

# **SETTLEMENT AGREEMENT AND RELEASE**

*Joy L. Bowens v. Mazuma Federal Credit Union,*

**United States District Court, Western District of Missouri, Case No. 4:15-cv-00758**

## PREAMBLE

This Settlement Agreement and Release (the "Agreement") is entered into by and among plaintiff Joy L. Bowens ("Named Plaintiff") and all those on whose behalf she is prosecuting this action (each of them a "Plaintiff" and all of them "Plaintiffs"), on the one hand, and defendant Mazuma Credit Union ("Defendant"), on the other hand, as of the date executed below. All references in this Agreement to a "party" or the "parties" shall refer to a party or the parties to this Agreement.

## RECITALS

A. On or about September 30, 2015, Named Plaintiff filed a putative class action complaint entitled *Joy L. Bowens v. Mazuma Federal Credit Union*, United States District Court, Western District of Missouri, Case No. 4:15-cv-00758, alleging claims for Breach of Contract, Unjust Enrichment/Restitution, Money Had and Received, Negligence, and for violation of the Electronic Funds Transfer Act ("EFTA") and Regulations Promulgated Thereunder (the "Complaint" or "Action").

B. On or about December 21, 2015, Defendant filed an Answer to the Complaint, denying generally all material allegations therein, and raising various affirmative defenses. On or about June 1, 2016 and September 16, 2016, the parties engaged in mediation with mediator John R. Phillips.

C. On or about February 7, 2017, Named Plaintiff filed a notice of settlement, notifying the court that the parties had reached a settlement in principle to resolve this dispute, subject to the negotiation of certain details, which negotiation has now occurred.

D. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the burden, risk and expense of further litigation. Defendant does not in any way acknowledge, admit to or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

E. Plaintiffs have entered into this agreement to liquidate and recover on the claims asserted in the Action, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the Action lacks merit or is subject to any defense.

## AGREEMENT

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

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

(a) “Bar Date to Object” shall be the date set by the Court as the deadline for Class Members to object to this Agreement. The Bar Date shall be fifteen days after Class Counsel has filed the Motion for Final Approval. The Motion for Final Approval will not be filed until the "Bar Date to Opt Out" has passed.

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

(c) “Claims Administrator” shall mean the company which is the lower of the two bidders to which Class Counsel has put this notice and administration for handling this settlement. Class counsel shall put this administration out for bid to at least two companies.

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

(e) “Class Member” shall mean any member of Defendant who, between the implementation of Defendant's automated overdraft program in April 2011 and September 30, 2015, was assessed an overdraft fee when the member had sufficient money in his or her "current balance," but insufficient money in his or her available balance to complete the transaction that caused the fee.

(f) “Court” shall mean the United States District Court for the Western District of Missouri.

(g) “Defendant’s Counsel” shall mean George Francis Verschelden of Stinson Leonard Street LLP.

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

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

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

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

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

(m) “Challenged Overdraft Charges” shall mean the total dollar amount of Overdraft Charges that were assessed to a Class Member between April 2011 and September 30, 2015, when the member had sufficient "current balance" in his or her checking account, but insufficient available balance to cover the transaction in question.

(n) "Current balance" shall mean all money in a shared draft account without any deduction for any sort of holds.

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

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

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

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

(s) “Settlement Fund” shall mean the one million three hundred sixty thousand dollars (\$1,360,000) to be paid by Defendant under the terms of this Agreement. Under no circumstances shall Defendant be obligated to contribute any more than \$1,360,000 to the Settlement Fund.

## **2. CHANGE IN SYSTEMS.**

Defendant agrees that as a result of this lawsuit and settlement, as of January 1, 2018, Defendant will assess overdraft fees based on the "current balance" in a member's account rather than on available balance as Defendant did prior to this lawsuit. The parties agree that this operational change would have decreased the total amount of overdraft fees charged by Mazuma over the last four years by approximately \$3 million.

