresses set forth below, and if directed to RRCU, shall be addressed to Counsel for RRCU at the email addresses set forth below or such other email addresses as Class Counsel or RRCU may designate, from time to time, by giving notice to all Parties hereto in the manner described in this Paragraph.

If directed to Plaintiff or any Class Member, email address notice to:

Jason Frank, jfrank@lawfss.com
Maritza Nowowiejski, mnowowiejski@lawfss.com
Franklin Azar, azarf@fdazar.com

If directed to RRCU, email address notice to:

John Palmeri, jpalmeri@grsm.com
Tamara A. Seelman, tseelman@grsm.com
Margaret Boehmer, mboehmer@grsm.com

138. **Confidentiality of Settlement Negotiations.** The Parties and their counsel shall keep strictly confidential and not disclose to any third party any non-public information regarding the Parties' negotiation of this Settlement and/or

Agreement, unless ordered by the Court to do so. For the sake of clarity, information contained within this Agreement shall be considered public, as well as any information requested by the Court in the approval process and other such information necessary to implement this Settlement, provided such information is filed (and is not under seal) and/or is not considered to be confidential materials under the Parties' Protective Order in this case.

139. **No Party Deemed to Be the Drafter.** None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, rule of interpretation, or construction that would or might cause any provision to be construed against the drafter hereof.

140. **Choice of Law.** This Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Colorado, and the rights and obligations of the Parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Colorado without giving effect to that State's choice of law principles.

141. **Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by RRCU and Plaintiff or Class Counsel, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of

this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement. Nothing in this Agreement (including the fact of Settlement) constitutes or shall be construed as a waiver by RRCU of whatever rights they may have under any arbitration agreement, including with respect to any claim, lawsuit, or judicial proceeding initiated by a member of the Class who has opted-out of the Settlement.

142. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

143. **Integrated Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the Settlement. This Agreement supersedes all prior negotiations and agreements, including but not limited to the Term Sheet, and may not be modified or amended except by a writing signed by the Parties and their respective counsel. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. It is understood by the Parties that, except for the matters expressly

represented herein, the facts or law with respect to which this Agreement is entered may turn out to be other than or different from the facts now known to each Party or believed by such Party to be true. Each Party therefore expressly assumes the risk of the facts or law turning out to be different and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

144. **Attorneys' Fees and Costs.** Except as otherwise expressly provided in this Agreement, each party shall bear its own costs and attorneys' fees.

145. **Return or Destruction of Confidential Materials.** The Parties agree to continue to comply with the Protective Order entered in this Action at the conclusion of the case. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Agreement.

146. **Intended Beneficiaries.** No provision of this Agreement shall provide any rights to, or be enforceable by, any Person that is not one of the Plaintiff, a Class Member, RRCU, one of the Class Releasees, Class Counsel, or Counsel for RRCU, except that this Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties. No Plaintiff, Class Member, or Class Counsel may assign or otherwise convey any right to enforce any provision of this Agreement.

147. **Regular Course of Business.** The Parties agree that nothing in this Agreement shall be construed to prohibit communications between Class Releasees, on the one hand, and Class Members, on the other hand, in the regular course of business.

148. **Tax Consequences.** No representations or advice regarding the tax consequences of this Agreement have been made by any Party. The Parties further understand and agree that each Party, each Class Member, each of Class Counsel, and Plaintiff shall be responsible for his, her, its, or their own taxes, if any, resulting from this Agreement and any payments made pursuant to this Agreement.

149. **Bankruptcy Proceedings.** The Parties agree that any Class Member who is in active bankruptcy proceedings or previously was a party to bankruptcy proceedings during the period of time covered in the definition of the Class may only participate in the Settlement subject to applicable bankruptcy law and procedures. RRCU is under no obligation to notify any bankruptcy court that has, had, or may have jurisdiction over such Class Member's bankruptcy proceedings or any trustee or examiner appointed in such Class Member's bankruptcy proceedings of this Agreement or the benefits conferred by this Agreement and the Settlement. The Parties agree that any disputes concerning the rights of the bankruptcy estate to the proceeds of any payment under the Settlement or Service Award shall be adjudicated by the applicable Bankruptcy Court. The Settlement Administrator shall follow any

direction of the Bankruptcy Court with respect to the proceeds of any payment or Service Award.

