

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into this 27th day of March 2023, by and among (1) Plaintiffs (as defined below), for themselves and, as to Class Representative Judith Jimenez, on behalf of the Settlement Class (as defined below); and (2) TD Bank, N.A. (“TD Bank”), subject to preliminary and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, TD Bank, 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, all claims against TD Bank in the action titled *Judith Jimenez, et al. v. TD Bank, N.A.*, D.N.J., Civil Action No. 1:20-cv-07699 (“*Jimenez*” or the “Action”), including the claims of the Settlement Class, shall be settled and compromised upon the terms and conditions contained herein.

### **I. Recitals**

1. On June 24, 2020, Plaintiff Judith Jimenez filed a class action complaint against TD Bank in the United States District Court for the District of New Jersey, alleging that TD Bank improperly reopened bank accounts without customer consent and bringing claims for breach of contract, unjust enrichment, and conversion. *See* Dkt. 1.
2. On January 22, 2021, Plaintiffs filed an amended complaint, adding Stephanie Vil and Kathy Fogel as plaintiffs and bringing additional claims under the Fair Credit Reporting Act (the “FCRA”), the Electronic Fund Transfer Act (the “EFTA”), and the Massachusetts Consumer Protection Law. *See* Dkt. 28.
3. TD Bank moved to dismiss the Amended Complaint on February 19, 2021 (Dkt. 32), and the district court granted in part and denied in part that motion on September 27, 2021 (Dkt. 45).
4. On October 11, 2021, Plaintiffs filed a Second Amended Complaint, reasserting claims dismissed by the district court’s order. *See* Dkt. 50.
5. TD Bank filed a partial motion to dismiss the Second Amended Complaint on November 24, 2021. Dkt. 56.
6. During the pendency of TD Bank’s partial motion to dismiss, the Parties (as defined below) engaged in substantial discovery. The Parties also held multiple conferences to resolve discovery issues.
7. Effective October 2022, TD Bank added the following language to the Personal Deposit Account Agreement: “After an Account is closed, we may within our sole discretion re-open an Account to debit a transaction, recover a loss, reverse provisional credit, or for any other reason. If we re-open an Account, the terms of this Agreement continue to apply to the Account.”

8. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims (as that term is defined below) of the Settlement Class. The Parties intend this Agreement to bind Plaintiffs, TD Bank, and all members of the Settlement Class who do not timely request to be excluded from the Settlement (as defined below).

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

## **II. Definitions**

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

1. “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 Cash Settlement Amount, or otherwise administering or carrying out the terms of the Settlement, including but not limited to postage and telecommunications costs.
2. “Agreement” means this Settlement Agreement and Release.
3. “Basic Claim” means a Claim that is submitted in accordance with Section XI in which the Claimant has elected to receive the Basic Payment.
4. “Basic Payment” is the payment that each Claimant whose Basic Claim is accepted pursuant to paragraphs 94-99 will receive.
5. “Cash Settlement Amount” means the entire cash compensation TD Bank shall pay to the Settlement Class to settle the Action, without admission of liability, inclusive of the Fee & Expense Award, the Service Awards, and all Administrative Costs. TD Bank shall pay a Cash Settlement Amount of Four Million Nine Hundred Thousand and 00/100 Dollars (\$4,900,000.00).
6. “Claim” means a written request submitted by a Participating Settlement Class Member to the Settlement Administrator, using the Claim Form, seeking a distribution from the Cash Settlement Amount.
7. “Claim Deadline” means ninety (90) days after the Notice Deadline.
8. “Claim Form” means a form provided by the Settlement Administrator to Notice Recipients for the purpose of making a Claim, which will be provided substantially in the form attached hereto as Exhibit A.
9. “Claimant” means a Participating Settlement Class Member who submits a Claim.

10. “Class Counsel” means:

GOLOMB SPIRIT GRUNFELD, P.C.  
Kenneth J. Grunfeld  
1835 Market Street  
Suite 2900  
Philadelphia, PA 19103  
Tel.: (215) 985-9177  
kgrunfeld@golomblegal.com

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

11. “Class Period” means the period from June 24, 2014 through the date of Preliminary Approval.
12. “Class Representative” means Judith Jimenez.
13. “Court” means the United States District Court for the District of New Jersey.
14. “Day” or “Days,” unless otherwise noted, means a calendar day.
15. “Effective Date” means the fifth business day after which all of the following events have occurred:
- a. All Parties, TD Bank’s counsel, and Class Counsel have executed this Agreement;
  - b. The Court has entered without material change the Final Approval Order; and
  - c. 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, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

Notwithstanding the foregoing, the Effective Date shall not be earlier than thirty-five (35) days after Final Approval.