**3. CLASS ACTION SETTLEMENT.** Plaintiff will propose and recommend to the Court that a settlement class be certified, which class shall be comprised of the Class Members. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that the case shall proceed as a class action under Federal Rule of Civil Procedure 23(b); provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining the Action as a class action. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

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

**5. NOTICE TO THE CLASS.**

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

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

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

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

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

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

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

**6. MOTION FOR FINAL APPROVAL.** Within a reasonable time after the "Bar Date to Opt Out," and provided the conditions in Section 14 below are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

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

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

(a) Payments to Class Members. Within ten (10) days after the entry of the Final Approval Order, Defendant shall transfer the Settlement Fund to the Claims Administrator, less the total amount that will be credited to Class Members by Defendant, as provided in subsection 8(d)(v)(1), below. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and includes (a) Class Counsel's fees and costs; (b) any service award payments to the Named Plaintiff; (c) costs associated with administering the Notice in accordance with Section 4, above; and (d) any fees paid to the Claims Administrator for services rendered in connection with the administration process. Defendant shall not make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged improper fees charged to the Class Members exceeds the value of the Net Settlement Fund.

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

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

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

(i) Plaintiff's Fees and Costs. Plaintiffs' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund to Class Counsel ten (10) days after Final Approval. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay fees and costs to Defendant; should the award of fees and costs be reduced on appeal, Class Counsel shall immediately repay into the Settlement Fund an amount equal to the reduction ordered by the appellate court. Class counsel has agreed to apply for an attorneys' fee award of one-third (33-1/3%) of the Settlement Fund, plus reasonable litigation costs. This is 11% if the

savings amount arising from the change of practices in assessing overdraft fees to "current balance" is added to the Settlement Fund, plus reasonable litigation costs. In the event that the Court approves attorney fees in an amount less than for which Class Counsel applies, the difference will go to a *cypres* non-profit organization to be nominated by Class Counsel and approved by the Court.

(ii) Service Award. Named Plaintiff may apply to the Court for a service award of ten thousand dollars (\$10,000) without objection from Defendant. If Named Plaintiff applies to the Court for a service award greater than \$10,000, then Defendant reserves its right to object to such application. Subject to the Court's approval, the service award shall be paid from the Settlement Fund ten (10) days after the Effective Date.

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

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

$$\frac{\text{Net Settlement Fund} / \text{Total Challenged Overdraft Charges}}{\text{Total Challenged Overdraft}}$$

Charge per Class Member = Individual Payment

(v) Individual Payments shall be paid to Class Members ten (10) days after the Effective Date, as follows:

- (1) For those Class Members who are members of Defendant at the time of the distribution of the Net Settlement Fund, their checking accounts or other accounts maintained at Defendant shall be credited by Defendant in the amount of the Individual Payment they are entitled to receive.
- (2) For those Class Members who are not members of Defendant at the time of the distribution of the Net Settlement Fund, they shall be sent a check by the Claims Administrator at the address used to provide the Notice, or at such other address as designated by the Class Member. The Class Member shall have one-hundred eighty (180) days to negotiate the check. Any checks uncashed after one-hundred eighty (180) days shall be distributed pursuant to Section 10.
- (3) To the extent the amount of the Settlement Fund paid by Defendant to the Claims Administrator is not sufficient, after payment of expenses as provided for in Sections 8(d)(i) through (iii), to make the payments provided for in Section

8(d)(v)(1), above, because Class Members at the time of the Final Approval Order ceased to be members at the time of the credit provided for in this Section 8(d)(v)(2), then Defendant shall pay the Claims Administrator an additional amount sufficient to allow the Claims Administrator to make the necessary payments. In no event, however, shall the total amount to be paid by Defendant exceed the Settlement Fund.

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

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

**10. THE CLAIMS ADMINISTRATOR.**

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

(b) The Claims Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.

