

## **SETTLEMENT AGREEMENT AND RELEASE**

*Burns, et al. v. TD Bank, N.A.*

### **PREAMBLE**

This Settlement Agreement and Release (the “Agreement”) is entered into by and among (1) plaintiffs Kyle Burns, Ruby Hayes, Jasmine Norville, and Lisa Rodriguez (together, “Plaintiffs”), on behalf of themselves and the Settlement Class, and (2) defendant TD Bank, N.A. (“Defendant”), subject to preliminary and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, Defendant, Class Counsel (as defined below), and Plaintiffs hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment and occurrence of the Effective Date as provided herein, all claims of the Settlement Class against Defendant in the action titled *Kyle Burns, et al. v. TD Bank, N.A.*, D.N.J., Civil Action No. 1:21-cv-18194-KMW-AMD (“*Burns*” or the “Action”), shall be settled and compromised upon the terms and conditions contained herein.

### **RECITALS**

A. On August 13, 2021, Plaintiff Kyle Burns filed a putative Class Action Complaint in Camden County Superior Court seeking monetary damages, restitution, and injunctive and declaratory relief from Defendant and alleging that Defendant improperly assessed and collected certain Overdraft Fees not authorized by Defendant’s account agreement.

B. Defendant removed the case to federal court on October 7, 2021. ECF No. 1. The complaint was amended on November 22, 2021, adding Ruby Hayes as an additional class representative. ECF No. 18. Subsequently, a Consolidated Amended Complaint was filed on February 18, 2022 (“Complaint”), which made further amendments and added Jasmine Norville and Lisa Rodriguez as additional named plaintiffs.

C. Defendant filed a motion to dismiss on March 21, 2022. ECF No. 35. After full

briefing, the Court held oral argument and granted in part and denied in part Defendant's motion to dismiss. ECF No. 70. Since that time, both Parties have issued extensive discovery requests. Defendant has produced tens of thousands of pages of documents, which have been reviewed by Plaintiffs.

D. On October 6, 2023, the Parties participated in a full-day mediation session with Judge Joel Schneider (Ret.) of Montgomery McCracken Walker & Rhoads LLP.

E. Prior to the mediation, Plaintiffs requested and Defendant provided an extensive data analysis from a third-party expert regarding the range of maximum damages in the litigation.

F. While the initial mediation was unsuccessful, the Parties continued arms-length settlement discussions that lasted over two months. Those discussions ultimately resulted in an agreement in principle. On November 30, 2023, the Parties executed a Term Sheet and filed a Letter with the Court, confirming their agreement in principle and requesting that the Court stay all deadlines in the Action.

G. Further negotiations by the Parties resulted in the Settlement reflected in this Agreement. The Parties negotiated and reached agreement regarding attorneys' fees, costs, and expenses, and Service Awards only after reaching agreement on all other material terms of this Settlement.

H. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties. 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 Action, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any

way acknowledge, admit to, or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. 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. Plaintiffs have entered into this Agreement to liquidate and recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Participating Settlement Class Members.

**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:

**I. DEFINITIONS**

As used in this Agreement and the attached exhibits (which are an integral part of the Settlement and are incorporated herein in their entirety by reference), the following terms shall have the meanings set forth below. Other capitalized terms in this Agreement, but not defined in this section, shall have the meanings ascribed to them elsewhere in this Agreement. As used herein, the plural of any defined term includes the singular thereof and the singular of any defined term includes the plural thereof, as the case may be.

1. “Account” means a personal checking account maintained by Defendant that was assessed one or more APSN Fees during the Class Period.

2. “Administrative Costs” means all fees paid to the Settlement Administrator for its services related to the Settlement and all out-of-pocket costs and third-party expenses of the Settlement Administrator that are associated with providing notice of the Settlement to Notice Recipients, administering and distributing the Settlement Payment Amount, or otherwise administering or carrying out the terms of the Settlement, including but not limited to postage and telecommunications costs.

3. “Agreement” means this Settlement Agreement and Release.

4. “APSN Fee” means an Overdraft Fee assessed by Defendant during the Class Period for a debit card transaction that was authorized at a time when the Account’s Available Balance was positive but later paid by Defendant when the Account’s Available Balance was insufficient to cover the transaction, as identified by the Parties based on review and analysis of Defendant’s reasonably accessible data and information.

5. “Available Balance” means the account balance that Defendant used to determine whether to assess an Overdraft Fee or NSF Fee. The Available Balance includes reductions for Pending Transactions and holds on deposited funds.

6. “Charged-Off Account” means any Account that: (i) was assessed one or more APSN Fees, (ii) was closed with amounts owing to Defendant on or before Final Approval, and (iii) continues to have an outstanding balance owed to Defendant as of Final Approval.

7. “Class Counsel” means Kaliel Gold PLLC; Webb, Klase & Lemond, LLC; Bursor & Fisher, P.A.; and Golomb Spirt, P.C.

8. “Class Period” means from June 27, 2019 to and including September 30, 2022.

9. “Confidential Information” means all documents, data, discovery materials and other information provided to Class Counsel by Defendant during the course of the Action,

whether by formal discovery or otherwise, that were designated as Confidential. Notwithstanding the above, neither documents nor information described in this paragraph that were filed in the public record during the course of this Action, unless currently under seal, shall be Confidential Information.

10. “Court” means the United States District Court for the District of New Jersey.

11. “Current Account Holder” means a Settlement Class Member who continues to hold an Account with Defendant as of the date that the Net Settlement Fund is distributed to Participating Settlement Class Members pursuant to this Agreement.

12. “Day” or “Days,” unless otherwise noted, means a calendar day.

13. “Debit Card Transaction” means any debit effectuated with a debit card or similar device (or the card number and/or CSV code included on such debit card or similar device) issued by Defendant that could or can be used to debit funds from an Account by point of sale and/or ATM transactions.

14. “Defendant” means TD Bank, N.A.

15. “Defendant’s Counsel” means Lucus A. Ritchie and Joshua Dunlap of Pierce Atwood LLP and Susan M. Leming of Brown & Connery, LLP.

16. “Effective Date” means the fifth business day after which all of the following events have occurred: (i) all Parties, Class Counsel, and Defendant’s Counsel have executed this Agreement; (ii) the Court has entered without material change the Final Approval Order; and (iii) the time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change to the Final Approval Order, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for rehearing, review,

appeal, or certiorari could be taken has finally expired and relief from a failure to file the same is not available.

17. “E-Mail Notice” means the form of notice that will be e-mailed to Notice Recipients for whom Defendant possesses e-mail addresses, substantially in the form attached hereto as Exhibit A.

18. “Fee & Expense Award” means the attorneys’ fees, costs, and expenses that Class Counsel will seek from the Court as more fully described in Section XIII.

19. “Final Approval” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the Fee & Expense Award to Class Counsel and the amount of the Service Awards to Plaintiffs (the “Final Approval Order”). In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

20. “Final Approval Hearing” means the hearing set by the Court for the purpose of determining the fairness, adequacy, and reasonableness of the Settlement and associated procedures and requirements.