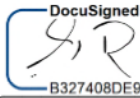
150. **No Conflict Intended; Headings.** Any inconsistency between this Agreement and the exhibits attached hereto shall be resolved in favor of this Agreement. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

151. **Class Member Obligations.** Under no circumstances shall the Settlement or Agreement or any release herein be deemed to alter, amend, or change the terms and conditions of any account or loan to which any Class Member is or was a party, or to provide a defense to any such loan, nor shall this Agreement or any release herein be deemed to have any effect in any bankruptcy case, in any foreclosure proceeding, or in any other action involving a Class Member hereto, nor shall the Settlement or this Agreement create or be construed as evidence of any violation of law or contract. In the event this Agreement is so construed as to a particular Class Member, it can be declared by RRCU to be null and void as to that Class Member only (and in such latter event, the Class Released Claims as to that Class Member shall also be void).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.

PLAINTIFF SABA RAEL

DocuSigned by:

B327408DE931402...

Saba Rael

Date: 6/3/2022, 2022

DEFENDANT RED ROCKS CREDIT UNION

DocuSigned by:

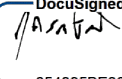
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By: _____
Darius Wise

Title: Interim Chief Executive Officer

Date: 6/3/2022, 2022

Agreed as to form and content:

DocuSigned by:

654995BE36F34B3...

Jason M. Frank (CA SBN 190957, *pro hac vice*)
Scott H. Sims (CA SBN 234148, *pro hac vice*)
FRANK SIMS & STOLPER LLP
19800 MacArthur Blvd., Ste. 855
Irvine, CA 92612
Telephone: (949) 201-2400
Facsimile: (949) 201-2405
jfrank@lawfss.com
ssims@lawfss.com

Franklin D. Azar (SBN 13131)
FRANKLIN D. AZAR & ASSOCIATES P.C.
14426 East Evans Ave.
Aurora, CO 80014
Telephone: (303) 757-3300
Facsimile: (303) 759-5203
azarf@fdazar.com

Counsel for Plaintiffs and the Proposed Class

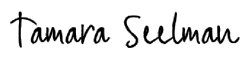
Agreed as to form and content:

Jason M. Frank (CA SBN 190957, *pro hac vice*)
Scott H. Sims (CA SBN 234148, *pro hac vice*)
FRANK SIMS & STOLPER LLP
19800 MacArthur Blvd., Ste. 855
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Franklin D. Azar (SBN 13131)
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Aurora, CO 80014
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Facsimile: (303) 759-5203
azarf@fdazar.com

Counsel for Plaintiffs and the Proposed Class

DocuSigned by:

070E65D8D3B9479...

Tamara A. Seelman (SBN 29391)
John M. Palmeri (SBN 14252)
Margaret Boehmer (SBN 45169)
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555 Seventh Street, Suite 3400
Denver, CO 80202
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tseelman@grsm.com
jpalmeri@grsm.com
mbohmer@grsm.com

Attorneys for Defendant Red Rock Credit Union

EXHIBIT A

DocuSign Envelope ID: 77CD748B-0D34-43FF-AF86-7E45BB4D51D5

David Carter et al. vs. Red Rocks Credit Union

District Court, Denver County, Colorado

Case No. 2020CV32234

C/O ATTICUS ADMINISTRATION

PO BOX 64053

SAINT PAUL MN 55164

Presorted First-Class Mail
U.S. Postage
PAID
Twin Cities MN
Permit #XXX

IMPORTANT LEGAL NOTICE

IF YOU ENTERED INTO A FINANCE AGREEMENT WITH GAP PROTECTION THAT WAS ASSIGNED TO RED ROCKS CREDIT UNION (“RRCU”) YOU MAY SUBJECT TO A CLASS ACTION SETTLEMENT.