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

(d) The Claims Administrator also shall be responsible for timely and properly filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Defendant shall be required to report amounts credited to members pursuant to Section 8(d)(v)(2) on each member's annual statement. Except as provided herein, Class Members shall be responsible for their own tax reporting of payments or credits received under the terms of this Agreement.

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



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

**11. CY PRES PAYMENT.** Thirty (30) days after the Final Report, the total amount of uncashed checks, and amounts held by the Administrator at the time of the Final Report, shall be paid by the Claims Administrator one-half (50%) to Public Citizen for work by Public Citizen whose benefit will be intended to include Missouri consumers, and one-half (50%) to Truman Heritage Habitat for Humanity. If Public Citizen is not approved by the Court, Class Counsel will nominate to the Court for its approval some other non-profit, public benefit corporation nominated by Class Counsel and approved by the Court. If Truman Heritage Habitat for Humanity is not approved by the Court, Defendant's Counsel will nominate to the Court for its approval some other non-profit, public benefit corporation nominated by Defendant's Counsel and approved by the Court.

**12. OPT-OUTS.**

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

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

**13. OBJECTIONS.**

(a) Any Class Member, other than a Class Member who timely submits an Exclusion Letter, may object to this Agreement.

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

(i) A heading referring to the *Bowens v. Mazuma Federal Credit Union* Action with the case number 4:15-cv-00758;

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

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

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

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

**14. RELEASE.** Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiff, on behalf of herself and all of her respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, and each of the Class Members, including their respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, insurers and agents, hereby fully release and forever discharge Defendant, and all of its past, present and future predecessors, successors, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers, and agents (collectively, the “Defendant Releasees”), from any and all charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions, costs and attorney fees, damages and remedies, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, which Named Plaintiff and Class Members who do not opt out now have, own or hold or which Named Plaintiff and Class Members who do not opt out now have, own, or hold, against any of the Defendant Releasees that arise out of and/or relate to the claims and facts alleged in the Complaint.

**15. CONDITIONS TO SETTLEMENT.**

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

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 3 above;

(ii) The Court has entered the Final Approval Order as required by Sections 5 and 6 above, and all objections, if any, to such order are overruled, and all appeals taken from such order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 14(a) are not met, then this Agreement shall be cancelled and terminated.

(c) In the event this Agreement is terminated, pursuant to Section 14(c) immediately above, or fails to become effective in accordance with Sections 14(a) and/or (b) immediately above, then the parties shall be restored to their respective positions as they existed as of the date of the execution of this Agreement.

(d) In the event this Agreement is terminated, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

(i) Neither the Agreement terms nor any publicly disseminated information regarding the Agreement, including, without limitation, the Notice, court filings, orders and public statements relating to the Agreement, may thereafter be used as evidence for any purpose whatsoever.

(ii) The fact of, and any documents, findings, decisions, or orders relating to any failure of a court to approve the Agreement or any modifications or amendments of the Agreement, as well as the fact and content of any objections which may have been filed to the Agreement, may not be used as evidence for any purposes whatsoever.

## **16. REPRESENTATIONS.**

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

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

(c) The parties represent that there has not been any assignment, transfer, conveyance, or other disposition of any rights, obligations, or liabilities released under the terms of this Agreement, and that there will be no assignment or transfer or purported assignment or transfer to any person or entity whatsoever, of any claim, debt, liability, demand, obligation, cost, expense, action, defense, or cause of action hereinabove released.

(d) The Named Plaintiff, on behalf of the Class Members, represents that she has made such inquiry into the terms and conditions of this Agreement as she deems appropriate, and that by executing this Agreement, she believes the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(e) The Named Plaintiff represents that she has no conflicts or other personal interests that would in any way impact her representation of the class in connection with the execution of this Agreement.

