

CAUSE NO. 109569-CV

CARRIE MEIER, on behalf of herself and all
persons similarly situated,

Plaintiff,

v.

PROSPERITY BANK,

Defendant.

IN THE DISTRICT COURT

BRAZORIA, TEXAS

239TH JUDICIAL DISTRICT

**PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND
FOR CERTIFICATION OF SETTLEMENT CLASS**

Plaintiff, Carrie Meier, respectfully moves for Preliminary Approval of the Settlement Agreement and Releases,¹ attached as **Exhibit A**, which will resolve all claims against Defendant, Prosperity Bank in the Action. Preliminary Approval should be granted because the Settlement provides substantial and immediate relief for the Settlement Classes. Specifically, Defendant has agreed to: (1) pay \$1,600,000.00 into a cash Settlement Fund; and (2) separately pay the Settlement Administration Costs. Additionally, the Defendant has agreed to modify its Account disclosures to better inform its Accountholders regarding the assessment of NSF Fees and OD Fees. These modifications will result in substantial future financial savings. The terms of the Settlement are well within the range of reasonableness and consistent with all applicable law. Consequently, Plaintiff and Class Counsel respectfully request the Court: (1) grant Preliminary Approval; (2) certify the Settlement Class (3) approve the Notice Program and the form and content of the Notices attached to the Agreement as Exhibits 1-2; (4) approve and order the opt-out and objection procedures; (5) appoint Plaintiff as Class Representative; (6) appoint Jeff Ostrow and Jonathan M. Streisfeld of Kopelowitz Ostrow P.A. and Jeffrey D. Kaliel of KalielGold PLLC Group as Class Counsel; (7) stay the Action pending Final Approval; and (8) schedule a Final Approval Hearing.

I. BACKGROUND

A. Procedural History

1. Plaintiff filed her Class Action Petition on September 15, 2020, asserting a claim for breach of contract based upon Prosperity's assessment of APPSN Fees on debit card transactions. On December 17, 2020, Plaintiff filed her First Amended Class Action Petition asserting a claim for breach of contract based upon Defendant's assessment of APPSN Fees on

¹ All capitalized terms used throughout this memorandum have the same meanings as those defined in the Agreement.

debit card transactions as well as Defendant's assessment of Multiple Fees on a single transaction presented more than one time for payment. Defendant filed its Answer to Plaintiff's First Amended Class Action Petition on January 25, 2021.

2. On January 25, 2021, Plaintiff served Defendant with her first set of discovery requests, including document requests and interrogatories, to which Defendant served its responses and objections on March 10, 2021. On April 22, 2021, the Parties filed a Joint Motion for Entry of Confidentiality and Protective Order. Defendant produced approximately 900 pages of documents, and the Parties have conferred regarding the data available to calculate the total amount of fees that are the subject of Plaintiff's claim in the Action.

3. On April 20, 2021, Defendant filed a Motion for Summary Judgment. Plaintiff filed her Opposition on June 22, 2021, and simultaneously filed her Second Amended Class Action Petition to correct a scrivener's error. The summary judgment hearing took place on June 29, 2021. This Court granted summary judgment for Defendant on August 2, 2021. On August 30, 2021, Plaintiff filed a timely notice of appeal.

4. Before any appellate briefing occurred, on September 30, 2021, the Fourteenth Court of Appeals issued an abatement order and referred the parties to mediation. Following informal discussions between the Parties' counsel on the appellate issues and Plaintiff's intent to seek a class settlement at mediation, the Parties scheduled mediation with a well-regarded and experienced class action mediator, Hon. Caroline Baker (Ret.) of Baker Mediation, LLC. Class Counsel prepared a detailed, confidential mediation statement. In preparation for mediation, the Parties' counsel conferred on Defendant's estimation of the total amount of fees that are the subject of Plaintiff's claims in the Action.

5. The Parties participated in a lengthy private mediation session on February 28,

2022, which successfully resulted in the Parties reaching an agreement in principle on the terms of a mediated settlement that would resolve Plaintiff's claims and those of the putative classes.

6. On March 14, 2022, the Parties filed a Joint Motion for Extension of Abatement Period and for Remand with the Court of Appeals to extend the abatement period in the appeal and to remand jurisdiction to this Court to review and approve this Settlement. On March 22, 2022, the Court of Appeals granted that Joint Motion.

7. Between the end of Mediation and July 5, 2022, the Parties negotiated and finalized the terms of the Settlement Agreement.

8. To calculate the Settlement Classes' most probable damages were the case to be tried, and identify the members of the Settlement Classes, Defendant will analyze the transaction data and will work cooperatively with an expert retained by Plaintiff. The expert, Arthur Olsen, is a recognized expert in bank overdraft fee litigation.

B. Class Counsel's Investigation

Class Counsel spent many hours investigating the claims of several potential plaintiffs against Defendant. *See* Joint Declaration of Class Counsel ("Joint Decl."), attached as *Exhibit B*, ¶5. Class Counsel interviewed Plaintiff and gathered documents and information about Defendant's alleged conduct and its impact on Accountholders, essential to Class Counsel's ability to understand Defendant's alleged conduct, the material Account agreement language, and potential remedies. *Id.*

Class Counsel expended significant resources researching and developing the legal claims at issue. *Id.* ¶6. They are familiar with the claims as they have litigated and resolved many similar cases. *Id.* Class Counsel understand the damages at issue, what information is critical in determining class membership, and what data is necessary to calculate each Settlement Class

Member's damages. Class Counsel spent a significant amount of time analyzing data regarding Defendant's OD Fee and NSF Fee revenue to analyze the damages. *Id.* ¶6.

Class Counsel, fully informed of the claims' merits, negotiated the Settlement while zealously advancing the position of Plaintiff and the members of the Settlement Classes and being fully prepared to continue to litigate rather than accept any settlement that was not in the best interest of Plaintiff and the Settlement Classes. *Id.* ¶7.

C. Summary of the Settlement Terms

1. The Settlement Classes

The below Settlement Classes are opt-out classes:

APPSN Fee Class

Those current or former Accountholders of Defendant who were assessed APPSN Fees. The APPSN Fee Class Period means the period from September 15, 2016, through and including September 30, 2022.

Multiple Fee Class

Those current or former Accountholders of Defendant who were assessed Multiple Fees. The Multiple Fee Class Period means from September 15, 2016, through and including September 30, 2022.

Excluded from the Settlement Classes are Defendant, its parents, subsidiaries, affiliates, officers, and directors; all Settlement Class members who make a timely election to be excluded, and all judges assigned to this litigation and their immediate family members.

Agreement ¶42.

2. Relief for the Benefit of The Settlement Class

b. Settlement Fund, Distribution and Allocation of Settlement Class Member Payments

Defendant will pay \$1,600,000.00 into a Settlement Fund, allocated \$992,000.00 (62%) for the APPSN Fee Class and \$608,000.00 (38%) for the Multiple Fee Class. *Id.* ¶70.d. That fund will pay: (a) Settlement Class Member Payments; (b) any Service Award for the Class

Representative; and (c) any attorneys' fees and costs awarded to Class Counsel. Agreement ¶51.a. Other than the obligation to pay the Settlement Administration Costs, the Defendant has no other payment obligations under the Settlement. *Id.* ¶52.