21. “Long-Form Notice” means the long-form notice to Settlement Class Members attached hereto as Exhibit B. The Long-Form Notice will be posted to the Settlement Website.

22. “Mail Notice” means the postcard notice that will be mailed by the U.S. Postal Service to Notice Recipients for whom Defendant does not possess e-mail addresses, substantially in the form attached hereto as Exhibit C.

23. “National Change of Address Database” means the change of address database maintained by the U.S. Postal Service.

24. “Motion for Final Approval” means the motion or motions filed by Class Counsel, as referenced in Section VIII hereof, which shall be filed no later than fourteen (14) days prior to the Final Approval hearing.

25. “Motion for Award of Fees, Costs, and Service Award” means the motion or motions filed by Class Counsel, as referenced in Section VIII hereof, which shall be filed no later than thirty (30) days after the Notice Deadline.

26. “Net Settlement Fund” means the Settlement Payment Amount less all court-awarded attorneys’ fees, costs, expenses, Administrative Costs, and Service Awards.

27. “NSF Fee” means any returned item/insufficient funds fee assessed to an Account for an item returned when Defendant determined the Account had insufficient funds to cover the item.

28. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement.

29. “Notice Deadline” means sixty (60) days after Preliminary Approval.

30. “Notice Program” means the methods provided for in this Agreement for giving Notice and includes E-Mail Notice, Mail Notice, and Long-Form Notice. The form of the E-Mail Notice, Mail Notice, and Long-Form Notice shall be substantially in the form attached hereto as Exhibits A, B, and C and approved by the Court. By mutual agreement of the Parties, changes may be made to any or all of the forms of Notice. Additional description of the contemplated Notice Program is provided in Section VI hereof.

31. “Notice Recipient” means a current or former holder of an Account who will receive Notice of the Settlement. Notice Recipients are Settlement Class Members identified in



Defendant's internal data as Current or Past Account Holders who incurred an APSN Fee(s) on their Account during the Class Period.

32. "Objection Deadline" means the date by which a Participating Settlement Class Member must serve written objections to the Settlement, if any. The Objection Deadline shall be sixty (60) days after the Notice Deadline, or on such other date as the Court may order. The Objection Deadline will be specified in the Notice.

33. "Opt-Out Deadline" means the date by which a request to opt out must be filed or submitted in writing to the Settlement Administrator for a person who would otherwise fall within the Settlement Class to be excluded from the Settlement Class. The Opt-Out deadline shall be sixty (60) days after the Notice Deadline, or on such other date as the Court may order. The Opt-Out Deadline will be specified in the Notice.

34. "Overdraft Fee" means any fee assessed to an Account for an item paid when Defendant determined the Account had insufficient funds to cover the item.

35. "Overdraft Forgiveness Amount" means the sum of Ten Million Two-Hundred Fifty Thousand Dollars (\$10,250,000.00), which is the total amount that Defendant, without admission of liability, agrees to forgive as consideration for this Settlement through reductions to the outstanding balances of Participating Settlement Class Members with Charged-Off Accounts, as more specifically described in paragraphs 62 and 99 of this Agreement. This Overdraft Forgiveness Amount shall serve to reduce the amounts that Participating Settlement Class Members owe to Defendant for Overdraft Fees and overdrafts Defendant paid but for which Defendant was not reimbursed.

36. "Participating Settlement Class Member" means any Settlement Class Member except for Settlement Class Opt-Outs.

37. “Parties” means Plaintiffs and Defendant, collectively.

38. “Party” means Plaintiffs or Defendant, individually.

39. “Past Account Holder” means a Settlement Class Member who no longer holds an Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

40. “Pending Transaction” means a Debit Card Transaction that Defendant has authorized for payment but which has not yet been submitted by the merchant for final settlement and payment.

41. “Plaintiffs” mean Kyle Burns, Ruby Hayes, Jasmine Norville, and Lisa Rodriguez, collectively.

42. “Preliminary Approval” means the date that the Court enters, without material change, an order (the “Preliminary Approval Order”) preliminarily approving the Settlement in the form substantially the same as in the attached Exhibit D.

43. “Released Claims” means all claims to be released as specified in Section XII hereof.

44. “Released Parties” means those persons and entities released as specified in Section XII hereof.

45. “Releases” means all of the releases contained in Section XII hereof.

46. “Releasing Parties” means Plaintiffs and all Participating Settlement Class Members, and each of their respective past, present and future heirs, executors, administrators, assigns, beneficiaries, directors, officers, managers, employees, general partners, limited partners, principals, employees, insurers, reinsurers, attorneys, advisors, representatives, predecessors, successors, assigns, and legal representatives.

47. “Service Awards” means the awards to be paid from the Settlement Fund Account that Class Counsel will ask the Court to approve for Plaintiffs, as specified in paragraph 112 of this Agreement.

48. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.

49. “Settlement Administrator” means Epiq Systems, Inc.

50. “Settlement Class” means the class defined in Section II hereof.

51. “Settlement Class Member” means any person included in the Settlement Class.

52. “Settlement Class Opt-Outs” means the Settlement Class Members who timely and properly opt out of the Settlement, consistent with the terms of this Agreement.

53. “Settlement Fund Account” means an interest-bearing account held by an FDIC-insured financial institution, into which Defendant shall deposit the Settlement Payment Amount. Class Counsel and Defendant shall agree on the FDIC-insured financial institution at which the account shall be established.

54. “Settlement Payment Amount” means the amount of Twenty-One Million Nine Hundred Seventy-five Thousand Dollars (\$21,975,000.00) that Defendant agrees to pay, without admission of liability, as the monetary component of this Settlement, as more specifically described in paragraph 61 of this Agreement.

55. “Settlement Website” means the website that the Settlement Administrator will establish prior to the commencement of the Notice Program. Additional description of the Settlement Website is provided in Section VI hereof.

56. “Value of the Settlement” shall mean the amount of Thirty-Two Million Two Hundred Twenty-Five Thousand Dollars (\$32,225,000.00) comprised of the Settlement Payment Amount plus the Overdraft Forgiveness Amount.

## **II. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASSES**

57. For settlement purposes only, Plaintiffs agree to ask the Court to certify the following “Settlement Class” under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

All holders of a TD Bank personal checking account, who from June 27, 2019 to and including September 30, 2022, incurred one or more overdraft fees for a debit card transaction that was authorized at a time when the account’s available balance was positive, but later paid by the Bank when the account’s available balance was insufficient to cover the transaction (“APSN Class”).

58. Excluded from the Settlement Class are Defendant, all Settlement Class members who exclude themselves from the Settlement, and all judges assigned to this litigation.

59. Defendant agrees not to oppose Plaintiffs’ request for certification of the Settlement Class for settlement purposes only. In so doing, Defendant does not admit that any class may be certified for purposes of litigation. This Agreement is entered into without prejudice to Defendant’s right to oppose certification, or seek decertification, of any litigation class in this Action or any other litigation.