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

**17. FURTHER ASSURANCES.** Each of the parties hereto agrees to execute and deliver all such further documents consistent with this Agreement, and to take all such further

actions consistent with this Agreement, as may be required in order to carry the provisions of this Agreement into effect, subject to Class Counsel's obligation to protect the interests of the Class Members. Warranties, representations, agreements, and obligations contained in this Agreement shall survive the execution and delivery of this Agreement and shall survive any and all performances in accordance with this Agreement.

**18. APPLICABLE LAW.** This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of Missouri.

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

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

**21. ARM'S-LENGTH AGREEMENT.** The parties have negotiated all of the terms and conditions of this Agreement at arm's length. All terms and conditions are material and necessary to this Agreement and have been relied upon by the parties in entering into this Agreement.

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

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

Notwithstanding any other provision of this Agreement, any order of the Court regarding the Class Counsel's request for attorneys' fees and expenses or the incentive awards to Named Plaintiff is neither material to, nor part of the Agreement, and shall not operate to terminate or cancel the Agreement, or affect or delay the judgment approving this Agreement from becoming final. Neither a modification nor reversal on appeal of any order of the Court regarding the Class Counsel's request for attorneys' fees and expenses, or Named Plaintiff's incentive service awards shall constitute grounds for any Party to cancel, terminate, or withdraw from the Agreement.

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

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

Richard D. McCune  
Jae (Eddie) K. Kim  
McCune Wright Arevalo LLP  
3281 E. Guasti Road, Ste. 100  
Ontario, CA 91761  
Telephone: (909) 557-1250  
[rdm@mccunewright.com](mailto:rdm@mccunewright.com) and [jkk@mccunewright.com](mailto:jkk@mccunewright.com)

- And -  
Taras Kick  
The Kick Law Firm, APC  
201 Wilshire Boulevard  
Santa Monica, California 90401  
Telephone: (310) 395-2988  
[Taras@kicklawfirm.com](mailto:Taras@kicklawfirm.com)

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

George F. Verschelden  
Stinson Leonard Street LLP  
1201 Walnut Street, Suite 2900  
Kansas City, Missouri 64106  
Telephone: (816) 842-8600  
[george.verschelden@stinsonleonard.com](mailto:george.verschelden@stinsonleonard.com)

Any notice to the Claims Administrator shall be sent by email as follows:

**NAME AND ADDRESS TO BE PROVIDED**

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

Dated: July \_\_\_\_\_, 2017      MAZUMA CREDIT UNION,  
a Missouri chartered credit union

By: \_\_\_\_\_  
Its:

Dated: July \_\_\_\_\_, 2017      JOY L. BOWENS, an individual on behalf of  
herself and those she represents

By: \_\_\_\_\_  
Joy L. Bowens

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

Richard D. McCune  
Jae (Eddie) K. Kim  
McCune Wright Arevalo LLP  
3281 E. Guasti Road, Ste. 100  
Ontario, CA 91761  
Telephone: (909) 557-1250  
and

- And -  
Taras Kick  
The Kick Law Firm, APC  
201 Wilshire Boulevard  
Santa Monica, California 90401  
Telephone: (310) 395-2988

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

George F. Verschelden  
Stinson Leonard Street LLP  
1201 Walnut Street, Suite 2900  
Kansas City, Missouri 64106  
Telephone: (816) 842-8600

Any notice to the Claims Administrator shall be sent by email as follows:

NAME AND ADDRESS TO BE PROVIDED


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

Dated: July \_\_\_\_\_, 2017 MAZUMA CREDIT UNION,  
a Missouri chartered credit union

By: \_\_\_\_\_  
Its:

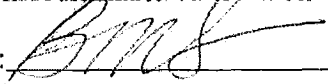
Dated: July 19, 2017

JOY L. BOWENS, an individual on behalf of  
herself and those she represents

By:  \_\_\_\_\_  
Joy L. Bowens

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

Dated: May 23, 2017 MAZUMA CREDIT UNION,  
a Missouri chartered credit union

By: 