A proposed Settlement has been reached in a class action lawsuit that may affect your rights. The lawsuit alleges that Red Rocks Credit Union (“RRCU”) failed to provide customers with a partial credit or refund of the fees paid for Guaranteed Asset Protection (“GAP”) after customers paid off their finance agreements early in violation of Colorado law. RRCU denies any wrongdoing.

- RRCU’s records indicate that you are a member of the Class and were entitled to a GAP refund in the amount of \$.

< <barcode> >

<<barcode>>

CLAIMANT ID: <<Unique ID>>
<<FIRST NAME>> <<LAST NAME>>
<<ADDRESS 1>> <<ADDRESS 2>>
<<CITY>> <<ST>> <<ZIP>>

DocuSign Envelope ID: 77CD748B-0D34-43FF-AF86-7E45BB4D51D5

You do not need to do anything to receive money under the Settlement. After the filing of the lawsuit, RRCU paid you the full amount of your GAP refund, which you either received in the mail or it was deposited into your account with RRCU. In total, the Class received approximately **\$312,592.10** in GAP refunds.

RRCU has also agreed to deposit **\$81,254.26** into a Settlement Fund to pay for: (a) the cost of providing notice and administration of this Settlement (**\$9,000**), (b) a Service Award of **\$500** to Plaintiff Saba Rael for serving as the Class Representative; (c) an Award of Attorneys' Fees in the amount of **\$68,532** and Expenses in the amount of **\$3,722.44** to reimburse Class Counsel for the time and expense incurred representing the Class, subject to final approval by the Court. The Court appointed the law firms of Frank Sims & Stolper LLP and Franklin D. Azar & Associates as Class Counsel.

The Court will hold a **Final Approval Hearing** on [hearing date] at [hearing time] in **Division 409** of the District Court at 1437 Bannock St., Room 256, Denver, Colorado to determine whether to approve the Settlement and payments.

Opt-Out Option: If you do not wish to participate in the Settlement, you must mail an "Opt-Out" Request to the Settlement Administrator postmarked no later than **[exclusion deadline]**. If you "opt-out", you will not be legally bound by anything that happens in this lawsuit. If you do not "opt-out," and the Court grants final approval of the Settlement, you will release the claims asserted in the lawsuit against RRCU.

Objection Option: If you do not "opt-out" and wish to object to the Settlement, you must inform the Court through a written objection of why you do not like the settlement. The objection must contain specific information that can be found in the full Class Notice on the settlement website and must be filed with the Court and mailed to the Settlement Administrator by **[objection deadline]**. The Court will consider objection at the Final Approval Hearing. If you object and wish to speak at the hearing, you may file a Notice of Intent to Appear with the Court through your own attorney and at your own expense.

To review the complete Class Notice and for more information about the Settlement, including details on how to "Opt-Out" or submit an Objection, please visit the Settlement Website at www.settlementwebsite.com. You may also call or email the Settlement Administrator at **1-800-XXX-XXXX** or settlementwebsite@atticusadmin.com with any questions or to have the full Class Notice mailed to you.

EXHIBIT B

Saba Rael et al. v. Red Rocks Credit Union
Case No. 2020CV32234

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

This Notice of Proposed Class Action Settlement (“Notice”) was authorized by the District Court, Denver County, Colorado. It is not a solicitation from a lawyer.