60. In the event that the Settlement does not receive Final Approval, or in the event the Effective Date does not occur, any order certifying the Settlement Class for purposes of effectuating the Settlement and the terms of this Agreement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the Settlement Class had never been certified pursuant to this Agreement and such findings had never been made, and the Action shall return to the procedural status quo in accordance with this paragraph. In addition, the Parties shall not be bound by this Settlement’s definition of the Settlement Class; the Parties shall not be

permitted to use it as evidence or otherwise in support of any argument or position in any motion, brief, hearing, appeal, or otherwise; and Defendant shall retain its right to object to the maintenance of this Action as a class action, the suitability of Plaintiffs to serve as class representatives, and the suitability of Class Counsel to serve as class counsel.

### **III. SETTLEMENT CONSIDERATION**

61. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section XII hereof and the dismissal of the Action upon Final Approval, Defendant shall, without admission of liability, pay the total amount of Twenty-One Million Nine Hundred Seventy-Five Thousand Dollars (\$21,975,000.00) as the monetary component of the Settlement as set forth in Sections IX and X hereof and subject to the termination provisions in Section XIV. This Settlement Payment Amount includes all monetary disbursements incurred in connection with the Settlement, including but not limited to (a) all monetary payments to the Settlement Classes; (b) all Administrative Costs; (c) all attorneys' fees, costs, and expenses awarded by the Court to Class Counsel; and (d) all Service Awards to be paid to Plaintiffs. For avoidance of doubt, Defendant shall not be required to pay any additional monetary sums in settlement of the Action, nor shall it be required to bear any other fees, costs, charges, or expenses in connection with the Settlement (exclusive of the costs of CAFA notice and implementation of account credits as provided in Section X of this Agreement). Defendant also shall not be required to take any action or refrain from taking any action as a result of this Settlement except to fulfill its obligations to implement the terms of this Agreement as specifically provided herein.

62. In addition to the Settlement Payment Amount described in the preceding paragraph, and subject to the occurrence of the Effective Date, Defendant shall provide Ten Million Two-Hundred Fifty Thousand Dollars (\$10,250,000.00) in the form of reductions to the

outstanding balances of Settlement Class Members whose accounts were closed with amounts owed to Defendant. This Overdraft Forgiveness Amount shall serve to reduce the amounts that Participating Settlement Class Members owe to Defendant for Overdraft Fees and overdrafts Defendant paid but for which Defendant was not reimbursed.

63. Defendant has discontinued assessing Overdraft Fees for debit card transactions that were authorized at a time when the account's Available Balance was positive. Defendant agrees to work with Plaintiffs' counsel in good faith to estimate the annual fee impact of this practice change for personal checking accounts.

#### **IV. PRELIMINARY SETTLEMENT APPROVAL**

64. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for a Preliminary Approval Order. The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Defendant, and substantially in the form as that attached hereto as Exhibit D. The Motion for Preliminary Approval shall request that the Court: (1) find that it will likely be able to approve the terms of the Settlement as fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) designate the representative(s) of the Settlement Class; (4) appoint Class Counsel; (5) approve the Notice Program set forth herein and approve the form and content of the Notice of the Settlement; (6) approve the procedures set forth in Section VII hereof for Settlement Class Members to exclude themselves from the Settlement Class or for Participating Settlement Class Members to object to the Settlement; (7) stay the Action pending Final Approval of the Settlement; and (8) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and counsel for Defendant, and no earlier than 140 days after Preliminary Approval.

65. Within 10 days of the filing of the Motion for Preliminary Approval, Defendant, at its own expense, shall serve or cause to be served notice of the proposed Settlement, in conformance with the Class Action Fairness Act, 28 U.S.C. § 1715(b) (the “CAFA”).

**V. SETTLEMENT ADMINISTRATOR**

66. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraphs hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement.

67. Class Counsel and Defendant may, by agreement, substitute a different entity as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Class Counsel or Defendant may move the Court to substitute a different entity as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

68. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, are as follows:

- a. Implement the Notice Program required by this Agreement;
- b. Establish and maintain an address for receiving mailed requests for exclusion from the Settlement Class;
- c. Establish and maintain the Settlement Website as a means for Notice Recipients to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long-Form Notice, the Preliminary Approval Order, and such other documents as Class Counsel and Defendant agree to post or that the Court orders posted on the Settlement Website;

- d. Establish and maintain a toll-free telephone line for Notice Recipients to call with Settlement-related inquiries, and answer the questions of Notice Recipients who call with or otherwise communicate such inquiries;
- e. Respond to any mailed Notice Recipient inquiries;
- f. Process all requests for exclusion from the Settlement Class;
- g. Provide weekly reports and, no later than five (5) days after the Opt-Out Deadline, a final report to Class Counsel and Defendant's Counsel that summarizes the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;
- h. Payment of any taxes pursuant to paragraph 95;
- i. At Class Counsel's and/or Defendant's counsel's request, in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly requested exclusion from the Settlement Class;
- j. Process and transmit distributions to Participating Settlement Class Members from the Settlement Fund Account;
- k. Pay invoices, expenses, and costs upon approval by Class Counsel and Defendant, as provided in this Agreement; and
- l. Perform any Settlement-administration-related function at the instruction of Class Counsel and Defendant, including, but not limited to, verifying that the Net Settlement Fund has been distributed as required by Section X hereof.



69. All Administrative Costs, including all costs associated with Notice and administration of the Settlement shall be paid out of the Settlement Payment Amount. The costs of Notice and administration shall include any fees of and reasonable expenses incurred by the Settlement Administrator in relation to the Settlement, and any other reasonable expenses relating to the establishment, maintenance, and distribution of the Settlement Payment Amount.

## **VI. NOTICE**

70. Subject to its statutory and regulatory obligations to protect its customers' private financial information, as well as the execution of a separate Confidentiality Agreement in a form acceptable to Defendant that affirms the Settlement Administrator's obligations in this Agreement to protect the confidentiality of Notice Recipients' and Settlement Class Members' personal identifying information, within thirty (30) days after Preliminary Approval, Defendant will provide to the Settlement Administrator a list ("Notice Recipient List") that identifies, subject to the availability of information in reasonably accessible electronic form, the names, last known mailing addresses, and last known e-mail addresses, if available, of identifiable Notice Recipients.

71. The Settlement Administrator shall ensure that the information that it receives from Defendant, Class Counsel, Settlement Class Members, and/or Notice Recipients is secured and managed in such a way as to protect the security and confidentiality of the information, consistent with industry best practices and applicable law. The Settlement Administrator shall use this information solely for the purpose of administering the Settlement. Except as specifically provided in this Agreement, the Settlement Administrator shall not disclose or disseminate any information that it receives from Defendant, Class Counsel, Settlement Class

Members, and/or Notice Recipients without prior written consent of the Parties or by order of the Court.

72. The Settlement Administrator shall then implement the Notice Program provided herein within thirty (30) days of receiving the Notice Recipient List, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a description of the Settlement Class Members' right to "opt out" or exclude themselves from the Settlement and the Opt-Out Deadline; a description of the Participating Settlement Class Members' right to object to the Settlement and the Objection Deadline; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Notice Recipients may access this Agreement and other related documents and information. Class Counsel and Defendant shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include the TD Bank logo or trademarks or the return address of Defendant, or otherwise be styled to appear to originate from Defendant.