Its: President / CEO

Dated: May \_\_\_\_\_, 2017

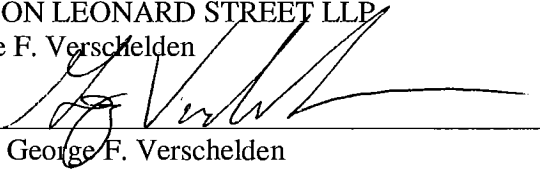
JOY L. BOWENS, an individual on behalf of  
herself and those she represents

By: \_\_\_\_\_  
Joy L. Bowens

**APPROVED AS TO FORM:**

Dated: May 30, 2017

STINSON LEONARD STREET LLP  
George F. Verschelden

By:   
George F. Verschelden  
Attorneys for Defendant MAZUMA  
CREDIT UNION

Dated: May \_\_, 2017

McCUNE WRIGHT AREVALO LLP  
Richard D. McCune  
Jae (Eddie) K. Kim

THE KICK LAW FIRM, APC  
Taras Kick

By: \_\_\_\_\_  
Richard D. McCune  
Attorneys for Plaintiff JOY L. BOWENS



**APPROVED AS TO FORM:**

Dated: May \_\_, 2017

STINSON LEONARD STREET LLP  
George F. Verschelden

By: \_\_\_\_\_  
George F. Verschelden  
Attorneys for Defendant MAZUMA  
CREDIT UNION

Dated: May \_\_, 2017

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Taras Kick

By: \_\_\_\_\_  
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Attorneys for Plaintiff JOY L. BOWENS

# Exhibit 1

Joy L. Bowens  
v.  
Mazuma Credit Union

## NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

**READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT  
MAY AFFECT YOUR RIGHTS!**

**IF YOU HAD A CHECKING ACCOUNT WITH MAZUMA CREDIT  
UNION (“MAZUMA”) AND YOU WERE CHARGED AN OVERDRAFT  
FEE BETWEEN APRIL 2011 AND SEPTEMBER 30, 2015, THEN YOU  
MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION  
SETTLEMENT**

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

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
<b>APPROVE THE SETTLEMENT AND RECEIVE A PAYMENT; YOU NEED NOT DO ANYTHING</b>	Unless you exclude yourself from the settlement (see the next paragraph), then you will receive a check or a credit to your account (depending on whether you are still a member of Mazuma).
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	You can choose to exclude yourself from the settlement or “opt out.” This means you choose not to participate in the settlement. You will keep your individual claims against Mazuma but you will not receive a payment. If you want to recover against Mazuma, then you will have to file a separate lawsuit or claim.
<b>OBJECT TO THE SETTLEMENT</b>	You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, then you <u>will</u> receive a payment and you <u>will not</u> be able to sue Mazuma for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved.

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

### **BASIC INFORMATION**

#### **1. What is this lawsuit about?**

The lawsuit that is being settled is entitled *Joy L. Bowens v. Mazuma Federal Credit Union*, United States District Court, Western District of Missouri, Case No. 4:15-cv-00758. The case is a “class action.” That means that the “Named Plaintiff,” Joy L. Bowens is an individual who is acting on behalf of all persons who were charged an overdraft fee at any time from April 2011 through September 30, 2015, and, at the time such fee was imposed, that person had sufficient funds in the current balance but not the available balance in his or her account to complete the transaction. This group is called the “Class Members.” She is asserting claims for breach of contract, violations of Regulation E and other causes of action. She seeks a refund of such allegedly improper overdraft fees charged to Class Member accounts. Mazuma does not deny it charged overdraft fees but alleges that it did so properly and in accordance with the terms of its account agreements and applicable law because Mazuma assesses overdrafts based on the available balance in a member’s account. Mazuma maintains that this practice was disclosed to its members and therefore denies that its practices give rise to claims for damages by Ms. Bowens or any class member.

