

BEFORE THE ADMINISTRATOR, UNIFORM CONSUMER CREDIT CODE,
STATE OF COLORADO

ASSURANCE OF DISCONTINUANCE

IN THE MATTER OF RED ROCKS CREDIT UNION

THIS ASSURANCE OF DISCONTINUANCE (“AOD”) is made between the Administrator of the Uniform Consumer Credit Code, C.R.S. § 5-1-101, *et seq.* (“UCCC”) and Red Rocks Credit Union (“RRCU”) arising out of the Administrator’s review of RRCU’s compliance with the UCCC and its rules, including 4 CCR 902-1:8 (“Rule 8”) and the Colorado Consumer Protection Act, C.R.S. § 6-1-101, *et seq.* (“CCPA”), RRCU agreeing pursuant to C.R.S. § 5-6-110 that it will not engage in the conduct described herein in the future.

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the Administrator and RRCU, as follows:

1. The Administrator is the Administrator of the UCCC. *See* C.R.S. § 5-6-103. Among other things, she is authorized to enforce compliance with the UCCC and its rules, and conduct investigations of possible violations of them. *See* C.R.S. § 5-6-101, *et seq.*

2. RRCU is a Colorado state-chartered credit union with a principal office located at 8195 Southpark Lane, Littleton, CO 80120.

3. The Administrator has jurisdiction over RRCU and the subject matter of this AOD under C.R.S. § 5-6-110. This AOD applies to all consumer credit transactions entered into with consumers in Colorado in accordance with C.R.S. § 5-1-201 (“Colorado Consumers”), which include Guaranteed Automobile Protection (“GAP”).

4. GAP means an agreement structured as either an insurance policy or a contractual term that relieves the consumer of liability for the deficiency balance remaining after the payment of all insurance proceeds for property damage upon the total loss of the consumer’s automobile that was collateral securing the consumer loan, whether the loss occurred from the total destruction of the vehicle or theft (“GAP Waiver”). *See* Rule 8(a).

5. Among other things, RRCU acts as a creditor under C.R.S. § 5-1-301(17) by purchasing from auto dealers retail installment sales contracts that include GAP protection that Colorado Consumers purchased from auto dealers.

6. Rule 8(h) provides:

If the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral, and if no GAP claim has been made, the creditor must refund to the consumer the unearned fee or premium paid for GAP. If GAP was provided as a contractual term, the refund shall be made using a pro-rata method ("GAP Refunds").

7. On July 1, 2020, RRCU was sued by Plaintiff Saba Rael seeking class relief from RRCU for RRCU's alleged failure to issue GAP Refunds. On July 10, 2020, the case was consolidated with a number of other pending complaints seeking class relief for GAP Refunds. *Mazza v. Air Academy Federal Credit Union*, Case No. 2020-CV-32226 ("Class Action").

8. The Administrator asserts that by failing to pay GAP Refunds RRCU's conduct (1) violates Rule 8(h), which requires RRCU to refund consumers unearned GAP premiums (i.e., premiums related to the remaining period of the GAP policy) if the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral, and (2) in conjunction with auto dealers and GAP administrators, violates the CCPA because it is in unfair and deceptive trade practice, C.R.S. § 6-1-105 *et seq.*

9. In July 2020, RRCU revised its processes to ensure GAP Refunds were made to all of its members going forward and initiated a retrospective audit to determine if GAP Refunds were previously made to all of its members. RRCU determined that prior to July 2020, it had provided GAP refunds to some, but not all members as required by Rule 8(h) and began the process to provide such GAP Refunds. Since July 1, 2020, RRCU has made a total of 1330 payments and mailed checks to members or deposited directly into members' accounts the total amount of \$312,267.84 for the period October 1, 2014, through September 23, 2021.

10. RRCU represents that it used its best efforts to identify all transactions with Colorado Consumers to whom RRCU owed GAP Refunds from October 1, 2014 to July 1, 2020.

11. On or about March 30, 2022, RRCU reached a settlement in principle in the Class Action ("Class Action Settlement"). Pursuant to the Class Action Settlement, RRCU agrees to provide an affidavit to Plaintiff's counsel and the class administrator attesting that it provided the refunds to members as stated in paragraph 9, and for any refunds to members that were returned to RRCU as undeliverable, the refund amount became abandoned property and is subject to the Colorado Unclaimed Property Act, C.R.S §§ 38-13-101 to 38-13-134.

12. Additionally, pursuant to the Class Action Settlement, RRCU agrees to pay into a settlement fund interest on the refund amount at the statutory rate of eight percent (8%) per annum, compounded annually pursuant to C.R.S. § 5-12-102(1)(b). A class administrator shall be hired to administer interest payments to RRCU's members and former members who were entitled to and to whom RRCU provided a GAP refund. The class administrator's fees will be paid by the settlement fund. Further, Plaintiff's counsel will seek a court order allowing Plaintiff's attorneys' fees and a service award to Plaintiff to be paid from the settlement fund. The class administrator's fees together with the Plaintiff's attorneys' fees and service award may encompass the entire fund in which case there would be no distribution to class members. Plaintiff's counsel have agreed that the combined total of any attorneys' fees, costs and incentive awards will not exceed the total amount of the interest payments. To the extent that the combined total of any attorneys' fees, costs and incentive awards approved by the Court are less than the total interest payments 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 and incentive awards is 75% of the total interest payments, then each class member would receive a check for 25% of their individual interest payment.