Settlement Class Members do not have to submit claims or take any other affirmative step to receive the Settlement benefits. Instead, no later than 10 days following the Effective Date of the Settlement, Defendant shall transfer to the Settlement Administrator the Net Settlement Fund minus the Settlement Class Member Payments related to Account credits to be made by the Defendant to Settlement Class Members who are current Accountholders. *Id.* ¶53. Within 30 days of the Effective Date, the Defendant will directly deposit funds into Current Accountholders' accounts and the Settlement Administrator will distribute funds by check to Past Accountholders. *Id.* ¶70. The Settlement Administrator shall make reasonable efforts to locate the proper address for any check returned undeliverable and will re-mail a check once to the updated address. *Id.* Settlement Class Members shall have 180 days to negotiate checks. *Id.* Any checks uncashed after 180 days shall be distributed pursuant to the provisions regarding residual funds. *Id.*

All Settlement Class Members entitled to a Settlement Class Member Payment will receive a pro rata distribution from the Net Settlement Fund based on the number of APPSN Fees and/or Multiple Fees the Settlement Class Member paid during the Class Periods applying the stated formulas. *Id.* Because each Settlement Class Member's distribution amount is dependent on his or her specific Account activity and the number of Settlement Class Members, it is not possible to determine the likely recovery of each Settlement Class Member until this calculation is performed.

c. Disposition Of Residual Funds

Within 7 days after the deadline to cash checks sent to Settlement Class Members, any residual funds shall be distributed by check to all Settlement Class Members who either cashed

their checks or received an Account credit, unless the amount of residual funds is so small that it would be economically infeasible or impracticable to perform a secondary distribution. All costs associated with a secondary distribution are considered Settlement Administration Costs and payable by the Defendant. *Id.* ¶71.

If the amount of the residual funds is so small that a second distribution would be economically infeasible or impracticable, then, within 14 days after the deadline to cash checks sent to Settlement Class Members by the Settlement Administrator, Plaintiff shall apply to the Court for a *cy pres* payment to the recipient agreed to by the Parties. *Id.* ¶72. Any remaining amounts resulting from uncashed checks shall be distributed to the *cy pres* recipient approved by the Court. *Id.* Similarly, if there are residual funds remaining 90 days following a secondary distribution, then Plaintiffs shall apply to the Court for a *cy pres* payment to the recipient agreed to by the Parties. *Id.* Any remaining amounts resulting from uncashed checks shall be distributed to the *cy pres* recipient approved by the Court. *Id.*

3. Releases

In exchange for the Settlement benefits, all Settlement Class Members will be deemed to have released Defendant from the Released Claims as of the Effective Date. *Id.* ¶73.

4. The Notice Program

The Settlement Administrator is Epiq Class Action & Claims Solutions, Inc., one of the leading United States administration firms. The Settlement Administrator will oversee the Notice Program, which is designed to provide the best notice practicable and is tailored to take advantage of the information Defendant has available about the Settlement Class. Joint Decl. ¶32. The Notice Program is reasonably calculated to apprise members of the Settlement Classes of: a description of the Settlement's material terms; a date by which members of the Settlement Classes may opt-

out of the Settlement; a date by which Settlement Class Members may object to the Settlement and/or Class Counsel's application for a Service Award or attorneys' fees and costs; the Final Approval Hearing date; and the Settlement Website address where members of the Settlement Classes may access the Agreement, Long Form Notice, and other related documents. Agreement ¶¶60. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice. Joint Decl. ¶33. The Notice Program satisfies all applicable requirements of law, including that of constitutional due process. *Id.*

The Notice Program includes three Notice forms: (1) Email Notice to Current Accountholders who have agreed to receive Account statements by email; (2) Postcard Notice to Current Accountholders who have not agreed to receive Account statements by email, Past Accountholders, or Current Accountholders for whom Email Notice fails using the email address Defendant provides; and (3) detailed Long Form Notice that will be available on the Settlement Website and via U.S. mail upon request. Agreement ¶¶60-67 and Exhibits 1-2 thereto.²

The Long Form Notice will describe the procedures Settlement Class members must follow to opt-out of the Settlement or to object to the Settlement and/or Class Counsel's application for a Service Award or attorneys' fees and costs. Opt-outs must be postmarked no later than the last day of the Opt-Out Period. *Id.* ¶¶61-62. A valid objection must be mailed to the Clerk of the Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator by the last day of the Objection Period and include: (a) the name of the Action; (b) the objector's full name, mailing address, telephone number, and email address (if any); (c) all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel; (d) the number of times the objector has objected to a class action settlement within the five years

² A Spanish language translation of the Long Form Notice will be available, too. Agreement ¶¶67.

preceding the date that the objector mails the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case; (e) 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; (f) 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 years preceding the date of the mailed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years; (g) any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity; (h) the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing; (i) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any); (j) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (k) the objector's signature (an attorney's signature is not sufficient). *Id.* ¶¶62-63.

The Settlement Website will include hyperlinks to the Agreement, Long Form Notice, Preliminary Approval Order, and such other documents as the Parties agree to post or the Court orders posted. *Id.* ¶46. The Settlement Website shall be established following Preliminary Approval and prior to the commencement of the Notice Program. *Id.* ¶60.

The Settlement Administrator will also establish and maintain an automated toll-free

telephone line for Settlement Class members to call with Settlement-related inquiries and to receive automated responses and answer the frequently asked questions of Settlement Class members who call with or otherwise communicate such inquiries. *Id.* ¶59.d. That line can also be used to request the Long Form Notice.

5. Settlement Administration

The Settlement Administrator is one of the leading class action settlement administrators in the United States. Its duties are as follows:

- a. Use the name and address information for Settlement Class members provided by Defendant in connection with the Notice Program approved by the Court, for the purpose of mailing the Postcard Notice and sending the Email Notice and later mailing distribution checks to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for Defendant to make the payment by a credit to the Settlement Class Members' Accounts;
- b. Establish and maintain a post office box for requests for exclusion from the Settlement Class;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain an automated toll-free telephone line for Settlement Class members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class members who call with or otherwise communicate such inquiries;
- e. Respond to any mailed Settlement Class member inquiries;
- f. Process all requests for exclusion from the Settlement Classes;
- g. Provide weekly reports to Class Counsel and Defendant that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;
- h. In advance of the Final Approval Hearing, prepare a declaration or affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly requested exclusion from the Settlement Classes, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;
- i. Distribute Settlement Class Member Payments by check to Past Account Holder Settlement Class Members and Current Account Holder Settlement Class Members who are unable to receive credits;
- j. Provide to Defendant the amount of the Settlement Class Member Payments to Current Account Holders and instruct Defendant to initiate the direct deposit or credit of Settlement Class Member Payments to Current Account Holder Settlement Class Members;

k. Pay invoices, expenses, and costs upon approval by Class Counsel and Defendant, as provided in this Agreement; and

l. Any other Settlement-administration-related function at the instruction of Class Counsel and Defendant, including, but not limited to, verifying that the Settlement Fund has been distributed.

Id. ¶59.