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

You received this Notice because Mazuma’s records indicate that you were charged overdraft fee(s) between April 2011 and September 30, 2015, while your available balance was insufficient but your current balance was sufficient to complete the transaction at issue. The Court directed that this Notice be sent to all Class Members because each Class Member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

#### **3. Why did the parties settle?**

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Named Plaintiff’s lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interests of the class as a whole, and in this case, it is her belief, as well as Class Counsel’s opinion, that this settlement is in the best interest of all Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that Mazuma was contractually and otherwise legally obligated not to assess overdraft fees when the current balance was sufficient to pay for a transaction, and even if they were, there is uncertainty about whether the claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiff were to win at trial, there is no assurance that the Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, the Class Members will avoid these and other risks and the delays associated with continued litigation.

## WHO IS IN THE SETTLEMENT

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

If you received this notice, then Mazuma's records indicate that you are a Class Member who is entitled to receive a payment or credit to your account.

## YOUR OPTIONS

### 5. What options do I have with respect to the Settlement?

You have three options: (1) do nothing and await a disbursement of the remaining settlement funds; (2) exclude yourself from the settlement ("opt out" of it); or (3) participate in the settlement but object to it. Each of these options is described in a separate section below.

### 6. What are the critical deadlines?

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

The deadline to file an objection with the Court is also [REDACTED].

### 7. How do I decide which option to choose?

If you do not like the settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this settlement, then you may want to consider opting out.

If you believe the settlement is unreasonable, unfair, or inadequate and the Court should reject the settlement, you can object to the settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the settlement will not be approved and no payments will be made to you or any other Class Member. If your objection (and any other objection) is overruled, and the settlement is approved, then you will still get a payment.

### 8. What has to happen for the Settlement to be approved?

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received this Notice. The Court will make a final decision regarding the settlement at a "Fairness Hearing" or "Final Approval Hearing", which is currently scheduled for [REDACTED].

## THE SETTLEMENT PAYMENT

### 9. How much is the Settlement?

Mazuma has agreed to create a Settlement Fund of \$1,360,000, and also has agreed to change its practices in assessing overdraft fees to use the "current balance" in the account rather than the "available balance". The parties agree that this operational change would have decreased the total amount of overdraft fees charged by Mazuma over the last four years by approximately \$3 million. As discussed separately below, Attorneys' fees, litigation costs, a Service Award to the Named Plaintiff, and the costs paid to a third party Claims Administrator to administer the

settlement (including mailing this notice) will be paid out of this amount. The balance of the Settlement Fund will be divided among all Class Members based on the amount of eligible overdraft fees they paid.

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

Class Counsel has requested that the Court award 33-1/3% (one-third) of the settlement fund as attorneys' fees, which is equal to about 11% if savings from the change to current balance is included. Class Counsel has also requested that it be reimbursed approximately \$\_\_\_\_\_ in litigation costs incurred in prosecuting the case. The Court makes the decision on the request for attorneys' fees and costs, and will decide the amount of the attorneys' fees based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

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

The Named Plaintiff will apply to the Court for a service award of up five percent of the settlement fund for her role in securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

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

The Claims Administrator has agreed to cap its expenses at \$\_\_\_\_\_.

**13. How much will my payment be?**

After payment of attorneys' fees and costs of litigation, the Service Award payment to the Named Plaintiff and the costs of the Claims Administrator, it is estimated there will be \$\_\_\_\_\_ left in remaining funds which will be disbursed to class members on a pro rata basis, based on how many challenged overdraft fees they were charged.

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

No. As long as you do not opt out, you may participate in the disbursement of settlement funds which will take place after the claims period. A credit will be applied to your checking account if you are an existing member, or a check will be mailed to you at the last known address Mazuma has for you if you are not an existing credit union member. If your address has changed, you should provide your current address to the Claims Administrator at the address set forth in Question 16, below.