IF YOU RECEIVED A POST-CARD NOTICE ABOUT THIS SETTLEMENT, YOU HAVE BEEN IDENTIFIED AS A CLASS MEMBER

- A proposed Settlement has been reached in a class action lawsuit that may affect your rights.¹
- The Settlement resolves a class action lawsuit against Red Rocks Credit Union (“RRCU”). The lawsuit alleges that RRCU failed to provide customers with a partial refund of the fees paid for Guaranteed Asset Protection (“GAP”) after customers paid off their Finance Agreements early. Plaintiff contends that RRCU was required to automatically issue the refund after the early payoff under Colorado law. RRCU denies any wrongdoing.
- You are a member of the Class if (1) you entered into a Finance Agreement with GAP protection that was governed by Colorado law and that was made with or assigned to RRCU; (2) you paid off your Finance Agreement before the maturity date (an “Early Payoff”); (3) the Early Payoff occurred during the period **October 1, 2014 to July 1, 2020**; and (4) you did not receive a GAP Refund. Excluded from the Class are any persons whose vehicles were repossessed by RRCU due to the failure to pay the money owed to RRCU under the Finance Agreement.
- **You do not need to do anything to receive money under this Settlement.** After the filing of the lawsuit, RRCU paid you the full amount of your GAP refund, which you either received in the mail or was deposited into your account with RRCU. In total, the Class received approximately **\$312,267.84** in GAP refunds.
- RRCU has also agreed to deposit **\$81,254.26** into a Settlement Fund to pay for: (a) the cost of providing notice and administration of this Settlement (**\$9,000**), (b) a Service Award of **\$500** to Plaintiff Saba Rael for serving as the Class Representative; and (c) an Award of Attorneys’ Fees in the amount of **\$68,532** and Expenses in the amount of **\$3,722.44** to reimburse Class Counsel for the time and expense incurred representing the Class, subject to final approval by the Court.
- In addition, RRCU has also agreed to continue a Business Practice Change it made after the filing of the lawsuit that provides that from July 1, 2020 forward, RRCU will ensure that GAP refunds are paid to customers within a reasonable time after an Early Payoff of the Finance Agreement.
- You must decide whether to: (1) “Opt-Out” or (2) Object; or (3) Do Nothing

THESE OPTIONS AND THE DEADLINES TO EXERCISE THEM ARE FURTHER DETAILED IN THIS NOTICE AND SUMMARIZED ON THE NEXT PAGE.

YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER YOU ACT OR NOT. PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

¹ Capitalized terms in this Notice are defined in the Settlement Agreement <<link>>.

| SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT | |
|---|--|
| EXCLUDE YOURSELF FROM THE SETTLEMENT BY <<DATE>>, 2022 | <p>You may file a written request to exclude yourself or “opt out” from the Settlement by <<DATE>>, 2022. If you do so, you will not be affected by any of the decisions in this lawsuit. (See Section 11 <<link>>.)</p> <p>If the Settlement is granted final approval by the Court and you did not timely “opt out” of the Settlement, then you will release certain legal claims against RRCU. (See Section 19 <<link>>.)</p> |
| OBJECT TO THE SETTLEMENT BY <<DATE>>, 2022 | <p>If you believe the Settlement is unfair or inadequate, you may file a written objection to the Settlement by <<DATE>>, 2022, so long as you do not file a request to exclude yourself from the Settlement. (See Section 17 <<link>>.)</p> |
| DO NOTHING | <p>If you do nothing, and the Settlement is granted final approval by the Court, then you will release certain legal claims against RRCU. (See Section 19 <<link>>.)</p> |

THESE OPTIONS AND THE DEADLINES TO EXERCISE THEM ARE FURTHER DETAILED IN THIS NOTICE.

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BASIC INFORMATION

1. WHY DID I RECEIVE NOTICE OF THIS SETTLEMENT?

A Court authorized this Notice because you have a right to know about a proposed Settlement of this class action lawsuit and about your options before the Court decides whether to grant final approval of the Settlement. RRCU's records indicate that you are a Class Member who was entitled to a GAP refund.

This Notice explains the lawsuit, the Settlement, and your legal rights. Judge Marie Avery Moses of the District Court for Denver County, Colorado is overseeing this case and has exclusive jurisdiction over the Settlement. This litigation is known as *Saba Rael et al. v. Red Rocks Credit Union*, Case No. 2020CV32234.

2. WHAT IS THIS LAWSUIT ABOUT?

According to RRCU's records, you entered into a Finance Agreement to finance the purchase of an automobile, and the Finance Agreement was either made with or assigned to RRCU. At the time, you also purchased GAP protection for your Finance Agreement.