6. Settlement Termination

Defendant has the option to terminate this Agreement if 5% or more of the total Settlement Class Members opt-out. *Id.* ¶79. Defendant shall notify Class Counsel and the Court of its intent to terminate the Agreement within 10 business days after the end of the Opt-Out Period, or the termination option shall be considered waived. *Id.*

7. Service Award for Class Representative

Class Counsel intend to request that this Court grant the Plaintiff \$5,000.00 for serving as Class Representative. *Id.* ¶70. As will be detailed in the Motion for Final Approval, the Plaintiff was integral to bringing this Action and to obtaining the Settlement for the Settlement Class and contributed significantly to its prosecution. Joint Decl. ¶21. The Defendant does not oppose the request for a Service Award. *Id.*

8. Attorneys' Fees and Costs

Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs incurred. Consequently, Class Counsel intend to request that this Court grant attorneys' fees consistent with Texas Civil Practice and Remedies Code §26.003 and Tex. R. Civ. P. 42(h)-(i), plus reimbursement of reasonable costs incurred, to be paid from the Settlement Fund. Agreement ¶70; Joint Decl. ¶20. The Parties negotiated and reached agreement on fees and costs only after agreeing on the Settlement's material terms. *Id.* Both are subject to this Court's approval and will compensate for the time, risk and expense Class Counsel incurred pursuing the Actions. *Id.*

II. ARGUMENT

A. The Settlement Should Be Preliminarily Approved

1. Class Action Settlement Procedure

Consistent with Texas Rule of Civil Procedure 42(e), class action settlements are subject to a two-step approval process. First, the Court makes a preliminary evaluation of the fairness of the settlement. If the Court determines that the settlement appears to be fair, adequate, and reasonable, then it should order that notice be given to the class members of a formal final settlement hearing. At that formal hearing, evidence may be presented in support of and in opposition to the settlement. The federal Manual for Complex Litigation, Second (“MCL 2d”), summarizes the preliminary approval criteria as follows:

If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

MCL 2d § 30.44.

2. The Texas Rule of Civil Procedure 42 Criteria for Granting Preliminary Approval Are All Met

Court approval of class action settlements is guided by “the strong judicial policy favoring the resolution of disputes through settlement.” *Hall v. Pedernales Elec. Co-op., Inc.*, 278 S.W.3d 536, 549 (Tex. App.—Austin 2009, no pet.); Rubenstein, *Newberg on Class Actions* (Fifth) § 13:44 (2014) (“The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding lengthy trials and appeals.”). Texas Rule of Civil Procedure 42 sets forth the prerequisites to class certification. The trial court exercises its discretion to determine whether the substantive and procedural aspects of a class-action settlement

are fair, adequate, and reasonable, and whether the settlement was the product of honest negotiations or of collusion. *See Gen. Motors Corp. v. Bloyed*, 916 S.W.2d 949, 955 (Tex. 1996).

“Because Rule 42 is patterned after Federal Rule of Civil Procedure 23, federal decisions and authorities interpreting current federal class action requirements are instructive.” *Riemer v. State*, 392 S.W.3d 635, 639 (Tex. 2012); *see* Tex. R. Civ. P. 42. Here, although the proposed Settlement is very favorable and merits Final Approval, only at the last step of the approval process, meaning at the final approval or “fairness” hearing rather than at this preliminary approval step, “the trial court is charged with the responsibility of determining that the settlement is fair, adequate, and reasonable,” which falls “within the sound discretion of the trial court.” *Bloyed*, 916 S.W.2d at 955. That determination is guided by consideration of the six factors set forth by the Texas Supreme Court in *Bloyed*. “[A]t the preliminary approval stage, the court is simply determining whether it is ‘likely’ these . . . requirements for settlement approval will be met at the final approval stage.” Newberg on Class Actions §§ 13:14-15 (5th ed.) (June 2019 Update).

Here, this proposed Settlement meets all these criteria.

3. The Settlement Is Reasonable, Fair, and Adequate Given the Strength of the Case and the Risks of Litigation

To guide a court’s decision on whether to finally approve a class settlement, the Texas Supreme Court listed the following factors in *Bloyed*, known as the *Ball* factors, that trial courts should consider: (1) whether the settlement was negotiated at arm’s length or was a product of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings, including the status of discovery; (4) the factual and legal obstacles that could prevent the plaintiffs from prevailing on the merits; (5) the possible range of recovery and the certainty of damages; (6) the respective opinions of the participants, including class counsel, class representatives, and the absent class members. *Bloyed*, 916 S.W.2d at 955 (citing *Ball v. Farm &*

Home Sav. Ass'n, 747 S.W.2d 420, 423-24 (Tex. App.—Fort Worth 1988, writ denied)). Each of these factors strongly weighs in favor of approval.

Regarding *Ball* factor 1, whether the settlement was negotiated at arm's length by experienced counsel, not only was it negotiated at arm's length and not the product of collusion, but it also is the result of an all-day arm's length mediation with the Honorable Caroline Baker (Ret.), a well-respected mediator. Joint Decl. ¶17. Courts have held that there is typically an initial presumption that there is no fraud or collusion in the absence of evidence to the contrary and where a mediator was involved. *In re Chesapeake Energy Corp.*, 567 F. Supp. 3d 754, 778 (S.D. Tex. 2021).

Regarding *Ball* factor 2, the complexity, expense, and likely duration of the case, this is an extremely complex case, not only being a consumer class action, but one involving the intersection of class action law with the laws governing financial institutions as well as contract interpretation law. Joint Decl. ¶27. It is likely it could have lasted years, and possibly even longer with appeals, with one already having been filed because this Court granted summary judgment dismissing the claims for both APPSN Fees and Multiple Fees. *Id.* Should the appeal result in reversal, and the case proceeded to a motion for class certification and trial, considerable time and resources would be expended, and the litigation costs alone would have been hundreds of thousands of dollars. *Id.* This all supports approving the proposed Settlement. *Hall*, 278 S.W.3d at 549-550; *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004) (fact that settlement would avoid risks and burdens of potentially protracted litigation weighs in favor of approval).

Regarding *Ball* factor 3, the stage of proceedings and status of discovery, prior to the mediation in this matter, there was significant written discovery which produced hundreds of pages of documents as well as the exchange of critical account information and data related to damages.

Joint Decl. ¶7. Class Counsel retained Arthur Olsen, a well-respected data expert in bank fee litigation, to cooperatively work with Defendant to analyze the transaction data to determine damages. *Id.* ¶13. This allowed the parties to analyze the damages exposure with high precision, identifying the actual transactions at issue. As such, the decision being reached today is highly informed, both through formal and informal discovery. The Fifth Circuit has regularly affirmed the approval of a settlement agreement even when “very little formal discovery has been conducted,” *Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977); *see also In re Chesapeake Energy Corp.*, 567 F. Supp. 3d at 779 (noting settlement can be approved under this factor even without much formal discovery where other sources of information is available). Here, the case was settled while the appeal of the summary judgment order was pending and after there was sufficient discovery, especially given Class Counsel’s experience litigating dozens of cases challenging the account fees at issue in this Action.

Regarding *Ball* factor 4, the factual and legal obstacles that could prevent the Plaintiff from prevailing on the merits, these include that the Court of Appeals might not reverse the summary judgment order, and even if it does, the Court might not certify one or both of the Settlement Classes and the trier of fact might conclude that the contract language allowed the Defendant to charge the challenged fees in the manner it charged them. Joint Decl. ¶24. The Court already granted summary judgment for Defendant on the contract constructions issues, prompting Plaintiff to appeal that ruling, which appeal was pending when the Parties agreed to the Settlement for which Preliminary Approval is now sought.