**15. When will I receive my payment?**

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on \_\_\_\_\_ to consider whether the settlement should be approved. If the Court approves the settlement, then the claims administrator may begin to process claims. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the

Court approves the settlement, an objector could appeal and it might take months or even years to have the appeal resolved, which would delay any payment.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

#### **16. How do I exclude myself from the settlement?**

If you do not want to receive a payment, or if you want to keep any right you may have to sue Mazuma for the claims alleged in this lawsuit, then you must exclude yourself or “opt out.”

To opt out, you must send a letter to the Claims Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Bowens v. Mazuma Federal Credit Union* class action.” Be sure to include your name, last four digits of your member number, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by \_\_\_\_\_, and sent to:

**Bowens v. Mazuma Credit Union Claims Administrator**

**Attn: \_\_\_\_\_**

**CLAIMS ADMINISTRATOR NAME AND ADDRESS**

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

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

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

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

### **OBJECTING TO THE SETTLEMENT**

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

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

You should use the following form when you send your objection to the Court and the Claims Administrator:

Your Name

Your Address (not a post office box)

Your Telephone Number  
Your e-mail address

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

Joy L. Bowens,  
  
vs.  
  
Mazuma Federal Credit Union

Case No. 4:15-cv-00758  
  
Objection to Class Settlement by  
[Your Name]

Hearing Date: \_\_\_  
Time: \_\_\_ p.m.  
Dept.: \_\_\_

[Reason For Your Objection]

Date: \_\_\_\_\_

[Signature]

All objections must be post-marked no later than \_\_\_\_\_, and must be mailed as follows:

COURT	CLAIMS ADMINISTRATOR
United States District Court for the Western District of Missouri [address]	Bowens v. Mazuma Credit Union Claims Administrator CLAIMS ADMINISTRATOR NAME AND ADDRESS

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

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

**21. What happens if I object to the settlement?**

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

**THE COURT’S FAIRNESS HEARING**

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

The Court will hold a Final Approval or Fairness Hearing at [redacted] on [redacted] at the United States District Court for the Western District of Missouri, located at Charles Evans Whittaker Courthouse, Department \_\_\_\_, 400 East 9th Street, Kansas City, Missouri 64106. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys’ fees and expenses and how much the Named Plaintiff should get as a “Service Award” for acting as the class representative.

**23. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have submitted an objection, then you may want to attend.

**24. May I speak at the hearing?**

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 19, above, the statement, “I hereby give notice that I intend to appear at the Final Approval Hearing.”

**IF YOU DO NOTHING**

**25. What happens if I do nothing at all?**

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

**THE LAWYERS REPRESENTING YOU**

**26. Do I have a lawyer in this case?**

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

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

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



**28. Who determines what the attorneys' fees will be?**

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review the fee application at [WEBSITE] or view a physical copy at the Office of the Clerk of the United States District Court for the Western District of Missouri, which is located at Charles Evans Whittaker Courthouse, 400 East 9th Street, Kansas City, Missouri, 64106.

**GETTING MORE INFORMATION**

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online at [WEBSITE] or at the Office of the Clerk of the United States District Court for the Western District of Missouri, which is located at Charles Evans Whittaker Courthouse, 400 East 9th Street, Kansas City, Missouri, 64106, by asking for the court file containing the Motion for Preliminary Approval of Class Settlement (the agreement is attached to the motion).

For additional information about the settlement and/or to obtain copies of the Settlement Agreement, or to change your address for purposes of receiving a payment, you should contact the Claims Administrator as follows:

**Bowens v. Mazuma Credit Union Claims Administrator**  
**CLAIMS ADMINISTRATOR NAME AND ADDRESS**

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

Richard D. McCune  
Jae (Eddie) K. Kim  
McCune Wright Arevalo LLP  
3281 E. Guasti Road, Ste. 100  
Ontario, CA 91761  
Telephone: (909) 557-1250

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The Kick Law Firm, APC  
201 Wilshire Boulevard  
Santa Monica, CA  
Telephone: (310) 395-2988

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