73. The Notice Program shall include the following components: (1) E-Mail Notice or Mail Notice; and (2) Long-Form Notice on the Settlement Website. The primary method of Notice is individual E-Mail Notice to the last known e-mail address shown on Defendant's records. The secondary method of Notice is individual Mail Notice to the last known mailing address shown on Defendant's records, or at a more current address, if that information can reasonably be obtained by the Settlement Administrator. Notice shall be provided substantially in a form as that attached hereto as Exhibits A, B, and C.

74. After the Settlement Administrator receives the Notice Recipient List, the Settlement Administrator shall (1) e-mail the E-Mail Notice to all Notice Recipients whose last known e-mail addresses are reasonably available; and (2) send the Mail Notice to those Notice Recipients for whom there are no e-mail addresses on file. If an E-Mail Notice is returned as undeliverable, the Settlement Administrator shall send the Mail Notice to that Notice Recipient. Before sending any Mail Notice, the Settlement Administrator shall use reasonable efforts to update all mailing addresses using the National Change of Address Database.

75. The steps described in paragraph 74 shall be completed by the Notice Deadline, if reasonably practicable, subject to the re-mailing of any returned notices. Within seven (7) days after the Notice Deadline, the Settlement Administrator shall provide Class Counsel and Defendant an affidavit or report that confirms that the Notice Program was completed in a timely manner, again subject to the re-mailing of any returned notices. Class Counsel may file that affidavit or report with the Court as an exhibit to or in conjunction with Plaintiffs' Motion for Award of Fees, Costs, and Service Award. The Settlement Administrator shall provide an updated affidavit or report to Class Counsel and Defendant when requested by the Parties, and no later than twenty-one (21) days prior to the Final Approval Hearing.

76. As soon as practicable following Preliminary Approval, but no later than twenty-one (21) days after Preliminary Approval, and prior to the sending of Notice, the Settlement Administrator shall establish the Settlement Website and a toll-free telephone line for Notice Recipients to call with questions. The Internet address (URL) of the Settlement Website and the toll-free number shall be included in all forms of Notice sent to Notice Recipients.

77. The Settlement Website shall include this Agreement, the Long-Form Notice, the Preliminary Approval Order, and such other documents as Class Counsel and Defendant agree to

post or that the Court orders posted on the website. The telephone line shall be capable of providing general information concerning the Settlement, including deadlines for objecting to or opting out of the Settlement, and the dates of relevant Court proceedings, including the Final Approval Hearing. The URL of the Settlement Website shall be [www.TDBankAPSNFeeClassAction.com](http://www.TDBankAPSNFeeClassAction.com) or such other URL as Class Counsel and Defendant may subsequently agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the TD Bank logo or TD Bank trademarks. The Settlement Administrator shall cause to be maintained a record of activities, including inquiries to the Settlement Website, downloads, phone calls, and/or mailings, and shall ensure that a running tally is kept of the number and types of materials mailed by it or downloaded from the Settlement Website in a computerized database form.

78. The Settlement Website and toll-free number shall be maintained at least through the Effective Date. Operation of the Settlement Website shall cease no later than sixty (60) days after distribution of the Net Settlement Fund has been completed as set forth in Section X, or such other date as Class Counsel and Defendant shall agree. Ownership of the Settlement Website URL shall be transferred to Defendant within ten (10) days of the date on which operation of the Settlement Website ceases.

79. Within the parameters set forth in this Section VI, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Defendant.

## **VII. EXCLUSION/OPT-OUTS AND OBJECTIONS**

80. Exclusion/Opt-Out. Any Settlement Class Member may exclude themselves from the Settlement and Release, and from their binding effect, by sending to the Settlement Administrator, postmarked by the Opt-Out Deadline, a written request to opt out or be excluded

from the Settlement. Such a request shall have the effect of excluding from the Settlement and Release all joint holders, if applicable, of the Settlement Class Member's Account. The Notice shall include a procedure for Settlement Class Members to opt out of the Settlement. Settlement Class Opt-Outs are not entitled to receive a payment from the Net Settlement Fund or Overdraft Forgiveness under this Settlement. The Settlement Administrator shall provide the Parties with copies of all completed opt-out requests, and Plaintiffs shall file with the Court, no later than fourteen (14) days prior to the Final Approval Hearing, a confidential, sealed list of all who have opted out. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement, including the Releases.

81. For an opt-out to be considered by the Court, the opt-out must set forth:

- a. The individual's name, address, and the last four digits of the Account(s) at issue;
- b. A statement that the individual wants to be excluded from the Settlement in *Kyle Burns, et al. v. TD Bank, N.A.*, D.N.J., Civil Action No. 1:21-CV-18194-KMW-AMD, and that the individual understands that they will receive no money or other benefits from the Settlement;
- c. The identity of the person's or entity's counsel, if represented; and
- d. The individual's signature and the date on which the request was signed.

82. Within seven (7) days of receiving any opt-out statement, the Settlement Administrator shall provide counsel for the Parties with a copy of the opt-out statement.

83. Class Counsel and Defendant's counsel shall have the right to contact persons and entities who submit written notifications of exclusion from the Settlement Class.

84. Neither the Parties nor any person acting on their behalf shall seek to solicit or otherwise encourage anyone to opt out of the Settlement. No group opt outs shall be acceptable; all opt outs must be provided on an individual basis by the person or entity seeking to opt out.

85. **Objections.** Any Participating Settlement Class Member may object to the Settlement or object to Class Counsel's application for attorneys' fees, costs, and expenses, or for a Service Award. The Notice shall include a procedure for Participating Settlement Class Members to object to the Settlement. Objections must be electronically filed with the Court, or mailed to the Clerk of the Court, with copy to Class Counsel and Defendant's counsel. For an objection to be considered by the Court, the objection must be electronically filed or mailed first-class postage prepaid and addressed in accordance with the instructions and the postmark date indicated on the envelope must be no later than the Objection Deadline, as specified in the Notice.

86. For an objection to be considered by the Court, the objection must also set forth:
- a. The name of the Action;
  - b. The objector's full name, address, e-mail address, telephone number, and the last four digits of the Account(s) at issue;
  - c. All grounds for the objection, accompanied by any legal support for the objection;
  - d. A statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
  - e. The number of times in which the objector has objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the objector made such an objection,

and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial or appellate courts in each listed case;

- f. The identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- g. The number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- h. The identity of all counsel representing the objector who will appear at the Final Approval Hearing, if any;
- i. A list of any persons who will be called to testify at the Final Approval Hearing in support of the objection, if any;
- j. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- k. The objector's signature (an attorney's signature is not sufficient). Any objection submitted on behalf of a business entity must identify the title of the authorized individual signing the objection.

87. All evidence and legal support a Participating Settlement Class Member wishes to use to support an objection must be filed with the Court on or before the Objection Deadline and sent to the Parties postmarked on or before the Objection Deadline. The Parties may file

responses to any objections that are submitted and shall have the right to take discovery, including via subpoenas duces tecum and depositions, from any objector.