16. “Eligible Account” means a TD Bank consumer checking account. For purposes of clarity, given TD Bank’s announced acquisition of First Horizon Bank, “Eligible Account” does not include any accounts opened at First Horizon Bank.
17. “E-Mail Notice” means the form of notice that will be e-mailed to Notice Recipients for whom TD Bank possesses e-mail addresses, substantially in the form attached hereto as Exhibit B.
18. “Enhanced Claim” means a Claim that is submitted in accordance with Section XI in which the Claimant elects to submit additional information in order to receive an Enhanced Payment.
19. “Enhanced Payment” means the amount that will be paid to Claimants who elect to provide additional information regarding post-reopening unauthorized transactions on their Eligible Account(s), as provided in paragraph 95. Enhanced Payments will be issued only if the total amount of Basic Payments owed is less than the Net Cash Settlement Amount. In no instance shall the Enhanced Payment be less than the Basic Payment.
20. “Fee & Expense Award” means the attorneys’ fees, costs, and expenses that Class Counsel will seek from the Court as more fully described in Section XV.
21. “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.
22. “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.
23. “Individual Awards” means the amount TD Bank shall pay to Stephanie Vil and Kathy Fogel, without admission of liability, in exchange for the release of their individual claims, as more fully described in Section XVI.
24. “Long-Form Notice” means the detailed notice of the Settlement that will be posted on the Settlement Website, substantially in the form attached hereto as Exhibit C.
25. “Mail Notice” means the postcard notice that will be mailed by the U.S. Postal Service to Notice Recipients for whom TD Bank does not possess e-mail addresses, substantially in the form attached hereto as Exhibit D.
26. “National Change of Address Database” means the change of address database maintained by the U.S. Postal Service.

27. “Net Cash Settlement Amount” means the Cash Settlement Amount, less the Service Awards, the Fee & Expense Award, and the Administrative Costs.
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 ninety (90) 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 B, C, and D 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 VII hereof.
31. “Notice Recipient” means a current or former holder of an Eligible Account who will receive Notice of the Settlement. Notice Recipients are potential Settlement Class Members identified in TD Bank’s internal data as current or former Eligible Account holders who, on or after June 24, 2014, experienced a transaction on their Eligible Account after it was closed.
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) calendar 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. “Participating Settlement Class Member” means any Settlement Class Member except for Settlement Class Opt-Outs.
35. “Parties” means Plaintiffs and TD Bank, collectively.
36. “Party” means Plaintiffs or TD Bank, individually.
37. “Plaintiffs” mean Judith Jimenez, Kathy Fogel, and Stephanie Vil, collectively.

38. “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 E.
39. “Released Claims” means all claims to be released as specified in Section XIV hereof.
40. “Released Parties” means those persons and entities released as specified in Section XIV hereof.
41. “Releases” means all of the releases contained in Section XIV hereof.
42. “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, insurers, reinsurers, attorneys, advisors, representatives, predecessors, successors, and legal representatives.
43. “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 124 of this Agreement.
44. “Settlement” means the settlement into which the Parties have entered to resolve the Action on behalf of the Settlement Class. The terms of the Settlement are as set forth in this Agreement.
45. “Settlement Administrator” means Epiq Systems, Inc.
46. “Settlement Class” means the class defined in Section III hereof.
47. “Settlement Class Member” means any person included in the Settlement Class.
48. “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.
49. “Settlement Fund Account” means an interest-bearing account held by an FDIC-insured financial institution, into which TD Bank shall deposit the Cash Settlement Amount. Class Counsel and TD Bank shall agree on the FDIC-insured financial institution at which the account shall be established.
50. “Settlement Fund Payments” means all payments sent to Claimants out of the Net Cash Settlement Amount, including all Basic Payments and Enhanced Payments.
51. “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 VII hereof.

**III. Certification of the Settlement Class**

52. 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 current and former holders of an Eligible Account that, between June 24, 2014 and the date of Preliminary Approval, was reopened by TD Bank without customer authorization after the Eligible Account’s closure and had a debit, credit, or fee post to the Eligible Account after that reopening.

For clarity, current and former holders of Eligible Accounts who consented to or requested the Eligible Account reopening are not members of the Settlement Class. Any current or former holders of jointly-held Eligible Accounts also are not members of the Settlement Class if one of the joint holders consented to or requested the reopening.

Excluded from the Settlement Class are (1) TD Bank, its parents, subsidiaries, affiliates, officers, and directors at all relevant times, as well as members of their immediate families and their legal representatives, heirs, successors, or assigns; (2) any entity in which TD Bank has or had a controlling interest; (3) all Settlement Class members who exclude themselves from the Settlement; (4) all judges assigned to this litigation and their immediate family members; and (5) federal, state, and local governments and all agencies and subdivisions thereunder.

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

**IV. Settlement Consideration**

55. Subject to approval by the Court, the total cash consideration to be provided by TD Bank pursuant to the Settlement, without admission of liability, shall be Four Million Nine Hundred Thousand and 00/100 Dollars (\$4,900,000.00). This Cash Settlement Amount includes all monetary disbursements incurred in connection with the Settlement, including but not limited to (a) all monetary payments to the Settlement Class; (b) all Administrative Costs; (c) all attorneys' fees, costs, and expenses awarded by the Court to Class Counsel; and (d) all Service Awards awarded by the Court to Plaintiffs. For avoidance of doubt, TD Bank shall not be required to pay any money beyond the Cash Settlement Amount, with the sole exception of the Individual Awards to be paid to Ms. Vil and Ms. Fogel, who are not Settlement Class Members, in exchange for the release of their individual claims, as provided for in Section XVI. TD Bank 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.

**V. Settlement Approval**

56. 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 TD Bank, and substantially in the form as that attached hereto as Exhibit E. 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 Judith Jimenez as Class Representative 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 VIII 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 TD Bank, and no earlier than 190 days after Preliminary Approval.

57. Within 10 days of the filing of the motion for Preliminary Approval, TD Bank, 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").

**VI. Settlement Administrator**

58. 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.

59. Class Counsel and TD Bank 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 TD Bank 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.