Regarding *Ball* factor 5, the possible range of recovery and the certainty of damages, as stated, the Settlement being presented to the Court for Preliminary Approval represents approximately 13% of the Relevant Fees at issue, an excellent result for the Settlement Classes.

Joint Decl. ¶18. Settlements are, of course, reasonable where plaintiffs recover only part of their actual losses. This factor looks at range of possible damages that could be recovered at trial and evaluates the likelihood of success at trial to determine whether the settlement amount is a fair within that range. *Johnson v. Scott*, 113 S.W.3d 366, 373-374 (Tex. App.—Beaumont 2003, writ denied); *ODonnell v. Harris Cty.*, No. H-16-1414, 2019 WL 6219933, at *13 (S.D. Tex. Nov. 21, 2019). “The question is not whether the parties have reached ‘exactly the remedy they would have asked the Court to enter absent the settlement,’ but instead ‘whether the settlement’s terms fall within a reasonable range of recovery, given the likelihood of the plaintiffs’ success on the merits.’” *Id.* (citations omitted); *see also Parker v. Anderson*, 667 F.2d 1204, 1210 n.6 (5th Cir. 1982) (noting fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate, and that a settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery). Here, there is certainly risk that Plaintiff and absent class members would not prevail and a substantial percentage recovery will be achieved by the Settlement.

Finally, regarding *Ball* factor 6, proposed Class Counsel and the Class Representative are in favor of the proposed Settlement, and reaction from Settlement Class members will be known at the time of Final Approval, after Notice has been delivered to the Settlement Class members. (Joint Decl. ¶.) “While the trial court was required to consider the opinions of absent class members, the mere existence of objections is not sufficient to render the agreement unfair, inadequate, or unreasonable. ‘[I]nherent in compromise is a yielding of absolutes and an abandoning of highest hopes.’” *Hall*, 278 S.W.3d at 552 (quoting *Cotton*, 559 F.2d at 1330, which quotes *Milstein v. Werner*, 57 F.R.D. 515, 524–25 (S.D.N.Y. 1972)); *see also Stott v. Capital Fin. Servs., Inc.*, 277 F.R.D. 316, 346 (N.D. Tex. 2011) (“As class counsel tends to be the most familiar

with the intricacies of a class action lawsuit and settlement, ‘the trial court is entitled to rely upon the judgment of experienced counsel for the parties.’”) (citation omitted). Further, Class Counsel, who are among the most experienced in litigating consumer class actions involving alleged improper account fees such as those challenged in this Action, have investigated the factual and legal issues, and are in favor of the Settlement. Joint Decl. ¶6. “The endorsement of class counsel is entitled to deference, especially in light of class counsel’s significant experience in complex civil litigation and their lengthy opportunity to evaluate the merits of the claims.” *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 292 (W.D. Tex. 2007).

B. The Proposed Settlement Classes Should Be Certified

In granting Preliminary Approval of the proposed Settlement, this Court also must determine that the proposed Settlement Classes are appropriate for certification. Manual for Complex Litigation § 21.632 (4th ed. 2004); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). First, certification requires that a class action must meet the four Rule 42(a) requirements: (1) numerosity—the class is so numerous that joinder of all members is impracticable; (2) commonality—there are questions of law or fact common to the class; (3) typicality—the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) adequacy of representation—the representative parties will fairly and adequately protect the interests of the class. *Citizens Ins. Co. of Am. v. Daccach*, 217 S.W.3d 430, 438 (Tex. 2007) (citing Tex.R. Civ. P. 42(a)). A class action must also satisfy at least one Rule 42(b) requirement. Here, the Action satisfies Rule 42(b)(3), which requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” and that class treatment is “superior to other available methods for the fair and efficient adjudication of the controversy.” See *Daccach*, 217 S.W.3d at 438–39 (citing Tex. R. Civ. P. 42(b)(3)).

1. Numerosity Is Satisfied

Rule 42(a)(1) requires “the class is so numerous that joinder is impracticable.” Numerosity is not based on numbers alone. “The test is whether joinder of all members is practicable in view of the size of the class and such factors as judicial economy, the nature of the action, geographical location of class members, and the likelihood that class members would be unable to prosecute individual lawsuits.” *Weatherly v. Deloitte & Touche*, 905 S.W.2d 642, 653 (Tex. App.—Houston [14th Dist.] 1995, writ dismissed w.o.j.). Here, there are thousands of class members with small value claims requiring expert analysis such that they would not be expected to prosecute them. Joint Decl. ¶35. Numerosity is therefore satisfied. See *Hutchins v. Grace Tabernacle United Pentecostal Church*, 804 S.W.2d 598, 601 (Tex.App.—Houston [1st Dist.] 1991, no writ) (holding that 76 potential defendants was a sufficient number to meet the numerosity requirement); *Phillips v. Joint Legis. Com. on Perf. & Expenditure Rev.*, 637 F.2d 1014, 1022 (5th Cir.1981) (certifying class with at least 33 members).

2. Commonality Is Satisfied

Rule 42(a)(2) requires for certification that there are “questions of law or fact common to the class.” The commonality threshold is not high; it requires at least one issue of law or fact that inheres in the complaints of all class members. *United Pac. Res. Group, Inc. v. Hankins*, 111 S.W.3d 69, 74 (Tex. 2003). The common issue must be applicable to the whole class and subject of generalized proof. *Id.* Commonality can be demonstrated when the claims of the class members “depend upon a common contention . . . that is capable of classwide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Further, a common question need not be one that “will be answered on the merits, in favor of the class.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013).

It is not disputed that the Settlement Class members' claims arise from a common nucleus of facts because all Settlement Class members maintained accounts and were assessed APPSN Fees and/or Multiple Fees, and the liability theories underlying the class claims here involve uniform fee practices and uniform contractual terms. Joint Decl. ¶36. Common questions include whether the contracts allow for APPSN Fees and Retry Fees. *Id.* In large part, the meaning of the contract language at issue will resolve the allegations for the Settlement Classes. Commonality is satisfied.

3. The Requirement of Typicality Is Satisfied

Rule 42(a)(3) next requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Rule 42(a)(3)'s typicality standard is met when the class representative's claims rest on the same legal or remedial theory as those of absent class members. “A claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory.” *Sw. Bell Tel. Co. v. Marketing on Hold Inc.*, 308 S.W.3d 909, 920 (Tex. 2010). The representative's injuries do not have to be identical to the injuries of the class, but only “arise from the same event or course of conduct.” *Weatherly*, 905 S.W.2d at 653.