88. Any Participating Settlement Class Member who timely files and serves an objection in accordance with this section may appear at the Final Approval Hearing, either in person or through an attorney, if the Participating Settlement Class Member files a notice with the Court at least fourteen (14) days in advance of the Final Approval Hearing indicating that they wish to appear at that hearing. Failure to adhere to the requirements of this section will bar a Participating Settlement Class Member from being heard at the Final Approval Hearing, either individually or through an attorney, unless the Court otherwise orders.

89. Neither the Parties nor any person acting on their behalf shall seek to solicit or otherwise encourage anyone to object to the Settlement, or appeal from any order of the Court that is consistent with the terms of this Settlement.

#### **VIII. FINAL APPROVAL ORDER AND JUDGMENT**

90. Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall file their Motion for Award of Fees, Costs, and Service Award, no later than thirty (30) days after the Notice Deadline. Plaintiffs shall file their Motion for Final Approval of the Settlement no later than fourteen (14) days prior to the Final Approval Hearing.

91. At the Final Approval Hearing, the Court will hear argument on and determine whether to enter a Final Approval Order granting Plaintiffs' Motion for Final Approval of the Settlement and Motion for Award of Fees, Costs, and Service Award. In the Court's discretion, the Court also may hear from any Participating Settlement Class Members (or their counsel) who



object to the Settlement or to the fee, cost, expense, or Service Award application, provided the objectors filed timely objections that meet all of the requirements listed above.

92. The proposed Final Approval Order that will be attached to Plaintiffs' Motion for Final Approval shall be in a form agreed upon by Class Counsel and Defendant. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfied Due Process requirements;
- d. Dismiss the Action with prejudice and without costs;
- e. Bar and enjoin Plaintiffs and all Participating Settlement Class Members from asserting any of the Released Claims, as set forth in Section XII hereof, including during the pendency of any appeal from the Final Approval Order;
- f. Release Defendant and the Released Parties from the Released Claims, as set forth in Section XII hereof; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Plaintiffs, Defendant, all Participating Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

93. In the event that the Court does not enter the Final Approval Order in a form substantially the same as submitted, as determined by the Parties, the Parties have the right to terminate this Agreement and the Settlement, per Section XIV below. While materiality remains subject to the Parties' determination in their reasonable discretion, material changes shall not include any changes to the legal reasoning or format used by the Court to justify the substantive

relief sought by the Final Approval Order. In the event that the Effective Date does not occur, the Final Approval Order is vacated or reversed, or the Settlement does not become final and binding, the Parties agree to request that the Court vacate any dismissal with prejudice.

#### **IX. SETTLEMENT FUND**

94. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section XII hereof and the dismissal of the Action upon Final Approval, within fourteen (14) days of Preliminary Approval, Defendant shall transfer to the Settlement Administrator the Settlement Payment Amount of Twenty-One Million Nine Hundred Seventy-Five Thousand Dollars (\$21,975,000.00) for deposit into the Settlement Fund Account.

95. The Settlement Fund Account at all times shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund Account or otherwise, including any taxes or tax detriments that may be imposed upon Defendant or its counsel with respect to income earned by the Settlement Fund Account for any period during which it does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Payment Amount. Plaintiffs and Class Counsel, and Defendant and its counsel, shall have no liability or responsibility for any of the Taxes. The Settlement Fund Account shall indemnify and hold Plaintiffs and Class Counsel, and Defendant and its counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

96. The Settlement Payment Amount shall be used for the following purposes:

- a. Distribution of payments to Participating Class Members pursuant to Section X hereof;
- b. Payment of the Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses pursuant to Section XIII hereof;
- c. Payment of the Court-ordered Service Awards to Plaintiffs pursuant to Section XIII hereof;
- d. Payment of any residual *cy pres* distribution as set forth in Section XI hereof, together with any Administrative Costs associated therewith;
- e. Payment of any Taxes pursuant to paragraph 95 hereof, including, without limitation, taxes owed as a result of interest earned on the Settlement Fund Account, in a timely manner, subject to approval by Class Counsel and Defendant;
- f. Payment of any Administrative Costs, including but not limited to costs related to the Notice Program, and the administration of the Settlement; and
- g. Payment of additional fees, costs, and expenses not specifically enumerated in subparagraphs (a) through (f) of this paragraph, consistent with the purposes of this Agreement, subject to approval of Class Counsel and Defendant.

**X. DISTRIBUTIONS TO SETTLEMENT CLASS MEMBERS FROM THE NET SETTLEMENT FUND AND OVERDRAFT FORGIVENESS AMOUNT**

97. Defendant, in consultation with Class Counsel and any expert, shall identify data—to the extent it exists in reasonably accessible electronic form—sufficient to calculate the total APSN Fees assessed to the Account(s) of each Participating Settlement Class Member (“Eligible Fees”). Class Counsel will then work with the Settlement Administrator, Defendant, and any expert to distribute the Net Settlement Fund and implement the Overdraft Forgiveness

benefit to eligible Participating Settlement Class Members using the below methodology, or such other methodology as would have an equivalent result.

98. Net Settlement Fund: The Net Settlement Fund shall be distributed to Settlement Class Members on a *pro rata* basis based on the total amount of Eligible Fees each such Participating Settlement Class Member incurred in relation to the total amount of Eligible Fees incurred by all Participating Settlement Class Members. For Accounts held jointly by more than one Settlement Class Member, each Eligible Fee will be counted only once. The Settlement Administrator shall multiply each Participating Settlement Class Member's *pro rata* percentage of Eligible Fees by the Net Settlement Fund, which shall yield the amount of each Participating Settlement Class Member's "Net Settlement Fund Payment." Charged-Off Accounts may participate in the *pro rata* distribution from the Net Settlement Fund. The Settlement Administrator shall also calculate an "Eligible Fee Payment Amount" that identifies the dollar amount to be paid to Participating Settlement Class Members for each Eligible Fee.

- a. Net Settlement Fund Payments to Current Account Holders shall be made by a credit to those Account Holders' Accounts. These credits shall be paid from the Net Settlement Fund. For each Current Account Holder entitled to a Net Settlement Fund Payment, the Settlement Administrator shall provide Defendant with the account holder's name, account number, and amount of account credit to which the Account Holder is entitled. Prior to the payment of any account credits under this Agreement, the Settlement Administrator shall return to Defendant from the Net Settlement Fund the sum of the total account credits to be provided to Current Account Holders. Following its payment of account credits, Defendant shall provide written verification to the Settlement Administrator of the amount of

account credits that were given. In addition, Defendant shall return to the Settlement Administrator the amount of any failed account credits so that the Settlement Administrator may issue checks to those Participating Settlement Class Members.

- b. Net Settlement Fund Payments to Past Account Holders will be made by check with an appropriate legend, in a form approved by Class Counsel and Defendant, to indicate that it is from the Net Settlement Fund. Checks will be cut and mailed by the Settlement Administrator and will be sent to the addresses that the Settlement Administrator identifies as valid. For jointly held Accounts, checks will be payable jointly to all Account Holders, and will be mailed to the first Account Holder listed on the Account, or to another Account Holder if the Settlement Administrator is unable to locate a valid address for the first Account Holder. Checks shall have an initial stale date of 120 days. Upon request, or if any check is returned as undeliverable, the Settlement Administrator may reissue the check so long as the stale date provided on the check does not exceed 200 days from the Effective Date.