60. 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, the Claim Form, and such other documents as Class Counsel and TD Bank 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 TD Bank'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 87;
  - i. At Class Counsel's and/or TD Bank'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. Review and respond (as necessary) to all Claims;
  - k. Provide weekly reports and a final report to Class Counsel and TD Bank's counsel that summarize the number of Claims since the prior reporting period, the total number of Claims received to date, the number of any Claims granted and denied since the prior reporting period, the total number of Claims granted and denied to date, and other pertinent information;

- l. Process and transmit distributions to Participating Settlement Class Members from the Settlement Fund Account;
  - m. Pay invoices, expenses, and costs upon approval by Class Counsel and TD Bank, as provided in this Agreement; and
  - n. Perform any Settlement-administration-related function at the instruction of Class Counsel and TD Bank, including, but not limited to, verifying that the Net Cash Settlement Amount has been distributed as required by Section XII hereof.
61. All Administrative Costs, including all costs associated with Notice and administration of the Settlement, shall be paid out of the Cash Settlement 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 Cash Settlement Amount.

**VII. Notice**

62. 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 TD Bank 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 sixty (60) days after Preliminary Approval is granted, TD Bank 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.
63. The Settlement Administrator shall ensure that the information that it receives from TD Bank, 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 TD Bank, Class Counsel, Settlement Class Members, and/or Notice Recipients without prior written consent of the Parties or by order of the Court.
64. 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; a description of

the Claims process; and the address of the Settlement Website at which Notice Recipients may access this Agreement and other related documents and information. Class Counsel and TD Bank 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 TD Bank, or otherwise be styled to appear to originate from TD Bank.

65. 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 TD Bank's records. The secondary method of Notice is individual Mail Notice to the last known mailing address shown on TD Bank'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 B, C, and D.
66. 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; (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. Forty-five (45) days after the Notice Deadline, and then again eighty (80) days after the Notice Deadline, the Settlement Administrator shall re-send the E-Mail Notice to all Notice Recipients whose last known e-mail addresses were provided by TD Bank to the Settlement Administrator and who have not submitted a Claim pursuant to Section XI. Under no circumstance shall TD Bank be required to provide updated e-mail addresses for purposes of resending the E-Mail Notice.
67. The steps described in paragraph 66 shall be completed by the Notice Deadline, if reasonably practicable, subject to the re-mailing of the E-Mail Notice and any returned notices. Within seven (7) days of the Notice Deadline, the Settlement Administrator shall provide Class Counsel and TD Bank an affidavit that confirms that the Notice Program was completed in a timely manner, again subject to the re-mailing of the E-Mail Notice and any returned notices. Class Counsel may file that affidavit with the Court as an exhibit to or in conjunction with Plaintiffs' motion for the Fee & Expense Award. The Settlement Administrator shall provide an updated affidavit to Class Counsel and TD Bank within the earlier of seven (7) days following the completion of such re-mailing or twenty-one (21) days prior to the Final Approval Hearing.
68. As soon as practicable following Preliminary Approval, but no later than forty-five (45) 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.

69. The Settlement Website shall include this Agreement, the Long-Form Notice, the Preliminary Approval Order, the Claim Form, and such other documents as Class Counsel and TD Bank 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.TDaccountreopeningsettlement.com](http://www.TDaccountreopeningsettlement.com) or such other URL as Class Counsel and TD Bank 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.
70. 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 Cash Settlement Amount has been completed as set forth in Section XII, or such other date as Class Counsel and TD Bank shall agree. Ownership of the Settlement Website URL shall be transferred to TD Bank within ten (10) days of the date on which operation of the Settlement Website ceases.
71. Within the parameters set forth in this Section VII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and TD Bank.

**VIII. Exclusion/Opt-Outs and Objections**

72. 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 Eligible 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 Cash Settlement Fund 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.
73. For an opt-out to be considered by the Court, the opt-out must set forth:
  - a. The individual's name, address, and last four digits of the Eligible Account number that the individual believes forms the basis of their claim to be a Settlement Class Member;

- b. A statement that the individual wants to be excluded from the Settlement in *Judith Jimenez, et al. v. TD Bank, N.A.*, D.N.J., Civil Action No. 1:20-cv-07699, and that the individual understands that they will receive no money 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.
74. 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.
75. Class Counsel and TD Bank's counsel shall have the right to contact persons and entities who submit written notifications of exclusion from the Settlement Class.
76. 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.
77. 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 TD Bank'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.
78. 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, and telephone number;
  - c. An explanation of the basis upon which the objector claims to be a Settlement Class Member;
  - d. A statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
  - e. All grounds for the objection, accompanied by any legal support for the objection;
  - f. 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;

- g. 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;
  - h. 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;
  - i. The identity of all counsel representing the objector who will appear at the Final Approval Hearing, if any;
  - j. A list of any persons who will be called to testify at the Final Approval Hearing in support of the objection, if any;
  - k. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
  - l. 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.
79. 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.
80. Any Participating Settlement Class Member who timely files and serves an objection in accordance with this Section VIII 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 VIII 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.
81. 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.

**IX. Final Approval Order and Judgment**

82. 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 application for attorneys' fees, costs, and expenses, and for Service

Awards for Plaintiffs, 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.

83. 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 Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards for Plaintiffs. 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.
84. 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 TD Bank. 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 XIV hereof, including during the pendency of any appeal from the Final Approval Order;
  - f. Release TD Bank and the Released Parties from the Released Claims, as set forth in Section XIV hereof; and
  - g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Plaintiffs, TD Bank, all Participating Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.
85. 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 XVII 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.