GAP protection is an addendum to a customer's Finance Agreement which provides that the creditor on the Finance Agreement (RRCU) will waive certain amounts owed under the Finance Agreement in the event the customer's car is "totaled" or stolen.

According to the Lawsuit, customers are entitled to a partial credit or refund of the amount paid for GAP protection if the Finance Agreement is paid off early (an "Early Payoff"). This amount is referred to in this Notice as a "GAP Refund."

Plaintiff alleges that RRCU was legally and contractually required to pay you a GAP refund within a reasonable time after the Early Payoff of your Finance Agreement pursuant to Colorado law, 4 Colo. Code Regs. § 902-1:8(h). Plaintiff further alleges that you are entitled to interest at a statutory rate of eight percent (8%) per annum. *See* Colo. Rev. Stat. Ann. § 5-12-102(1)(b).

RRCU denies any wrongdoing in the lawsuit, including the allegation that it owes interest on any unpaid GAP refunds.

The Amended Complaint in this lawsuit, which provides greater details about Plaintiffs' claims, can be viewed by clicking on the following link: <<link>>

3. WHY IS THIS A CLASS ACTION?

A class action lawsuit allows a large number of people with a common complaint to sue collectively while being represented by one or more members of the group called the "Class Representatives." In this case, the Class Representative, Saba Rael, has brought this lawsuit on behalf of herself and other Colorado consumers with similar claims. Together, all the individuals with similar claims (with the exception of those who request exclusion or "opt out" from the Class) are referred to as "Class Members."

4. WHAT ARE THE REASONS FOR THE SETTLEMENT?

The Court has not ruled in favor of either the Plaintiff or RRCU. Instead, both sides agreed to a Settlement that they believe is a fair, reasonable and adequate compromise of their respective positions.

By agreeing to the Settlement, the parties avoid the costs, delays, and uncertainty of further litigation, and Class Members receive the benefits described in this Notice. As in any litigation, Plaintiff and the Class Members would face an uncertain outcome if they did not agree to the Settlement, and the case could continue for a long period of time. Continuation of the case could result in a judgment greater or less than the Settlement. Plaintiff and Class Counsel believe this Settlement provides a fair and reasonable resolution of the claims asserted in this lawsuit for the benefit of the Class Members.

RRCU denies any wrongdoing and the Settlement shall in no event be construed or deemed to be evidence or an admission or concession on the part of RRCU with respect to any claim or of any fault, liability, wrongdoing, or damage.

THE SETTLEMENT

5. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

The Class includes all persons (a) whose Finance Agreements with GAP protection were governed by Colorado law and made with or assigned to RRCU; (b) who paid off or refinanced their Finance Agreement before the original maturity date (an “Early Payoff”); (c) whose Early Payoffs occurred during the period October 1, 2014 to July 1, 2020; and (d) who did not receive a GAP Refund from RRCU prior to the filing of the lawsuit on July 1, 2020. The Class does not include and specifically excludes any persons who meet the above criteria but whose vehicles were repossessed by RRCU due to their failure to pay the money owed to RRCU under their Finance Agreement.

If you did not receive a Post-Card Notice but believe you are a member of the Statutory Class or Non-Statutory Class, you can contact the Claims Administrator at <<telephone number>> or <<email address>>. You will be required to provide any documents you have to support your claim to the Claims Administrator.

6. WHAT BENEFITS DOES THE SETTLEMENT PROVIDE?

Under the Settlement, RRCU has agreed to provide the following benefits as consideration for the resolution and release of the Class Members’ claims:

- **Business Practice Change.** Commencing on July 1, 2020 and in September 2021, RRCU implemented changes to its refund policies and procedures so that from July 1, 2020 forward, RRCU ensures that GAP Refunds are made to customers in Colorado within a reasonable time after receipt of an Early Payoff. Customers are not required to take any action after an Early Payoff to receive the GAP Refund. The refund amount is calculated using the Pro Rata Method unless otherwise required by law, and no cancellation fee will be charged unless expressly authorized in the customer’s GAP Agreement. These policies and procedures apply to all customers whose Finance Agreements with GAP Agreements have been or will be assigned to RRCU. RRCU agrees it will continue to provide GAP Refunds after an Early Payoff in Colorado in conformance with 4 Colo. Code Regs. § 902-1:8(h). RRCU’s agreement to maintain this

Questions? Call <<Telephone Number>> or visit www.<<NAME>>.com

business practice change is a material term of Settlement to be enforced pursuant to the Settlement Agreement.