Here, Plaintiff's claims are not only typical of those of the Settlement Class members, but they are essentially identical: Plaintiff was assessed the same APPSN Fees and Multiple Fees and entered into the same uniform agreement as did other Settlement Class members and was assessed those fees by the uniform policies and bank core processing system in the same alleged improper manner. Joint Decl. ¶37. The requisite nexus between Plaintiff's injury and injuries to the members of the Settlement Classes exists here, satisfying typicality. *Sperav. Fleming, Hovenkamp & Grayson, P.C.*, 4 S.W.3d 805, 812 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

4. The Requirement of Adequate Representation Is Satisfied

Finally, Rule 42(a)(4) requires that the Class Counsel and the Class Representative “fairly and adequately protect the interests of the class.” Tex. R. Civ. P. 42(a)(4). “The adequacy of representation requirement consists of two elements: (1) it must appear that the representatives, through their attorneys, will vigorously prosecute the class claims, and (2) there must be an absence of antagonism or conflict between the representative’s interests and those of the class members.” *Graebel/Houston Movers, Inc. v. Chastain*, 26 S.W.3d 24, 32 (Tex. App.—Houston 2000, reh’g overruled). Like typicality, adequacy requires Plaintiff’s interests be aligned with the unnamed Settlement Class members to ensure that the Class Representative has an incentive to pursue and protect the claims of the absent class members. *See Amchem*, 521 U.S. at 626 n.20 (“The adequacy-of-representation requirement ‘tends to merge’ with the commonality and typicality criteria of Rule 23(a), which ‘serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.’”).

“For a conflict of interest to prevent class certification under Rule 42(a)(4), the conflict must be fundamental and go to the heart of the litigation.” *Riemer v. State*, 392 S.W.3d 635, 639 (Tex. 2012). A conflict that is merely speculative or hypothetical will not defeat the adequacy-of-representation requirement. *Employers Cas. Co. v. Texas Ass’n of Sch. Bd. Workers’ Comp. Self-Ins. Fund*, 886 S.W.2d 470, 476 (Tex. App.—Austin 1994, writ dism’d w.o.j.) (claim of conflict must not be speculative).

Here, there are no conflicts. Plaintiff’s interests are not antagonistic to those of the other Settlement Class members; in fact, her interests are aligned because she was charged the same Relevant Fees. Joint Decl. ¶38. Further, she has actively participated in the litigation. *Id.*

Courts also consider the competence of class counsel and whether they have sufficient qualifications and experience to vigorously prosecute the action. *Employers Cas. Co.*, 886 S.W.2d at 475. In addition, counsel’s own representations to the trial court of matters within counsel’s personal knowledge, e.g., regarding the litigation qualifications and trial experience of the lawyers handling the case, can be “sufficient ‘material’ to support the trial court’s determination.” *See Sun Coast Res. v. Cooper*, 967 S.W.2d 525, 539 (Tex. App.—Houston [1st Dist.] 1998, pet. dismissed w.o.j.). Plaintiff’s attorneys are highly experienced in consumer class actions, including the type of bank account fees challenged in this Action, have zealously represented the Settlement Classes, and are highly qualified to represent them. *See* Joint Decl. ¶¶15, 40; Exhibits 1-2.

5. The Proposed Settlement Class also Satisfies Rule 42(b)(3)

In addition to the Rule 42(a) requirements, a plaintiff must also satisfy the Rule 42(b) requirements. Here, Rule 42(b)(3) certification is appropriate because questions of law and fact common to the members of the Settlement Classes predominate over any questions affecting only individual members, and a class action is superior to all other available means for fairly and efficiently adjudicating the controversy.

The Texas Supreme Court summarized the predominance requirement as follows: “Ideally, a judgment in favor of the named plaintiffs should decisively settle the entire controversy, and all that should remain is for other Class members to file proofs of claim.” *Sw. Ref. Co. v. Bernal*, 22 S.W.3d 425, 434 (Tex. 2000). “The test for ‘predominance’ is not whether the common issues outnumber the individual issues; rather, it is whether the common issues will be the object of most of the efforts of the court and litigants.” *Chastain*, 26 S.W.3d at 34. That is exactly true in this case: it is undisputed that the language used in the relevant Account agreement is the same for all Settlement Class members, and thus it would be far more efficient to decide those common issues

via the class action mechanism. The Defendant does not dispute that it charged the Relevant Fees to all Settlement Class Members in the same manner. Rather, Defendant argues that the contract permitted it to assess such fees, making the predominating issues how the contract should be interpreted. That determination as to both the APPSN Fees and the Multiple Fees would likely be dispositive of the case. Consequently, predominance is met. Joint Decl. ¶36.

Rule 42(b)(3) also requires that a certifying court find that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. *See Weatherly*, 905 S.W.2d at 654. The rule sets forth four superiority considerations: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (d) the difficulties likely to be encountered in the management of a class action. This case meets all of these criteria.

Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would create, and there are no other actions of which Plaintiff is aware regarding this matter. Joint Decl. ¶41. Also, it is undisputed that each class member's claim is small, making economically infeasible to pursue the claims individually. *Id.* As the Supreme Court stressed in *Amchem*, 521 U.S. at 617:

The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.

And as Judge Posner has stated, “[t]he realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for \$30.” *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004). Therefore, superiority is met.

C. The Court Should Approve the Proposed Notice Program

Finally, according to Rule 42(c)(2)(A), for any class certified under Rule 42(b)(3), “the court must direct to class members the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort.” The manner of dissemination of the Notice is detailed above, is very comprehensive, and more than satisfies the of best notice practicable, as the Settlement Class members will be receiving direct notice with various assurances to maximize the likelihood of successful delivery.

Rule 42(c)(2)(A) also requires that “[t]he notice must concisely and clearly state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through counsel if the member so desires; (v) that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and (vi) the binding effect of a class judgment on class members under Rule 42 (c)(3).” The proposed Notice Program and Notices clearly satisfy the above criteria, by the Email Notice or Postcard Notice that each Settlement Class member will receive directly and by the more detailed Long Form Notice that will be available on the Settlement Website and by mail on request to the Settlement Administrator. Joint Decl. ¶¶33-34. The Notice identifies the manner in which the Settlement Fund will be allocated and ultimately distributed, including the manner in which any attorneys’ fees awarded to Class Counsel will be calculated. Agreement ¶70(a) and Exhibits 1-2 thereto.

D. Proposed Schedule of Important Future Dates

The next steps in the approval process are for the Parties to provide Notice of the Settlement to the Settlement Classes, allow an opportunity for opt-outs and objections, and to hold a Rule 42 Final Approval Hearing. The Parties propose the following dates, assuming such dates are acceptable to the Court:

Deadline to Complete Notice Program	60 days before Final Approval Hearing
Deadline to file Motion for Final Approval, including Class Counsel’s Application for Attorneys’ Fees and Costs and Request for a Service Award	45 days before Final Approval Hearing
Deadline for Settlement Class Members to Opt-out of the Settlement	30 days before Final Approval Hearing
Deadline for Settlement Class Members to Object to the Settlement	30 days before Final Approval Hearing
Deadline for Responses to Objections by the Parties (if any)	15 days before the Final Approval Hearing
Final Approval Hearing	April 17, 2023, at _ :__ am/pm (or such later date available on the Court’s calendar)

III. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests Preliminary Approval of the Settlement. For the Court’s convenience, attached hereto as *Exhibit C* is a proposed Preliminary Approval Order.

Dated: November 4, 2022

Respectfully submitted,

THE EDWARDS LAW GROUP

The Haehnel Building
1101 E. 11th Street
Austin, TX 78702
Tel. 512-623-7727
Fax. 512-623-7729

By /s/ Jeff Edwards

JEFF EDWARDS

State Bar No. 24014406
jeff@edwards-law.com

MICHAEL SINGLEY

State Bar No. 00794642
mike@edwards-law.com

DAVID JAMES

State Bar No. 24092572
david@edwards-law.com

Jeff Ostrow (*pro hac vice*)

Jonathan M. Streisfeld (*pro hac vice*)

KOPELOWITZ OSTROW P.A.