**X. Settlement Fund**

86. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section XIV hereof and the dismissal of the Action upon Final Approval, within fourteen (14) days of Preliminary Approval, TD Bank shall transfer to the Settlement Administrator the Cash Settlement Amount of Four Million Nine Hundred Thousand and 00/100 Dollars (\$4,900,000.00) for deposit into the Settlement Fund Account. Class Counsel and TD Bank shall agree on the FDIC-insured financial institution at which the account shall be established.
87. 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 TD Bank 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 Cash Settlement Amount. Plaintiffs and Class Counsel, and TD Bank 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 TD Bank and its counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).
88. The Cash Settlement Amount shall be used for the following purposes:
- a. Distribution of payments to Claimants whose Claims have been finally approved pursuant to Section XI hereof;
  - b. Payment of the Court-ordered award of Class Counsel’s attorneys’ fees, costs, and expenses pursuant to Section XV hereof;
  - c. Payment of the Court-ordered Service Awards to Plaintiffs pursuant to Section XV hereof;
  - d. Payment of any residual *cy pres* distribution as set forth in Section XIII hereof, together with any Administrative Costs associated therewith;
  - e. Payment of any Taxes pursuant to paragraph 87 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 TD Bank;
  - 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 TD Bank.



89. The Cash Settlement Amount shall not be used for the Individual Awards to Ms. Vil and Ms. Fogel, who are not Settlement Class Members, as provided for in Section XVI.

**XI. Claims Process**

90. Any Participating Settlement Class Member may submit a Claim to the Settlement Administrator seeking a distribution from the Net Cash Settlement Amount, except any person who has already settled with TD Bank and released all claims against TD Bank that were or could have been alleged in the Action between June 24, 2014 and Preliminary Approval.
91. Participating Settlement Class Members can submit either (1) a Basic Claim, in which case they will be paid the Basic Payment, subject to sufficient funds in the Net Cash Settlement Amount, and they will not be obligated to provide with the Claim Form a statement or any documentary evidence of post-reopening unauthorized transactions on the Eligible Account(s); or (2) an Enhanced Claim, if they believe that there were post-reopening unauthorized transactions on the Eligible Account(s) causing monetary losses which exceeded the Basic Payment, in which case they are required to provide with the Claim Form a statement and documentary evidence of any such post-reopening unauthorized transactions and resulting monetary losses on the Eligible Account(s).
92. Claims shall be submitted by filing a Claim Form with the Settlement Administrator. The Claim Form shall explain that its submission does not guarantee a distribution from the Net Cash Settlement Amount, that any Claim is subject to confirmation by the Settlement Administrator and/or TD Bank, and that distribution of the Net Cash Settlement Amount will be governed by the formula provided in paragraph 106. The Claim Form shall be substantially in the form as attached hereto as Exhibit A.
93. All Claims must be submitted to the Settlement Administrator by the Claim Deadline. Claim Forms shall be available on the Settlement Website and by writing, calling, or e-mailing the Settlement Administrator.
94. A Claimant shall submit no more than one Claim Form. Only one Claim Form may be submitted with respect to each Eligible Account regardless of whether the Eligible Account is or was individually or jointly held.
95. The following information and evidence, at a minimum, shall be required with respect to each Claim.
- a. Claimant's name;
  - b. Claimant's current mailing address, e-mail address, and telephone number;
  - c. Election to submit either a Basic Claim or an Enhanced Claim;
  - d. Information relating to the basis of the Claimant's Claim, including:

- i. Attestation that the reopening of the Eligible Account was without the Claimant's consent, and, if a joint account, without the consent of any joint holders of the Eligible Account;
    - ii. Attestation that the Claimant has not submitted and does not intend to submit an opt-out request;
    - iii. Attestation that, if the Eligible Account is or was jointly held, the Claim Form binds all Eligible Account holders;
    - iv. For those Claimants electing to submit an Enhanced Claim, a statement of all unauthorized transactions that occurred on Eligible Account(s) following reopening, any money the Claimant lost as a result of any unauthorized transactions incurred on the Eligible Account following its reopening, and any documentary evidence supporting the existence of those transactions and monetary losses;
    - v. If known, the last four digits of the Eligible Account number that the Claimant contends forms the basis of their claim to be a Settlement Class Member; and
    - vi. If known, the date that the Eligible Account was reopened;
  - e. Claimant's signature under penalty of perjury.
96. The Settlement Administrator shall review each Claim to determine the adequacy of the substantiation and the legitimacy of any Claim. In consultation with TD Bank, the Settlement Administrator shall have discretion to require a Claimant to submit additional information and/or documentation to support a Claim. In exercising its discretion under this paragraph, the Settlement Administrator and TD Bank shall consider the burden imposed by the additional information and documentation requested, as well as other appropriate considerations.
97. All Claim Forms shall be subject to such anti-fraud procedures and random and/or selective audits as the Settlement Administrator shall adopt in its discretion. The Settlement Administrator shall be responsible for developing an appropriate plan to audit Claim Forms. TD Bank retains the right to independently audit Claim Forms if it chooses to do so.
98. The Settlement Administrator shall provide weekly reports once it begins to receive Claims and, as soon as practicable after the Claim Deadline but in no event later than thirty (30) days after the Claim Deadline, a final report to Class Counsel and TD Bank's counsel summarizing the number of Basic and Enhanced Claims made and providing any other pertinent information, including information regarding the number of pending Claims. Along with the final report, the Settlement Administrator shall provide to Class Counsel and TD Bank's counsel copies of all Claim Forms and any supporting documentation submitted therewith.