13. As part of the Class Action Settlement, RRCU seeks a release from the Administrator from any investigation or other action arising out of GAP Refunds. The Administrator hereby agrees to provide such a release as set forth below upon RRCU's execution of this AOD. Without admitting liability, RRCU:

- a. agrees together with all related or affiliated entities, and its officers, directors, shareholders, managers, members, principals, subsidiaries, heirs, successors, and assigns, together with all other persons, corporations, associations, or other entities acting under the entities' direction and control, or in active concert or participation with RRCU, or by whom RRCU may be employed or contracted with, RRCU shall cease and desist from engaging in any conduct that violates Rule 8(h), which requires creditors to automatically, and without awaiting a request from a consumer, to refund consumers unearned GAP premiums (i.e., premiums related to the remaining period of the GAP policy) if the consumer credit sale or consumer loan is prepaid prior to maturity or the vehicle is no longer in the consumer's possession due to the creditor's lawful repossession and disposition of the collateral, and shall not engage in or commit such conduct in violation of Rule 8(h) in the future.
- b. verifies as true and accurate that it has paid \$312,267.84 in GAP Refunds to 1,330 consumers as specified in Paragraph 9 above. RRCU further verifies that it has performed a thorough self-audit of all refunds

owed to Colorado Consumers from October 1, 2014 to July 1, 2020. Additionally, RRCU will subject itself voluntarily to an audit by the Administrator as described in Paragraph 14.

14. At RRCU's expense and at the Administrator's option, RRCU shall permit the Administrator to inspect its books and records once, at any time within normal business hours, and to conduct a follow-up inspection upon reasonable notice to RRCU's counsel. The inspection must occur within one (1) year of the Effective Date, and shall be conducted solely to enable the Administrator to determine and verify the accuracy and thoroughness of RRCU's self-audit and its compliance with this AOD.

15. This AOD fully resolves any issues between the Administrator and RRCU arising out of the particular issues, allegations, or charges raised by the Administrator against Respondent as set forth in Paragraph 8 concerning the GAP refund issue under the UCCC and the CCPA and only those issues. This release does not apply to any GAP practices other than the specific refund issue described in Paragraph 8, and does not apply to other claims arising under the UCCC, CCPA, or Rule 8, including but not limited to, claims for conduct concerning the failure to properly calculate GAP benefits in accordance with Rule 8.

16. The Administrator releases RRCU, including any subsidiaries, officers, or employees, from any and all investigation, claims, violations, allegations, fines, fees and penalties for the specific GAP refund issue set forth herein and only that issue, whether they accrued or may have accrued as a result of any consumer credit transaction entered into by RRCU on or before the execution date of this AOD.

17. RRCU agrees that it will voluntarily refrain from exercising any contractual right to enforce a class action waiver as to GAP related issues against Colorado Consumers.

18. This AOD is binding upon the Administrator and her successors; and all the officers, directors, employees, shareholders, managers, members, principals, affiliates, heirs, agents, trade names, and successors of the RRCU; and the parties stipulate to its terms as indicated by their authorized designees' signatures below.

19. This AOD represents the entire agreement between the parties. No party is relying on any prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD. No prior statement, representation, agreement, or understanding of any kind that is not contained in this AOD shall have any force or effect.

20. Any modification of this AOD must be in writing, signed by each of the parties or by authorized representatives of each of the parties hereto.

21. This AOD is entered into for the purpose of resolving only the matters described herein. Nothing in this provision affects RRCU's right to take legal positions in litigation in which the Administrator is not a party.

22. The date this AOD is fully executed by both of the parties shall be the Effective Date of this AOD for all purposes herein.

23. This AOD may be executed in counterparts, and may be executed by facsimile or by electronic transmission of signature pages, and as executed shall constitute one agreement.

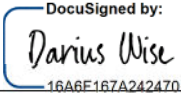
24. For the purpose of construing or interpreting this AOD, the parties agree that it is to be deemed to have been drafted equally by all parties hereto and shall not be construed strictly for or against any party.

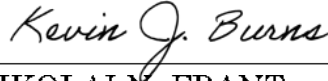
[SIGNATURE PAGE TO FOLLOW]

AGREED TO AND STIPULATED TO BY:

RED ROCKS CREDIT UNION

**COLORADO ATTORNEY GENERAL
ADMINISTRATOR, UCCC**


By: 
Darius Wise
Interim CEO
Red Rocks Credit Union
8195 Southpark Lane
Littleton, CO 80120

By: 
NIKOLAI N. FRANT
KEVIN J. BURNS
Department of Law
Consumer Protection Section
Consumer Credit Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: (720) 508-6110
E-Mail: Nikolai.Frant@coag.gov
Kevin.Burns@coag.gov

Date: 6/15/2022

Date: 06/22/22

APPROVED AS TO FORM:

By: 
TAMARA SEELMAN
Gordon Rees Scully
Mansukhani, LLP
555 Seventeenth Street
Suite 3400
Denver, CO 80202
Telephone: (303) 200-6885
E-Mail: tseelman@grsm.com

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