One West Las Olas Blvd., Suite 500

Fort Lauderdale, Florida 33301

Telephone: 954-525-4100

ostrow@kolawyers.com

streisfeld@kolawyers.com

Jeffrey D. Kaliel (*pro hac vice*)

KALIELGOLD PLLC

1100 15th St. NW 4th Floor

Washington, D.C. 20005

Tel: (202) 350-4783

jkaliel@kalielpllc.com

Counsel for Plaintiff and the Settlement Classes

EXHIBIT A

CAUSE NO. 109569-CV

CARRIE MEIER, on behalf of herself and all persons similarly situated,

Plaintiff,

v.

PROSPERITY BANK,

Defendant.

IN THE DISTRICT COURT

BRAZORIA, TEXAS

239TH JUDICIAL DISTRICT

SETTLEMENT AGREEMENT AND RELEASES

This Settlement Agreement (“Settlement” or “Agreement”),¹ dated as of July 7, 2022, is entered into by Plaintiff Carrie Meier, both individually and on behalf of the Settlement Classes, and Defendant Prosperity Bank. The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

I. Procedural History and Recitals

1. Plaintiff filed her Class Action Petition on September 15, 2020, asserting a claim for breach of contract based upon Prosperity’s assessment of APPSN Fees on debit card transactions. On December 17, 2020, Plaintiff filed her First Amended Class Action Petition asserting a claim for breach of contract based upon Prosperity’s assessment of APPSN Fees on debit card transactions as well as Prosperity’s assessment of Multiple Fees on a single transaction presented more than one time for payment. Prosperity filed its Answer to Plaintiff’s First Amended Class Action Petition on January 25, 2021.

2. On January 25, 2021, Plaintiff served Prosperity with her first set of discovery

¹ All capitalized terms herein have the meanings ascribed to them in Section II below or other places in the Agreement.

requests, including document requests and interrogatories, to which Prosperity served its responses and objections on March 10, 2021. On April 22, 2021, the Parties filed a Joint Motion for Entry of Confidentiality and Protective Order. Prosperity produced approximately 900 pages of documents, and the Parties have conferred regarding the data available to support the calculations of the damages alleged.

3. On April 20, 2021, Prosperity filed a Motion for Summary Judgment. Plaintiff filed her Opposition on June 22, 2021, and simultaneously filed her Second Amended Class Action Petition to correct a scrivener's error. The summary judgment hearing took place on June 29, 2021. This Court granted summary judgment for Prosperity on August 2, 2021. On August 30, 2021, Plaintiff filed a timely notice of appeal.

4. Before any appellate briefing occurred, on September 30, 2021, the Fourteenth Court of Appeals issued an abatement order and referred the parties to mediation. Following informal discussions between the Parties' counsel on the appellate issues and Plaintiff's intent to seek a class settlement at mediation, the Parties scheduled mediation with a well-regarded and experienced class action mediator, Hon. Caroline Baker (Ret.) of Baker Mediation, LLC. Class Counsel prepared a detailed, confidential mediation statement. In preparation for mediation, the Parties' counsel conferred on Prosperity's estimation of the total amount of fees that are the subject of Plaintiff's claims in the Action.

5. The Parties participated in a lengthy private mediation session on February 28, 2022, which successfully resulted in the Parties reaching an agreement in principle on the terms of a mediated settlement that would resolve Plaintiff's claims and those of the putative classes.

6. To calculate the Settlement Classes' most probable damages were the case to be tried, and identify the members of the Settlement Classes, Prosperity will analyze the transaction

data and will work cooperatively with an expert retained by Plaintiff. The expert, Arthur Olsen, is a recognized expert in bank overdraft fee litigation.

7. On March 14, 2022, the Parties filed a Joint Motion for Extension of Abatement Period and for Remand with the Court of Appeals to extend the abatement period in the appeal and to remand jurisdiction to this Court to review and approve this Settlement. On March 22, 2022, the Court of Appeals granted that Joint Motion.

8. The Parties now agree to settle the Action entirely, without any admission of liability, with respect to all Released Claims of the Releasing Parties. Prosperity has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Petition, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Prosperity does not in any way acknowledge, admit to, or concede any of the allegations made in the Petitions, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Petitions. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiff has entered into this Agreement to liquidate and recover on the claims asserted in the Petitions, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiff does not in any way concede the claims alleged in the Petitions lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiff, Prosperity, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the

receipt and sufficiency 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. “Account” means any checking account maintained by Defendant.
2. “Accountholder” means any person or business that has or had any interest, whether legal or equitable, in an Account during the Class Periods.
3. “Action” or means *Carrie Meier v. Prosperity Bank*, Cause No. 109569-CV, pending in the 239th Judicial District for Brazoria County, Texas.¹
4. “APPSN Fees” means fees that Defendant charged and did not refund on ATM transfers or point-of-sale debit card transactions, where there was a sufficient available balance at the time the transaction was authorized, but an insufficient available balance at the time the transaction was presented to Defendant for payment and posted to a APPSN Class Member’s Account.
5. “APPSN Fee Class” means those current or former Accountholders of Defendant who were assessed APPSN Fees.
6. “APPSN Fee Class Period” means the period from September 15, 2016, through and including September 30, 2022.
7. “Complaints” means the Class Action Petition, the First Amended Class Action Petition, and the Second Amended Class Action Petition filed in the Action.

¹ As noted above, the Action was appealed by Plaintiff to the Fourteenth Court of Appeals (Case No. 14-21-00493-CV). By joint motion of the Parties, the appeal was abated and the Action was remanded to the 239th Judicial District for Brazoria County, Texas to effectuate the terms of the mediated settlement agreement in principle.

8. “Class Counsel” means:

KOPELOWITZ OSTROW P.A.
Jeff Ostrow, Esq.
Jonathan M. Streisfeld, Esq.
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale, FL 33301

KALIEL GOLD PLLC
Jeffrey Kaliel, Esq.
1100 15th Street NW, 4th Floor
Washington, DC 20005

9. “Class Periods” means the APPSN Fee Class Period and the Multiple Fee Class Period.

10. “Class Representative” means Carrie Meier.

11. “Court” means the 239th Judicial District Court for Brazoria County, Texas.

12. “Current Accountholder” means a Settlement Class Member who is an Accountholder of Defendant as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

13. “Defendant” means Prosperity Bank.

14. “Defendant’s Counsel” means:

Bracewell LLP
Bryan S. Dumesnil
Nancy McEvily Davis
711 Louisiana, Suite 2300
Houston, Texas 77002

15. “Effective Date” means 5 days after the entry of the Final Approval Order provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) 30 days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order,

then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after entry of a dismissal of the appeal.

16. “Email Notice” means a short form of notice that shall be sent by email to Current Accountholders who agreed to receive Account statements by email substantially in the form attached as *Exhibit 1*.

17. “Final Approval” means the date that the Court enters the Final Approval Order.

18. “Final Approval Hearing” is the hearing held before the Court during which the Court will consider granting Final Approval to the Settlement and further determine the amount of attorneys’ fees and costs awarded to Class Counsel.

19. “Final Approval Order” means the final order that the Court enters granting Final Approval to the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees and costs awarded.