99. The Settlement Administrator shall have the authority to reject a Claim after conducting the review described in paragraphs 96-97, but it shall not reject any Claim until after consultation with Class Counsel and TD Bank. TD Bank may, in its discretion, conduct an independent review of any Claim, including by confirming the accuracy of any information included on a Claim Form using its own internal records, and may direct the Settlement Administrator to reject a Claim that it identifies as having inaccurate information or as being otherwise invalid under this Agreement.
100. If a Claim is rejected pursuant to paragraph 99, the Settlement Administrator shall provide written notice to the Claimant, and an opportunity to remedy curable deficiencies and/or state any grounds for contesting the proposed decision of the Settlement Administrator, within thirty (30) days of the date the Settlement Administrator sends notice of the rejection by e-mail or mail (whichever is earlier). All notices of rejection shall be sent by no later than sixty (60) days after the Claim Deadline. A Claimant shall only receive one 30-day period in which to respond to the Settlement Administrator's proposed rejection of a Claim. Untimely submission of a Claim is not a curable deficiency within the meaning of this paragraph. For purposes of clarity, if a Participating Settlement Class Member's Claim is rejected, they will not receive any payment and they will release their claims against TD Bank.
101. If submitted by mail, a Claim (or remedial submission) shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions.
102. Within the parameters set forth in this Section XI, further specific details of the Claims process shall be subject to the agreement of Class Counsel and TD Bank. In the event that the Settlement Administrator determines, in its discretion, that any adjustment to the Claims process or deadlines is called for, the Settlement Administrator shall confer with Class Counsel and TD Bank. Reasonable changes may be made to the Claims process set forth in this Section XI by agreement between Class Counsel and TD Bank, in order to facilitate the working of the Claims process or accomplishment of the goals of the Claims process.

## **XII. Distribution of Net Cash Settlement Amount**

103. Within the later of thirty (30) days after the Effective Date or fourteen (14) days after the resolution of any and all Claims under Section XI, the Settlement Administrator shall distribute the Net Cash Settlement Amount as set forth in this Section XII.
104. The Net Cash Settlement Amount is equal to the Cash Settlement Amount less the following:
  - a. The amount of the Court-awarded attorneys' fees, costs, and expenses to Class Counsel;
  - b. The amount of the Court-awarded Service Awards to Plaintiffs;

- c. Administrative Costs, including the projected costs of the Settlement Administrator completing its duties of distribution of the Settlement Fund Payments and its duties following such distribution;
  - d. The amount of any Taxes to be paid pursuant to paragraph 87; and
  - e. All other costs and/or expenses incurred in connection with the Settlement not specifically enumerated in subsections (a) through (d) of this paragraph that are expressly provided for in this Agreement or have been approved by Class Counsel and TD Bank.
105. The calculation of the allocations shall be performed by the Settlement Administrator, as described below, and the implementation of the allocations contemplated by this Section XII shall be undertaken by the Settlement Administrator. The methodology provided for herein shall be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computation. Subject to its statutory and regulatory obligations to protect its customers' private financial information, and pursuant to the terms of the Discovery Confidentiality Order, *see* ECF No. 59, TD Bank shall make available data and information sufficient to allow Class Counsel and their experts and the Settlement Administrator to determine and confirm the calculations and allocations contemplated by this Agreement and the Settlement Administrator's implementation of such allocations.
106. The Net Cash Settlement Amount shall be allocated to Claimants with approved Claims as follows:
- a. First, if the Net Cash Settlement Amount is sufficient, each Claimant who submits a valid and approved Claim (both Basic and Enhanced Claims) will receive at least a \$125 Basic Payment. If the amount of \$125 Basic Payments owed exceeds the Net Cash Settlement Amount, then the amount of each Basic Payment will be decreased so that each approved Claimant receives an equal distribution from the Net Cash Settlement Amount;
  - b. Second, if the total amount of Basic Payments does not exhaust the Net Cash Settlement Amount, then Claimants who submit a valid and approved Enhanced Claim shall instead receive an Enhanced Payment equal to the amount of post-reopening unauthorized transactions on the Eligible Account(s) listed on their Claim Form and substantiated with documentary evidence, as further explained in paragraph 95. In the event that the sum of the Basic Payments and approved Enhanced Payments would exceed the Net Cash Settlement Amount, then the approved Enhanced Payments will be decreased on a pro rata basis to no less than the Basic Payment until the total amount of Basic Payments and Enhanced Payments equals the Net Cash Settlement Amount; and
  - c. Third, in the event the Net Cash Settlement Amount exceeds the sum of the Basic Payments and approved Enhanced Payments, then the remainder of the Net Cash

Settlement Amount will be distributed equally to each Claimant who submits a valid and approved Claim (both Basic and Enhanced Claims).

- d. By operation of paragraphs 106(a) and (b), in no case will any Claimants who are entitled to an Enhanced Payment receive less than the Basic Payment.

See Appendix A for purposes of clarity. The Parties agree the foregoing allocation formula is exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, the distribution amount each Claimant should receive from the Net Cash Settlement Amount. The allocation formula used herein is not intended and shall not be used for any other purpose or objective whatsoever.