99. Overdraft Forgiveness: Defendant, in consultation with Class Counsel and any expert, shall identify data—to the extent it exists in reasonably accessible electronic form—sufficient to identify Charged-Off Accounts for Participating Settlement Class Members. The Overdraft Forgiveness Amount shall be applied to such Charged-Off Accounts as follows: First, for each Charged-Off Account with Eligible Fees greater than or equal to that Account's outstanding balance due to Defendant ("Fees > Balance Accounts"), the dollar amount needed to bring the Account's balance to \$0 shall be applied to the Account and deducted from the

Overdraft Forgiveness Amount available for other eligible Class Members. The Overdraft Forgiveness Amount remaining after application of Overdraft Forgiveness benefit to Fees > Balance Accounts shall be referred to as the “Remaining Overdraft Forgiveness Amount.” Thereafter, for each Charged-Off Account with Eligible Fees less than that Account’s outstanding balance due to Defendant (“Fees < Balance Accounts”), the Remaining Overdraft Forgiveness Amount shall be applied on a *pro rata* basis based on the total amount of Eligible Fees each Fees < Balance Account incurred in relation to the total amount of Eligible Fees incurred by all Fees < Balance Accounts. For Accounts held jointly by more than one Settlement Class Member, each Eligible Fee will be counted only once. The Settlement Administrator shall multiply each Fees < Balance Account’s *pro rata* percentage of Eligible Fees by the Remaining Overdraft Forgiveness Amount, which shall yield the amount of each Fees < Balance Account’s Overdraft Forgiveness benefit. Defendant shall reduce the outstanding balance owed to Defendant by that Account’s Overdraft Forgiveness benefit. For avoidance of doubt, no Account shall be credited an amount that moves its balance greater than \$0 as a result of Overdraft Forgiveness.

100. The Settlement Administrator and Defendant shall make best efforts to implement Net Settlement Fund Payments and Overdraft Forgiveness within sixty (60) days after the Effective Date. Notwithstanding other paragraphs of this Agreement, Defendant reserves the option to make direct payments (via check or account credit) to Participating Settlement Class Members for some or all Eligible Fees (in whole or in part) at any time after the date of execution of this Agreement, even if the Settlement has not yet received final approval. Defendant shall provide Class Counsel at least thirty (30) days advance written notice before exercising this option. Further, the Parties shall meet and confer in good faith to avoid

duplicate payments for the same Eligible Fee to Settlement Class Members by Defendant. Any modification of the Settlement Payment Amount or Settlement Fund as a result of such direct payments shall require Court approval.

101. The Parties agree the foregoing allocation methodologies are exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, the distribution amount each Participating Settlement Class Member should receive from the Net Settlement Fund and Overdraft Forgiveness Amount. The allocation formulas used herein are not intended and shall not be used for any other purpose or objective whatsoever.

102. The Settlement Administrator shall provide the Parties with a reconciliation and accounting of the Settlement Fund Account upon the request of Class Counsel or Defendant.

#### **XI. DISPOSITION OF RESIDUAL FUNDS**

103. Within one year after the date the Settlement Administrator mails the first Net Settlement Fund Payment, any remaining amounts resulting from uncashed checks shall either be distributed: (a) in a second round of distribution to those Participating Settlement Class Members who are Current Account Holders or who cashed their initial settlement check, unless Class Counsel determines that a second distribution is not economically reasonable, given the costs of a second distribution (which must be paid out of the Settlement Payment Amount) and the relative amount of such a second distribution; or (b) to an appropriate *cy pres* recipient agreed to by the Parties and approved by the Court. All costs of a second distribution as well as all costs associated with a residual *cy pres* distribution shall be paid out of the Settlement Payment Amount. If a second distribution is made, any amounts remaining unclaimed six months after the second distribution shall be distributed to an appropriate *cy pres* recipient agreed to by the Parties and approved by the Court. If the Court does not approve any *cy pres* distributions, or if

any such approval is reversed on appeal, residual funds shall be distributed in the manner provided by the Final Approval Order or other order addressing distribution of residual funds.

## **XII. RELEASES**

104. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Defendant and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents (alleged, apparent, or actual), insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively, “Releasees”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that constitute, result from, arise out of, are based upon, or relate to any of the claims that were asserted in the Action, and any of the conduct, allegations, acts, transactions, facts, events, representations, statements, omissions, duties, or matters up to and including the date of Preliminary Approval that were or could have been alleged in this Action by Plaintiffs or by any other Settlement Class Members relating in any way to the assessment of APSN Fees, including, without limitation, any claims, actions, causes of action, demands, damages, losses, or remedies relating to, based upon, resulting from, or arising out of Defendant’s practices, policies and procedures related to the authorization, processing, payment, return and/or rejection of an item or any failure to adequately or clearly disclose, in one or more contracts, agreements, disclosures, or other written materials, through oral communications, or in any other manner overdraft fee practices, whether assertable in the form



of a cause of action or as a private motion, petition for relief or claim for contempt, or otherwise, and in any court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, and whether based on any federal, state, local, statutory or common law (including, without limitation, breach of contract, breach of the implied covenant of good faith and fair dealing, the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*, and the New York General Business Law § 349) or any other law, rule, regulation, ordinance, code, contract, common law, or any other source, including the law of any jurisdiction outside the United States (including both direct and derivative claims), including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses (“Released Claims”).

105. AS OF THE EFFECTIVE DATE, PLAINTIFFS AND EACH SETTLEMENT CLASS MEMBER SHALL FURTHER AUTOMATICALLY BE DEEMED TO HAVE WAIVED AND RELEASED ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY § 1542 OF THE CALIFORNIA CIVIL CODE OR SIMILAR LAWS OF ANY OTHER STATE OR JURISDICTION. SECTION 1542 OF THE CALIFORNIA CIVIL CODE READS: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

106. Plaintiffs or any Participating Settlement Class Member may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraphs 104 and 105 hereof,

or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he or she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this paragraph and paragraphs 104 and 105 hereof. Further, each of those individuals agrees and acknowledges that he or she shall be bound by this Agreement, including by the releases contained in this paragraph and in paragraphs 104 and 105 hereof, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement and/or never receives a distribution of funds from the Settlement.

107. The Releases by Participating Settlement Class Members provided for herein are a result of membership in the Settlement Class, the Court's approval process, and occurrence of the Effective Date, and are not conditioned on receipt of payment or reduction of any outstanding obligation by any particular Settlement Class Member.

108. The Releases provided for in this Section XII shall apply to all current or former holders of Accounts held jointly.

109. Nothing in this Agreement shall operate or be construed to release any claims or rights Defendant has to recover any past, present or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on any accounts, loans or debts with Defendant, pursuant to the terms and conditions of such accounts, loans, or debts; provided, however, that

Defendant shall release its claim or rights to recover any amounts forgiven on any Charged-Off Account upon the occurrence of the Effective Date.