- **GAP Refunds:** After the filing of the Lawsuit, RRCU paid full GAP Refunds to the Class by either mailing a check in the amount of the GAP refund to the Class member or depositing the GAP Refund in the Class member's account with RRCU. Any uncashed refund checks has escheated or will escheat to the State in conformance with Colorado's unclaimed property laws. In total, the Class received approximately **\$312,267.84** in GAP refunds.

- **Settlement Fund.** RRCU has also agreed to deposit **\$81,254.26** into a Settlement Fund to pay for: (a) the cost of providing notice and administration of this Settlement (**\$9,000**), (b) a Service Award of **\$500** to Plaintiff Saba Rael for serving as the Class Representative; and (c) an Award of Attorneys' Fees in the amount of **\$68,532** and Expenses in the amount of **\$3,722.44** to reimburse Class Counsel for the time and expense incurred representing the Class, subject to final approval by the Court. The **\$81,254.26** is equal to the amount of interest that accrued from the date of the Early Payoff to the date the refund issued, calculated at 8% per annum and compounded annually pursuant to Colo. Rev. Stat. Ann. § 5-12-102(1)(b).

7. DO I NEED TO DO ANYTHING TO RECEIVE A PAYMENT?

NO. After the filing of the Lawsuit, RRCU directly paid your full GAP Refund by either mailing you a check or depositing the GAP Refund into your account at RRCU.

If you do not believe that you received this payment, please contact the Claims Administrator at <<telephone number>> or <<email address>>. You may also send a letter to the Claims Administrator at the following address:

RRCU GAP Settlement c/o Atticus Administration
PO Box 64053
Saint Paul, MN 55164

8. WHY DID I RECEIVE MULTIPLE NOTICES?

If you received more than one Post-Card about the Settlement, it may mean you have more than one vehicle covered by the Settlement.

9. WHAT CAN I DO IF I BELIEVE MY SETTLEMENT PAYMENT WAS NOT CALCULATED PROPERLY?

If you believe your payment was improperly calculated, you can contact the Claims Administrator at <<telephone number>> or <<email address>> and provide your relevant information. If the Claims Administrator or RRCU determines that your payment was improperly calculated, your payment will be updated and a new check will be issued.

10. HOW WILL THIS SETTLEMENT AFFECT MY RIGHTS?

If this Settlement is granted final approval by the Court and you do not “opt-out” or request exclusion from the Settlement, then you will release certain claims against RRCU as described in Section 19 below.

EXCLUDING YOURSELF FROM THE SETTLEMENT

11. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

If you do not want to be a part of the Settlement, then you must take steps to request exclusion from the Settlement.

To request exclusion or “opt out” from the Settlement, you must mail a written Request for Exclusion to the Claims Administrator at the following address:

RRCU GAP Settlement c/o Atticus Administration
PO Box 64053
Saint Paul, MN 55164

The Request for Exclusion must be post-marked on or before <<Deadline>>, 2022.

Your Request for Exclusion must include the following information:

1. Your name, address, and telephone number;
2. Your settlement administration claim number provided on the front of the Post-Card Notice you received;
3. A statement that “I do not want to be a member of the Class in *Saba Rael et al. v. Red Rocks Credit Union*, Case No. 2020CV32234 pending in the District Court for Denver County, Colorado. I understand that it will be my responsibility to pursue any claims I may have, if I so desire, on my own and at my expense”; and
4. Your signature and date.