107. In no event shall TD Bank ever be required to pay more than the Cash Settlement Amount of Four Million Nine Hundred Thousand and 00/100 Dollars (\$4,900,000.00), with the sole exception of the Individual Awards to be paid to Ms. Vil and Ms. Fogel, who are not Settlement Class Members, in exchange for the release of their individual claims, as provided for in Section XVI.
108. Settlement Fund Payments will be made by check with an appropriate legend to indicate that it is from the Settlement. Checks will be prepared and mailed by the Settlement Administrator. Checks shall be valid for one hundred and twenty (120) days after issuance. The Settlement Administrator shall not mail Settlement Fund Payment checks to addresses from which Notices were returned as undeliverable. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of the Net Cash Settlement Amount whose check is returned by the U.S. Postal Service as undeliverable, and will re-mail it once to the updated address. All costs associated with the process of printing and mailing the checks and any accompanying communication shall be deducted from the Cash Settlement Amount.
109. If a Participating Settlement Class Member's check is not deposited (or cashed) within one hundred and twenty (120) days after the check is mailed, (1) the check shall be null and void, and (2) the Settlement Administrator shall once again follow the procedures set forth above in paragraph 108 and shall send a second check to the Participating Settlement Class Member, this time to be valid for sixty (60) days after issuance. If that Participating Settlement Class Member's second check also is not deposited (or cashed) within sixty (60) days after the second check is mailed, then (1) the second check shall be null and void; (2) the Participating Settlement Class Member shall be barred from receiving a further Settlement Fund Payment under this Settlement; and (3) the amount of the Participating Settlement Class Member's award shall revert to the Settlement Fund Account and be distributed as described in Section XIII.
110. If a Participating Settlement Class Member's estate informs the Settlement Administrator of the Participating Settlement Class Member's death before the date that Settlement Fund Payment checks are mailed and provides a death certificate confirming that the Settlement Class Member is deceased, then any Settlement Fund Payment paid to a deceased Participating Settlement Class Member shall be made payable to the estate of the deceased Participating Settlement Class Member. If the Participating Settlement

Class Member's estate does not inform the Settlement Administrator of the Participating Settlement Class Member's death before Settlement Fund Payment checks are mailed, then the deceased Participating Settlement Class Member will be barred from receiving a Settlement Fund Payment under this Settlement.

111. The Parties shall have no responsibility or liability for any federal, state, or other taxes owed by Participating Settlement Class Members as a result of, or that arise from, any Settlement Fund Payment or any other term or condition of this Agreement.
112. The Settlement Administrator shall prepare, send, file, and furnish all tax information reporting forms required for payments made from the Settlement Fund Account as required by the Internal Revenue Service pursuant to the Internal Revenue Code and related Treasury Regulations. The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this Agreement.
113. The Settlement Administrator shall provide the Parties with a reconciliation and accounting of the Settlement Fund Account at each of the following times: (1) no later than ten (10) days after the Settlement Fund Payment checks are mailed; (2) no later than ten (10) days after the expiration of the 120-day period for depositing Settlement Fund Payment checks; and (3) no later than ten (10) days after the expiration of the 60-day period for depositing second Settlement Fund Payment checks sent to Participating Settlement Class Members who did not deposit the first check.

### **XIII. Disposition of Residual Funds**

114. In the event that there is any residual amount left in the Settlement Fund Account after the distributions required by Section XII of this Agreement are completed, then the residual funds may be equally distributed to Participating Settlement Class Members who deposited (or cashed) their own original check through a secondary distribution of the residual less the cost of the secondary distribution.
115. If the residual amount less the cost of the secondary distribution is less than One Hundred Thousand and 00/100 Dollars (\$100,000.00), then subject to Court approval, the funds may be distributed to a residual *cy pres* program. The residual *cy pres* recipient(s) shall be agreed upon by Class Counsel and TD Bank and approved by the Court. The purpose of any residual *cy pres* distribution shall be to benefit consumer financial literacy education, and to educate and assist consumers with financial services issues through advisory and related services (excluding litigation). Any residual *cy pres* distribution shall be paid as soon as reasonably possible following the completion of distribution of Settlement Fund Payments, with the Parties and the Settlement Administrator making their best efforts to make such a distribution within three hundred (300) days after the date the Settlement Administrator mails the first Settlement Fund Payments. All costs associated with the disposition of residual *cy pres* funds shall be paid out of the Cash Settlement Amount. In the event no money remains in the Settlement Fund Account within three hundred (300) days after the last Settlement Fund Payment is mailed, the Parties shall have no obligation whatsoever to make any residual *cy pres* distribution. 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 addressing distribution of residual funds.

**XIV. Releases**

116. As of the Effective Date, Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged TD Bank 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, 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, conversion, unjust enrichment, the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq., and the Massachusetts Consumer Protection Law, Mass. Gen. Laws ch. 93A, § 2) 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”).
117. 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”
118. 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 116 and 117 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 116 and 117 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 116 and 117 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.

119. Plaintiffs and Participating Settlement Class Members covenant not to sue or otherwise assert any claims against TD Bank challenging practices related to the reopening of closed TD Bank consumer checking accounts without customer knowledge or authorization.
120. 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.
121. The Releases provided for in this Section XIV shall apply to all current or former holders of Eligible Accounts held jointly.

**XV. Payment of Attorneys' Fees, Costs, Expenses, and Service Awards**

122. TD Bank agrees not to oppose Class Counsel's request for attorneys' fees in an amount not to exceed one third of the Cash Settlement Amount. Class Counsel agree not to make a request for attorneys' fees that exceeds one-third of the Cash Settlement Amount. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Cash Settlement 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 TD Bank'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.
123. 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.