### **XIII. PAYMENT OF FEES, COSTS, EXPENSES, AND SERVICE AWARDS**

110. Class Counsel shall make a request for attorneys' fees and costs consistent with established precedent in the United States District Court for the District of New Jersey and the United States Court of Appeals for the Third Circuit. Defendant reserves the right to oppose a request for attorneys' fees that is inconsistent with said precedent. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Payment Amount. The Parties agree that the Court's failure to approve an award of attorneys' fees, costs, or expenses in the amount requested by Class Counsel shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination. The Court-approved award of attorneys' fees, costs, and expenses shall constitute full satisfaction of any obligation on Defendant's part to pay any person, attorney, or law firm for costs, litigation expenses, attorneys' fees, or any other expense incurred on behalf of Plaintiffs or the Settlement Class.

111. Within five (5) business days of the Effective Date, the Settlement Administrator shall pay from the Settlement Fund Account to Class Counsel all Court-approved attorneys' fees, costs, and expenses of Class Counsel. Provided, however, that the Settlement Administrator shall not pay any such fees, costs, and expenses from the Settlement Fund Account to Class Counsel until such time as Class Counsel have jointly agreed upon a plan of allocation of fees, costs, and expenses among all Class Counsel, and have jointly provided payment instructions to the Settlement Administrator. In the event that the award of attorneys' fees, costs, and expenses of Class Counsel is reduced on appeal, the Settlement Administrator shall only pay to Class

Counsel from the Settlement Fund Account the reduced amount of such award, including interest accrued thereon. Class Counsel shall timely furnish to the Settlement Administrator any required tax information or forms before the payment is made.

112. Class Counsel shall ask the Court to approve a Service Award of up to Five Thousand and 00/100 Dollars (\$5,000.00) for each Plaintiff. The Service Award is to be paid from the Settlement Fund Account. The Service Award shall be paid to each Plaintiff in addition to any Settlement Fund Payment that the Plaintiff may be entitled to receive. Defendant shall not oppose Class Counsel's request for payment of the Service Awards. The Parties agree that the Court's failure to approve Service Awards, or to approve Service Awards in the amounts requested by Class Counsel, shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination. Any Service Awards shall be paid within five (5) business days of the Effective Date.

113. The Parties negotiated and reached agreement regarding attorneys' fees, costs, and expenses, and Service Awards only after reaching agreement on all other material terms of this Settlement.

#### **XIV. TERMINATION OF SETTLEMENT**

114. Subject to the limitations set forth in paragraphs 110 and 112 above regarding the Court's determination with respect to Class Counsel's requests for attorneys' fees, costs, and expenses and Plaintiffs' requests for Services Awards, this Settlement may be terminated by either Class Counsel or Defendant by serving on counsel for the opposing party and filing with the Court a written notice of termination within forty-five (45) days (or such longer time as may be agreed between Class Counsel and Defendant) after any of the following occurrences:

- a. Class Counsel and Defendant agree to termination;

- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. an appellate court reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
- d. any court incorporates terms or provisions into, or deletes or strikes terms or provisions from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Class Counsel or Defendant reasonably considers material;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement.

115. Defendant also shall have the right, in its sole discretion, to terminate the Settlement if the number of Settlement Class Opt-Outs exceeds 2% of the number of all Settlement Class Members (the “Termination Option”). Defendant shall give written notice to Class Counsel of any decision to exercise the Termination Option within fourteen (14) days of Defendant’s receipt of the last timely opt-out statement received pursuant to Section VII. In the event Defendant exercises the Termination Option, this Settlement shall become null and void and shall have no further force or effect, all funds being held in the Settlement Fund Account shall revert to Defendant, the Action shall continue, any Preliminary Approval Order shall be automatically vacated, and the Parties shall confer with the Court as to whether and how any notice of the termination should be sent to the Settlement Class, with Defendant bearing the cost of such notice.

116. No party may terminate the Settlement because of (1) any intervening change in law affecting the claims alleged in the Action, or (2) the amount of attorneys' fees, costs, or expenses awarded to Class Counsel or any Service Awards awarded to Plaintiffs.

117. The grounds upon which this Agreement may be terminated are set forth in paragraphs 114 and 115 hereof. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of Defendant's obligations under the Settlement shall cease to be of any force and effect; the amounts in the Settlement Payment Amount shall be returned to Defendant; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, Plaintiffs' right to seek class certification and Defendant's right to oppose class certification. Further, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

118. In the event of a termination as provided in paragraph 114 and 115 hereof, and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Settlement Fund Account, the Settlement Administrator shall return the balance of the Settlement Payment Amount to Defendant within seven (7) days of termination.

119. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of paragraph 114 and 115 hereof.

**XV. NO ADMISSION OF LIABILITY**

120. Defendant disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind, but expressly denies any such liability or wrongdoing. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

121. Class Counsel and Plaintiffs believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel and Plaintiffs have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

122. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever, or an admission by Defendant of the appropriateness of certification of any litigation class.

123. Neither the Settlement, nor any act performed, statement made, or document executed pursuant to or in furtherance of 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 claim made by Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal; or (c) is or may be deemed to be, or may be used as, an admission by the Released Parties that any litigation class may be certified.

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

#### **XVI. MISCELLANEOUS PROVISIONS**

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

126. Deadlines: If any of the dates or deadlines specified herein falls on a weekend or legal holiday, then the applicable date or deadline shall be moved to the next business day.

127. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the heirs, executors, administrators, successors, beneficiaries, and assigns of the Releasing Parties and the Released Parties.

128. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this



Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect so long as this Settlement has not been terminated in accordance with its terms, regardless of events that may occur, or court decisions that may be issued in any other case in any court.

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

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

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

132. Governing Law. The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Delaware, without regard to the principles thereof regarding choice of law.

133. Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original. In addition, the Parties agree that any Electronic Signature by a party to this Agreement is intended to authenticate this writing and has the same force and effect as a handwritten signature. Pursuant to the Delaware Uniform

Electronic Transactions Act, “Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

134. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program, the Settlement Administrator, and the allocation of the attorney fees to attorneys representing Plaintiffs if Class Counsel cannot reach an agreement on the allocation of attorney fees and/or costs and expenses. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

135. Notices. All notices to Class Counsel provided for herein, shall be sent by e-mail with a hard copy sent by overnight mail to:

E. Adam Webb  
G. Franklin Lemond, Jr.  
WEBB, KLASSE & LEMOND, LLC  
1900 The Exchange, S.E.  
Suite 480  
Atlanta, GA 30339  
Tel.: (770) 444-9325  
Contact@WebbLLC.com

Jeffrey D. Kalief  
KALIELGOLD PLLC  
1100 15th Street NW, 4th Floor

Washington, D.C. 20005  
Tel.: (202) 350-4783  
jkaliel@kalielllc.com

All notices to Defendant, provided for herein, shall be sent by e-mail with a hard copy sent by overnight mail to:

Lucus A. Ritchie  
Pierce Atwood LLP  
Merrill's Wharf  
254 Commercial Street  
Portland, ME 04101  
Tel: (207) 791-1100  
[lritchie@pierceatwood.com](mailto:lritchie@pierceatwood.com)

Deirdre McInerney  
TD Bank, N.A.  
Managing Counsel  
Tel: (856) 505 - 2293  
deirdre.mcinerney@td.com

All notices to the Settlement Administrator required or desired to be given under this Agreement shall be in writing and sent by first-class mail as follows:

Epiq Systems, Inc.  
P.O. Box 5826  
Portland, OR 97228-5826  
888-695-6078

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

136. Court Address for Objections. All objections must be sent to the Clerk of Court at the following address:

Clerk, U.S. District Court for the District of New Jersey  
Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets, Courtroom 4A  
Camden, NJ 08101

137. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by counsel for Defendant and Class Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

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

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

140. Agreement Mutually Prepared. Neither Defendant nor Plaintiffs, nor any of them, shall be considered the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

141. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. It is the Parties' intention to resolve

their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in any substantive or procedural law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law or changes in any substantive or procedural law, subsequently occurring or otherwise.