20. “Long Form Notice” means the form of notice that shall be posted on the Settlement Website created by the Settlement Administrator and shall be available to Settlement Class Members by mail on request made to the Settlement Administrator in substantially the form attached as *Exhibit 2*.

21. “Multiple Fee” shall mean NSF Fees and OD Fees that were charged and not refunded for Automated Clearing House debits and check transactions that were re-submitted by a merchant after being returned by Defendant for insufficient funds.

22. “Multiple Fee Class” shall mean those current or former Accountholders of Defendant who were assessed multiple fees.

23. “Multiple Fee Class Period” means the period from September 15, 2016, through September 30, 2022.

24. “Net Settlement Fund” means the Settlement Fund, minus any Court-approved Service Award to the Class Representative and any attorneys’ fees and costs awarded to Class Counsel.

25. “Notice” means the Email Notice, Long Form Notice, and Postcard Notice that the Parties will ask the Court to approve in connection with the motion for Preliminary Approval of the Settlement.

26. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Email Notice, Postcard Notice, and Long Form Notice, which shall be substantially in the forms as the exhibits attached to this Agreement.

27. “NSF Fee” means any non-sufficient funds fee or fees assessed to an Accountholder of an Account for items returned when the Account has insufficient funds.

28. “Objection Period” means the period that begins the day after the earliest date on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing. The deadline for the Objection Period shall be specified in the Notice.

29. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing. The deadline for the Opt-Out Period shall be specified in the Notice.

30. “Overdraft Fee” or “OD Fee” means any fee or fees assessed to an Accountholder for items paid when the Account had insufficient funds.

31. “Party” means each of the Plaintiff and Defendant, and “Parties” means Plaintiff and Defendant collectively.

32. “Past Accountholder” means a Settlement Class Member who is not an Accountholder of Defendant as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

33. “Plaintiff” means Carrie Meier.

34. “Postcard Notice” shall mean the short form of notice that shall be sent by mail to Current Accountholders who have not agreed to receive notices by email, Past Accountholders, or for whom the Settlement Administrator is unable to send Email Notice using the email address provided by Defendant, substantially in the form attached as *Exhibit 1*.

35. “Preliminary Approval” means the date that the Court enters an order preliminarily approving the Settlement, substantially in the form of the exhibit attached to the motion for Preliminary Approval.

36. “Preliminary Approval Order” means the order granting Preliminary Approval of this Settlement.

37. “Releasing Parties” means Plaintiff and all Settlement Class Members, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by entireties, agents, attorneys, and all those who claim through them or on their behalf.

38. “Relevant Fees” means APPSN Fees and/or Multiple Fees.

39. “Service Award” means the payment that Class Counsel requests that the Court award the Plaintiff for serving as the Class Representative.

40. “Settlement Administrator” means Epiq Systems, Inc. Class Counsel and Defendant may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily

or finally. In the absence of agreement, either Class Counsel or Defendant may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.

41. “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding Notice and Settlement administration.

42. “Settlement Class” or “Settlement Classes” means all current and former Accountholders of Defendant with one or more Accounts, who were charged at least one Relevant Fee during the Class Periods. It includes both the APPSN Fee Class and the Multiple Fee Class. Excluded from the Settlement Class or Settlement Classes is Defendant, its parents, subsidiaries, affiliates, officers, and directors; all Settlement Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

43. “Settlement Class Member” means any member of one or both of the Settlement Classes who has not opted-out of the Settlement and who is entitled to the benefits of the Settlement, including a Settlement Class Member Payment.

44. “Settlement Class Member Payment” means the cash distribution that will be made from the Net Settlement Fund to each Settlement Class Member, pursuant to the allocation terms of the Settlement.

45. “Settlement Fund” means the \$1,600,000.00 cash fund Defendant is obligated to pay under the terms of this Settlement.

46. “Settlement Website” means the website that the Settlement Administrator will establish as a means for Settlement Class members to obtain notice of and information about the Settlement, including hyperlinked access to this Agreement, the Long Form Notice, Preliminary Approval Order, and such other documents as the Parties agree to post or that the Court orders

posted on the website. These documents shall remain on the Settlement Website for at least six months after Final Approval.

47. “Value of the Settlement” means the amount of the Settlement Fund, plus the Settlement Administration Costs.

III. Modification of Disclosures

48. Defendant agrees to modify its disclosures to better inform Accountholders and future customers regarding the assessment of NSF and OD Fees.

IV. Calculation of APPSN Fees and Multiple Fees

49. Defendant and Plaintiff shall work cooperatively and in good faith to identify APPSN Fees, and Multiple Fees for the Class Periods. Defendant shall provide information to Plaintiff’s expert sufficient to allow Plaintiff’s expert to confirm the process for identifying members of the Settlement Classes and confirm the calculation of the APPSN Fees for the APPSN Fee Class Period and the Multiple Fees for the Multiple Fee Class Period. Defendant shall provide Class Counsel and the Settlement Administrator with a list of all members of the Settlement Classes and the amount that each was assessed during the APPSN Fee Class Period and the Multiple Fee Class Period.

V. Certification of the Settlement Class

50. Plaintiff shall propose and recommend to the Court that the Settlement Classes be certified for settlement purposes. Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a class action. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a

liability class in the Action.

VI. Settlement Consideration

51. Settlement consideration consists of:

a. The cash Settlement Fund in the amount of \$1,600,000.00. The Settlement Fund shall be used to pay: (1) any Service Award to the Class Representative; (2) any attorneys' fees and costs awarded to Class Counsel; and (3) all Settlement Class Member Payments; and

b. All Settlement Administration Costs.

52. Other than the payments described in this Section VI, Defendant shall not be required to make any other payments as part of this Settlement.

53. Within 10 days following the Effective Date, Defendant shall transfer to the Settlement Administrator the Net Settlement Fund minus the amount of Settlement Class Member Payments related to Account credits to be made by the Defendant to Settlement Class Members who are Current Accountholders.

54. For avoidance of doubt, it is agreed by the Parties that a Settlement Class Member may be in both Settlement Classes and qualify for a Settlement Class Member Payment as a member of each.

VII. Settlement Approval

55. 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 shall be attached to the motion, or otherwise filed with the Court, and shall be in a form agreed to by Class Counsel and Defendant.

56. The motion for Preliminary Approval shall, among other things, request that the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair,

adequate, and reasonable; (2) provisionally certify the Settlement Classes for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth herein for members to exclude themselves from the Settlement Classes or for Settlement Class Members to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Defendant's Counsel, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees and costs.

VIII. Settlement Administrator

57. Although the Defendant is paying the Settlement Administration Costs, the Parties shall jointly oversee the Settlement Administrator.

58. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program and distributing the Net Settlement Fund (minus those Settlement Class Member Payments that are to be directly deposited) as provided herein.