Your Request for Exclusion must be specific to yourself. Attempts to exclude multiple individuals as part of single Request for Exclusion are not allowed and shall be of no force or effect.

12. IF I DO NOT REQUEST EXCLUSION, CAN I SUE DEFENDANTS FOR THE SAME CLAIMS LATER?

NO. Unless you request exclusion from the Settlement, you will give up the right to sue RRCU for the claims that this Settlement resolves as described in Section 19 below.

THE LAWYERS REPRESENTING YOU

13. DO I HAVE A LAWYER IN THIS CASE?

Yes. The Court has appointed the following law firms to represent you and the other Class Members as “Class Counsel.” You can contact Class Counsel at the addresses or telephone numbers listed below. They are:

Jason M. Frank
Andrew D. Stolper
Scott H. Sims
**FRANK SIMS &
STOLPER LLP**
19800 MacArthur Blvd.,
Suite 855
Irvine, CA 92612
Telephone: (949) 201-2400
Facsimile: (949) 201-2405

Franklin D. Azar
**FRANKLIN D. AZAR &
ASSOCIATES, P.C.**
14426 East Evans Avenue
Aurora, CO 80014
Telephone: (303) 757-3300
Facsimile: (303) 759-5203

You will not be charged for contacting these lawyers. If you want to be represented by a different lawyer, you may hire one at your own expense.

14. HOW WILL THE LAWYERS BE PAID FOR THEIR SERVICES?

Class counsel will apply to the Court for an award of attorneys’ fees and costs to compensate them for their legal services and expenses incurred in this matter. The application for an award of attorneys’ fees and costs will be posted to the Settlement Website at www.<<name>>.com. Pursuant to the terms of the Settlement, Class Counsel intends to request an award of **\$68,532** in legal fees and reimbursement of their expenses in the amount of **\$3,722.44**.

Any fee and expense awards approved by the Court will be paid out from the Settlement Fund.

15. WILL CLASS REPRESENTATIVES RECEIVE SERVICE AWARDS?

Class Counsel will file an application for a Service Award of **\$500** to be paid to the Class Representative, Saba Rael, in recognition of the time and effort she provided in this lawsuit, and risks incurred, on behalf of the Class. The application for this Service Award will be posted to the Settlement Website at www.<<name>>.com.

Any Service Awards approved by the Court will be paid out from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

16. HOW DO I INFORM THE COURT IF I OBJECT TO THE SETTLEMENT?

If you are a member of the Class, and do not Request Exclusion or “opt out” from the Settlement, you can object to any part of the Settlement. You can give reasons why you think the Court should not approve the entire Settlement or parts of it.

To object, you must timely file a written objection with the Court and mail the same to the Claims Administrator at the following address:

RRCU GAP Settlement c/o Atticus Administration
PO Box 64053
Saint Paul, MN 55164

The objection must be filed on or before **<<Deadline>>, 2022**, and mailed to the Claims Administrator with a post-mark date on or before **<<Deadline>>, 2022**.

Your objection must state all of the following:

1. Your name, address, and telephone number;
2. Your settlement administration claim number provided on the front of this Notice;
3. A statement saying that you object to the Settlement in *Saba Rael et al. v. Red Rocks Credit Union*, Case No. 2020CV32234.
4. A statement describing whether your objection applies only to yourself, to a specific subset of the Class, or to the entire Class;
5. The specific grounds for your objection;
6. Any legal authority that supports your objection; and
7. Your signature.

If a lawyer is asserting an objection on your behalf, the lawyer must also:

1. File a notice of appearance with the Court on or before **<<Deadline>>, 2022**;
2. File a sworn declaration attesting that he or she represents you; and
3. File a sworn declaration that specifies the number of times during the prior five-year period that he or she has objected to a class action settlement on his or her own behalf or on behalf of a class member.