142. Receipt of Advice of Counsel. Each party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Section XII hereof, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

143. Return of Confidential Information. Class Counsel, on behalf of themselves and their expert witnesses and consultants as well as others retained by them, acknowledge that during the course of this Action, they have received Confidential Information. No later than thirty (30) days after the Effective Date, Class Counsel shall return to Defendant all Confidential Information and certify that they and their expert witnesses and consultants do not retain any copies or summaries or compilations or indices of such information. Within the same time period, Class Counsel will identify for Defendant the expert witnesses, outside consultants, and any other individuals or entities to whom Confidential Information was given, and will advise those persons of this requirement and will ensure their compliance with it. The Parties may stipulate to destruction of Confidential Information in lieu of return to Defendant. This provision is not intended to cover work product of Class Counsel but is intended to cover Confidential Information that is attached to any work product. Any retained work product which refers or

relates to Confidential Information shall continue to be confidential under the terms of the Discovery Confidentiality Order. See ECF No. 68. Class Counsel shall not use any of the Confidential Information learned or obtained in this Action for any purpose after the Effective Date.

144. No Press Releases. The Parties agree that no press release or statements to the press shall be made concerning this Settlement except as required by law or to effectuate the Settlement, provided however that Defendant may issue a statement in conjunction with any filings or reporting with or to any governmental agency, and may disclose the settlement for any other financial reporting purposes.

[Remainder of this page intentionally left blank.]

FOR PLAINTIFFS:

Dated: 13 FEBRUARY 2024



Kyle Burns  
*Plaintiff*

Dated: \_\_\_\_\_

Ruby Hayes  
*Plaintiff*

Dated: \_\_\_\_\_

Jasmine Norville  
*Plaintiff*

Dated: \_\_\_\_\_

Lisa Rodriguez  
*Plaintiff*

Dated: \_\_\_\_\_

Jeffrey Kaliel  
*Class Counsel*

Dated: \_\_\_\_\_

E. Adam Webb  
*Class Counsel*

Dated: \_\_\_\_\_

Joseph Marchese  
*Class Counsel*

Dated: \_\_\_\_\_

Richard Golomb  
*Class Counsel*



FOR PLAINTIFFS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kyle Burns  
*Plaintiff*

Dated: 15/02/2024  
\_\_\_\_\_

\_\_\_\_\_  
*Ruby Hayes*  
Ruby Hayes (Feb 15, 2024 09:51 PST)  
\_\_\_\_\_  
Ruby Hayes  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jasmine Norville  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lisa Rodriguez  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey Kaliel  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
E. Adam Webb  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joseph Marchese  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Richard Golomb  
*Class Counsel*



FOR PLAINTIFFS:


Dated: \_\_\_\_\_

\_\_\_\_\_  
Kyle Burns  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ruby Hayes  
*Plaintiff*

Dated: 2/14/2024 \_\_\_\_\_

  
Jasmine Norville (Feb 14, 2024 15:03 EST)  
\_\_\_\_\_  
Jasmine Norville  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lisa Rodriguez  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey Kaliel  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
E. Adam Webb  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joseph Marchese  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Richard Golomb  
*Class Counsel*

FOR PLAINTIFFS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kyle Burns  
*Plaintiff*


Dated: \_\_\_\_\_

\_\_\_\_\_  
Ruby Hayes  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jasmine Norville  
*Plaintiff*

Dated: 2/14/2024 \_\_\_\_\_

  
Lisa Rodriguez Feb 14, 2024 14:52 EST  
\_\_\_\_\_  
Lisa Rodriguez  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey Kaliel  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
E. Adam Webb  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joseph Marchese  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Richard Golomb  
*Class Counsel*

FOR PLAINTIFFS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kyle Burns  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ruby Hayes  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jasmine Norville  
*Plaintiff*

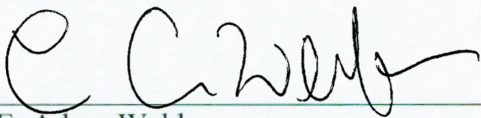
Dated: \_\_\_\_\_

\_\_\_\_\_  
Lisa Rodriguez  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey Kalief  
*Class Counsel*

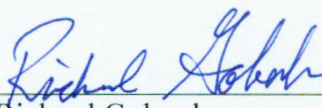
Dated: 2/15/24

  
\_\_\_\_\_  
E. Adam Webb  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joseph Marchese  
*Class Counsel*

Dated: 2/15/24

  
\_\_\_\_\_  
Richard Golomb  
*Class Counsel*

FOR PLAINTIFFS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kyle Burns  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ruby Hayes  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jasmine Norville  
*Plaintiff*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lisa Rodriguez  
*Plaintiff*

Dated: \_\_\_\_\_


\_\_\_\_\_  
Jeffrey Kaliel  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
E. Adam Webb  
*Class Counsel*

Dated: \_\_\_\_\_

*February 14, 2024*

  
\_\_\_\_\_  
Joseph Marchese  
*Class Counsel*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Richard Golomb  
*Class Counsel*

FOR DEFENDANT:

Dated: 2/21/24



\_\_\_\_\_  
TD Bank, N.A.  
*Defendant*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lucus Ritchie  
*Counsel for TD Bank, N.A.*

Dated: \_\_\_\_\_


\_\_\_\_\_  
Susan M. Leming  
*Counsel for TD Bank, N.A.*

FOR DEFENDANT:

Dated: \_\_\_\_\_

\_\_\_\_\_  
TD Bank, N.A.  
*Defendant*

Dated: 2/20/2024

  
\_\_\_\_\_  
Lucus Ritchie  
*Counsel for TD Bank, N.A.*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Susan M. Leming  
*Counsel for TD Bank, N.A.*



FOR DEFENDANT:

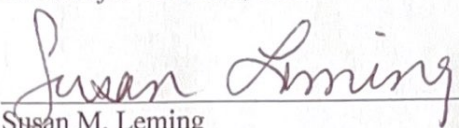
Dated: \_\_\_\_\_

\_\_\_\_\_  
TD Bank, N.A.  
*Defendant*

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lucus Ritchie  
*Counsel for TD Bank, N.A.*

Dated: 2/19/24

  
\_\_\_\_\_  
Susan M. Leming  
*Counsel for TD Bank, N.A.*