124. Class Counsel shall ask the Court to approve a Service Award of up to Eight Thousand and 00/100 Dollars (\$8,000.00) for Ms. Jimenez and up to Five Thousand and 00/100 Dollars (\$5,000.00) each for Ms. Fogel and Ms. Vil. The Service Awards are to be paid from the Settlement Fund Account. The Service Awards shall be paid to each Plaintiff in addition to any Settlement Fund Payment that the Plaintiff may be entitled to receive upon submission of a Claim Form. TD Bank 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.
125. 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.

**XVI. Individual Awards to Non-Settlement Class Member Plaintiffs**

126. In exchange for the release of their individual claims, as provided for in Section XIV, TD Bank agrees to pay Ms. Vil and Ms. Fogel, who are not Settlement Class Members, Individual Awards reflective of their alleged damages. Specifically:
  - a. TD Bank will pay Ms. Vil \$348.49 in exchange for the release of her individual claims; and
  - b. TD Bank will pay Ms. Fogel \$100 in exchange for the release of her individual claims.
127. Within five (5) business days of the Effective Date, TD Bank shall pay Ms. Vil and Ms. Fogel the Individual Awards provided for in paragraph 126. The Individual Awards to Ms. Vil and Ms. Fogel, as provided for in paragraph 126, shall be paid by TD Bank (and not the Settlement Administrator), after Ms. Vil and Ms. Fogel each have provided TD Bank with a W9 for the payee. The Individual Awards provided for in paragraph 126 shall not be paid out of the Settlement Fund Account and shall be separate from, and in addition to, the Cash Settlement Amount.
128. The Parties negotiated and reached agreement regarding the Individual Awards to Ms. Vil and Ms. Fogel only after reaching agreement on the material terms of this Settlement.

129. By agreeing to pay the Individual Awards to Ms. Vil and Ms. Fogel, TD Bank does not admit any liability or wrongdoing of any kind, but expressly denies any such liability or wrongdoing.
130. The Court's failure to approve the Individual Awards referenced in this Section XVI shall not prevent the Settlement Agreement from otherwise becoming effective, nor shall it be grounds for termination under Section XVII.

### **XVII. Termination of Settlement**

131. Subject to the limitations set forth in paragraphs 122 and 124 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, and subject also to the limitation set forth in paragraph 130, this Settlement may be terminated by either Class Counsel or TD Bank 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 TD Bank) after any of the following occurrences:
  - a. Class Counsel and TD Bank 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 TD Bank reasonably considers material;
  - e. the Effective Date does not occur; or
  - f. any other ground for termination provided for elsewhere in this Agreement.
132. TD Bank 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"). TD Bank shall give written notice to Class Counsel of any decision to exercise the Termination Option within fourteen (14) calendar days of TD Bank's receipt of the last timely opt-out statement received pursuant to Section VIII. In the event TD Bank 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 TD Bank, 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 TD Bank bearing the cost of such notice.

133. 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.
134. The grounds upon which this Agreement may be terminated are set forth in paragraphs 131 and 132 hereof. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of TD Bank's obligations under the Settlement shall cease to be of any force and effect; the amounts in the Cash Settlement Amount shall be returned to TD Bank; 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 TD Bank'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.
135. In the event of a termination as provided in paragraph 131 and 132 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 Cash Settlement Amount to TD Bank within seven (7) days of termination.
136. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of paragraph 131 and 132 hereof.

**XVIII. No Admission of Liability**

137. TD Bank 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. TD Bank 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.
138. 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.
139. 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 TD Bank of the appropriateness of certification of any litigation class.

140. 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.
141. In addition to any other defenses TD Bank 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.

#### **XIV. Miscellaneous Provisions**

142. 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.
143. 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.
144. 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.
145. 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.
146. 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.
147. 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.

148. 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.
149. 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.
150. 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.
151. 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.
152. 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, KLASE & LEMOND, LLC  
1900 The Exchange, S.E.  
Suite 480  
Atlanta, GA 30339  
Tel.: (770) 444-9325  
Email: Contact@WebbLLC.com

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

Noah A. Levine, Esq.  
WILMER CUTLER PICKERING HALE AND DORR LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Tel.: (212) 230-8800  
Email: noah.levine@wilmerhale.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 to:

Epiq Systems, Inc.  
PO Box 2167  
Portland, OR 97208-2167

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.

153. 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 3A  
Camden, NJ 08101
154. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by counsel for TD Bank and Class Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.
155. 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.
156. Authority. Class Counsel (for Plaintiffs), and counsel for TD Bank (for TD Bank), 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 TD Bank 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.

157. Agreement Mutually Prepared. Neither TD Bank 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.
158. 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.
159. 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 XIV 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.
160. 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 TD Bank 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 TD Bank 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 TD Bank. 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. 59. Class Counsel shall not use any of the Confidential Information learned or obtained in this Action for any purpose after the Effective Date.
161. Publicity. The parties shall not issue press releases or similar public statements regarding this Settlement for any purpose, except that Class Counsel may make public statements regarding the Settlement on any resume, future pleadings relating to Class Counsel's experience and results, and Class Counsel's websites. The Parties and their counsel agree

that they shall not make any public statements, whether written or oral, disparaging any other Party, including any statements tending to harm a Party's reputation, business interests, or goodwill.