If You wish to appear at the Final Approval Hearing, you (or your attorney) must file a Notice of Intention to Appear with the Court indicating that you (or your attorney) would like to speak at the hearing. The Notice of Intention to Appear must be filed with the Court on or before **<<Deadline>>, 2022**. If You (or your attorney) do not file a timely Notice of Intention to Appear, You (or your attorney) will be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

You (or your attorney) must file your written objection and any additional documents required above with **Courtroom 409** of the District Court for Denver County Colorado, the Honorable Marie Avery Moses, located at 1437 Bannock St., **Room 256**, Denver, CO, 80202.

Questions? Call **<<Telephone Number>>** or visit www.<<NAME>>.com

17. WHAT IS THE DIFFERENCE BETWEEN OBJECTING TO THE SETTLEMENT AND REQUESTING EXCLUSION?

Objecting is notifying the Court that you think something about the Settlement is unfair, unreasonable, or inadequate. You can only object to the Settlement if you are a Class Member. Requesting exclusion from the Settlement is notifying the Court that you do not want to remain a Class Member. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

RELEASE OF CLAIMS

18. WHAT CLAIMS ARE BEING RELEASED AS PART OF THE SETTLEMENT?

Upon Final Approval of the Settlement by the Court, each Class Member who does not request exclusion, individually or together, and each and every one of their former, present, or future agents, predecessors, successors, heirs, legatees, executors, administrators, insurers, assigns, trustees, spouses, and domestic partners (“Class Releasers”) RRCU, and each of their former, present, or future agents, insurers, predecessors, successors, subsidiaries, parent company(ies), affiliates, officers, directors, and employees and attorneys (“Class Releasees”) from any and all past and/or present claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, whether class, individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, and/or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, under the laws of any jurisdiction, which they, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, arising from or relating in any way to the to the Class Member’s entitlement to a GAP Refund after an Early Payoff that occurred during the Class Period or interest on such GAP Refund (the “Class Released Claims”). Notwithstanding the foregoing, the Class Releasees do not include any Dealers or GAP Administrators, including without limitation, those identified in the Class Members’ GAP Agreements or Finance Agreements.

THE FINAL APPROVAL HEARING

19. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO GRANT FINAL APPROVAL TO THE SETTLEMENT?

The Court has scheduled a Final Approval Hearing for <<DATE>>, 2022 at <<TIME>> in Courtroom 409 of the District Court for Denver County Colorado, the Honorable Marie Avery Moses, located at 1437 Bannock St., Room 256, Denver, CO, 80202. The hearing date and time is subject to change. Updates to the date and time will be posted to the Settlement Website at www.<<NAME>>.com.

At the Final Approval Hearing, the Court will consider granting final approval of the Settlement based on whether it is fair, reasonable, and adequate. The Court will also consider requests by Class Counsel for attorneys' fees and expenses related to the litigation and the Class Representative's Service Award. If there are timely and complete objections, the Court will consider those objections at the hearing as well.

At or after the hearing, a decision will be made whether to grant final approval of the Settlement. It is not known how long it will take for the Court to decide. Class Members should visit the Settlement Website at www.<<NAME>>.com to stay updated about the current status of the case.

20. DO I HAVE TO ATTEND THE HEARING?

No. Attending the hearing is not required, but you are welcome to attend at your own expense.

If you send an objection, you do not have to come to Court to talk about it. As long as your objection is timely and complies with the requirements set forth in this Notice and the Settlement Agreement, the Court will consider it. You may also pay your own lawyer to attend.

GETTING MORE INFORMATION

21. HOW DO I GET MORE INFORMATION?

This Notice is a summary of the proposed Settlement. More details regarding the terms of the Settlement can be found in the Settlement Agreement posted on the Settlement Website at www.<<NAME>>.com.

You may also contact the Settlement Administrator by calling the toll-free number, <<Telephone Number>> by emailing <<Email Address>> or by writing to:

RRCU GAP Settlement c/o Atticus Administration
PO Box 64053
Saint Paul, MN 55164

You may also contact Class Counsel using the contact information provided above in Section 14. You will not be charged for contacting Class Counsel.

Questions? Call <<Telephone Number>> or visit www.<<NAME>>.com