FOR PLAINTIFFS:

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

\_\_\_\_\_  
Judith Jimenez  
*Plaintiff*

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

\_\_\_\_\_  
Kathy Fogel  
*Plaintiff*

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

\_\_\_\_\_  
Stephanie Vil  
*Plaintiff*

Dated: 3/24/2023

  
\_\_\_\_\_  
Kenneth J. Grunfeld  
*Class Counsel*

Dated: 3/27/2023

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

FOR DEFENDANT:

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

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

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

\_\_\_\_\_  
Noah A. Levine  
*Counsel for TD Bank, N.A.*

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

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

FOR PLAINTIFFS:

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

\_\_\_\_\_  
Judith Jimenez  
*Plaintiff*

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

\_\_\_\_\_  
Kathy Fogel  
*Plaintiff*

Dated: 3/27/2023

  
\_\_\_\_\_  
Stephanie Vil  
*Plaintiff*

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

\_\_\_\_\_  
Kenneth J. Grunfeld  
*Class Counsel*

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

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

FOR DEFENDANT:

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

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

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

\_\_\_\_\_  
Noah A. Levine  
*Counsel for TD Bank, N.A.*

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

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

FOR PLAINTIFFS:

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

\_\_\_\_\_  
Judith Jimenez  
*Plaintiff*

Dated: 03/27/2023

\_\_\_\_\_  
*Dr. Kathy Fogel*  
Kathy Fogel  
*Plaintiff*

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

\_\_\_\_\_  
Stephanie Vil  
*Plaintiff*

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

\_\_\_\_\_  
Kenneth J. Grunfeld  
*Class Counsel*

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

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

FOR DEFENDANT:

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

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

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

\_\_\_\_\_  
Noah A. Levine  
*Counsel for TD Bank, N.A.*

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

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

FOR PLAINTIFFS:

Dated: 3/23/2023

  
\_\_\_\_\_  
Judith Jimenez  
*Plaintiff*

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

\_\_\_\_\_  
Kathy Fogel  
*Plaintiff*

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

\_\_\_\_\_  
Stephanie Vil  
*Plaintiff*

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

\_\_\_\_\_  
Kenneth J. Grunfeld  
*Class Counsel*

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

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

FOR DEFENDANT:

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

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

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

\_\_\_\_\_  
Noah A. Levine  
*Counsel for TD Bank, N.A.*

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

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

FOR PLAINTIFFS:

Dated: \_\_\_\_\_  
Judith Jimenez  
*Plaintiff*

Dated: \_\_\_\_\_  
Kathy Fogel  
*Plaintiff*

Dated: \_\_\_\_\_  
Stephanie Vil  
*Plaintiff*

Dated: \_\_\_\_\_  
Kenneth J. Grunfeld  
*Class Counsel*

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

FOR DEFENDANT:

Dated: 3/27/23  
*Matthew Boss*  
\_\_\_\_\_  
TD Bank, N.A.  
*Defendant*

Dated: \_\_\_\_\_  
Noah A. Levine  
*Counsel for TD Bank, N.A.*

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

FOR PLAINTIFFS:

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

\_\_\_\_\_  
Judith Jimenez  
*Plaintiff*

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

\_\_\_\_\_  
Kathy Fogel  
*Plaintiff*

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

\_\_\_\_\_  
Stephanie Vil  
*Plaintiff*

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

\_\_\_\_\_  
Kenneth J. Grunfeld  
*Class Counsel*

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


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

FOR DEFENDANT:

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

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

Dated: 3/23/2023

\_\_\_\_\_  
  
Noah A. Levine  
*Counsel for TD Bank, N.A.*

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

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

FOR PLAINTIFFS:

Dated: \_\_\_\_\_  
Judith Jimenez  
*Plaintiff*

Dated: \_\_\_\_\_  
Kathy Fogel  
*Plaintiff*

Dated: \_\_\_\_\_  
Stephanie Vil  
*Plaintiff*


Dated: \_\_\_\_\_  
Kenneth J. Grunfeld  
*Class Counsel*

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

FOR DEFENDANT:

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

Dated: \_\_\_\_\_  
Noah A. Levine  
*Counsel for TD Bank, N.A.*

Dated: 3/24/23  
  
Susan M. Leming  
*Counsel for TD Bank, N.A.*

## APPENDIX A

No.	Scenario	Result
1	Basic Payments > Net Cash Settlement Amount	All Claimants receive an equal payment such that the sum of all payments equals the Net Cash Settlement Amount. <i>See</i> ¶ 103(a).
2	Basic Payments = Net Cash Settlement Amount	All Claimants receive a \$125 payment. <i>See</i> ¶ 103(a).
3	Basic Payments < Net Cash Settlement Amount  Basic + Enhanced Payments > Net Cash Settlement Amount	All Basic Claimants receive a \$125 payment. <i>See</i> ¶ 103(a).  All Enhanced Claimants receive an Enhanced Payment reduced to no less than \$125 on a pro rata basis from the value equal to substantiated losses until the total amount of Basic and Enhanced Payments equals the Net Cash Settlement Amount. <i>See</i> ¶¶ 103(b), 103(c).
4	Basic Payments < Net Cash Settlement Amount  Basic + Enhanced Payments = Net Cash Settlement Amount	All Basic Claimants receive a \$125 payment. <i>See</i> ¶ 103(a).  All Enhanced Claimants receive a payment equal to the value of their substantiated losses. <i>See</i> ¶ 103(b).
5	Basic Payments < Net Cash Settlement Amount  Basic + Enhanced Payments < Net Cash Settlement Amount	All Basic Claimants receive a \$125 payment. <i>See</i> ¶ 103(a).  All Enhanced Claimants receive a payment equal to the value of their substantiated losses. <i>See</i> ¶ 103(b).  The remainder of the Net Cash Settlement Amount will be distributed equally to each Claimant who submits a valid and approved Claim (both Basic and Enhanced Claims). <i>See</i> ¶ 103(c).