59. The duties of the Settlement Administrator are as follows:

a. Use the name and address information for Settlement Class members provided by Defendant in connection with the Notice Program approved by the Court, for the purpose of distributing the Postcard Notice and Email Notice, and later mailing Settlement Class Member Payments to Past Accountholder Settlement Class Members and to Current Accountholder Settlement Class Members where it is not feasible or reasonable

for Defendant to make the Settlement Class Member Payments by a credit to the Current Settlement Class Members' Accounts;

b. Establish and maintain a post office box for opt-out requests from the Settlement Class;

c. Establish and maintain the Settlement Website;

d. Establish and maintain an automated toll-free telephone line for Settlement Class members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class members who call with or otherwise communicate such inquiries;

e. Respond to any mailed Settlement Class member inquiries;

f. Process all opt-out requests from the Settlement Classes;

g. Provide weekly reports to Class Counsel and Defendant 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. In advance of the Final Approval Hearing, prepare a declaration to submit to the Court confirming that the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly requested to opt-out from the Settlement Classes, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

i. Distribute Settlement Class Member Payments by check to Past Accountholder Settlement Class Members and Current Accountholder Settlement Class Members who are unable to receive credits;

j. Provide to Defendant the amount of the Settlement Class Member Payments to Current Accountholder Settlement Class Members and instruct Defendant to initiate the direct deposit or credit of Settlement Class Member Payments to Current Accountholder Settlement Class Members.

k. Pay invoices, expenses, and costs approved by the Court from the Settlement Fund upon approval by Class Counsel and Defendant, as provided in this Agreement; and

l. Any other Settlement Administration function at the instruction of Class Counsel and Defendant, including, but not limited to, verifying that the Settlement Fund has been distributed.

IX. Notice to Settlement Class Members

60. Beginning no later than 75 days following entry of the Preliminary Approval Order, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class members may opt-out of the Settlement Class; a date by which Settlement Class Members may object to the Settlement and/or to Class Counsel's application for a Service Award or attorneys' fees and costs; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Defendant shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include Defendant's logo or trademarks or the return

address of Defendant, or otherwise be styled to appear to originate from Defendant. Within a reasonable time before initiating the Email Notice and Postcard Notice, the Settlement Administrator shall establish the Settlement Website.

61. The Long Form Notice also shall include a procedure for Settlement Class members to opt-out of the Settlement Class, and the Email Notice and Postcard Notice shall direct Settlement Class members to review the Long Form Notice to obtain the opt-out instructions. A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period by mailing a request for exclusion to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. The opt-out request must state the Settlement Class member's name, the last four digits of the Account number(s), address, telephone number, and email address, and include a statement indicating a request to be excluded from the Settlement Class. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement. If an Account has more than one Accountholder, and if one Accountholder excludes himself, herself, or itself from the Settlement Class, then all Accountholders on that Account shall be deemed to have opted-out of the Settlement with respect to that Account, and no Accountholder shall be entitled to a payment under the Settlement.

62. The Long Form Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for a Service Award or attorneys' fees and costs, and the Email Notice and Postcard Notice shall direct Settlement Class members to review the Long Form Notice to obtain the objection instructions. Objections to the Settlement, and to the application for Service Award or attorneys' fees and costs, must be mailed to the Clerk of the Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the

last day of the Objection Period, as specified in the Notice. If submitted by mail, an objection 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. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

63. 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, mailing address, telephone number, and email address (if any);
 - c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
 - d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
 - e. 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;
 - f. 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 years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law

firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or Defendant may conduct limited discovery on any objector or objector's counsel consistent with the Texas Rules of Civil Procedure.

64. For those Settlement Class members who are Current Accountholders and have agreed to receive Account statements from Defendant electronically, Defendant shall provide the Settlement Administrator with the most recent email addresses it has for these members. The Settlement Administrator shall send the Email Notice to each such member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Settlement Administrator shall send a Postcard Notice in the manner described below. The Email Notice shall inform Settlement Class members how they may request a copy of the Long Form

Notice.

65. For those Settlement Class members who are Current Accountholders of Defendant who have not agreed to receive Account statements from Defendant electronically, or are Past Accountholders, the Postcard Notice shall be mailed to these members by first class United States mail to the best available mailing addresses. Defendant shall provide the Settlement Administrator with last known mailing addresses for these members. Prior to mailing the Postcard Notice, the Settlement Administrator shall run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Postcard Notice is returned with forwarding address information, the Settlement Administrator shall re-mail the Postcard Notice to the forwarding address. For all mailed Postcard Notices that are returned as undeliverable, the Settlement Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Settlement Administrator shall re-mail the Postcard Notice once to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail. The Postcard Notice shall inform Settlement Class members how they may request a copy of the Long Form Notice.

66. The Settlement Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. In addition to weekly updates to the Parties regarding the progress of the Notice Program and the declaration or affidavit by the Settlement Administrator in advance of the Final Approval Hearing and in support of the motion for Final Approval, a summary report of the Notice Program shall be provided to the Parties three days prior to the Final Approval Hearing. The database maintained by the Settlement Administrator regarding the Notices shall be available to Prosperity, Defendant's Counsel, Class Counsel, and the Court upon request. It shall otherwise be confidential

and shall not be disclosed to any third party. To the extent the database is provided to Class Counsel, it shall be kept confidential, not be shared with any third party and used only for purposes of implementing the terms of this Agreement, and not be used for any other purposes.

67. The Email Notice, Postcard Notice, and Long Form Notice shall be in forms approved by the Court, and substantially similar to the notice forms attached hereto as *Exhibits 1 and 2*. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval. A Spanish language translation of the Long Form Notice shall be available on the Settlement Website and be provided to Settlement Class members who request it from the Settlement Administrator.

X. Final Approval Order and Judgment

68. Plaintiff shall file her motion for Final Approval of the Settlement, inclusive of Class Counsel's application for Service Award or attorneys' fees and costs no later than 30 days before the last day of the Opt-Out Period and Objection Period. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' motion for Final Approval of the Settlement, and on Class Counsel's application for Service Award and attorneys' fees and costs. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to Class Counsel's application for Service Award or attorneys' fees and costs, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

69. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and final judgment thereon, and whether to approve Class Counsel's request for Service Award and attorneys' fees and costs. 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 satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released Claims (defined below); bar and enjoin all Releasing Parties from pursuing any Released Claims (defined below) against Released Parties (defined below) at any time, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Defendant and the Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

XI. Calculation and Disbursement of Settlement Class Member Payments.

70. Payments shall be made from the Settlement Fund as follows:
 - a. Class Counsel's Attorneys' Fees and Costs. Class Counsel's reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid by Defendant to Class Counsel from the Settlement Fund by wire transfer to an account designated by Class Counsel immediately upon the Effective Date. Class Counsel shall apply for an award of attorneys' fees of up to 33.33% of the Value of the Settlement, plus reimbursement of reasonable costs, to be approved by the Court. This Settlement is not contingent on approval of a request for attorneys' fees and costs, and if the Court denies the request or grants it in an amount other than what was

requested, the remaining provisions of the Settlement Agreement shall remain in force. This provision was not negotiated until after the material Settlement terms, including the amount of the Settlement Fund and Settlement Class definition, were negotiated.

b. Service Award. Class Counsel shall request a Service Award for the Class Representative not to exceed \$5,000.00. If approved, the Service Award shall be sent by wire transfer to Class Counsel on the Class Representative's behalf immediately upon the Effective Date.

c. Settlement Administrator's Fees and Costs. The Settlement Administrator's fees and costs shall be paid separately by the Defendant. The fees and costs shall be payable thirty (30) days from the date an invoice from the Settlement Administrator is received by Class Counsel and Defendant's Counsel. In the event the Final Approval Order is not entered, or this Agreement is terminated pursuant to the termination provisions herein, Defendant agrees to cover any costs incurred and fees charged by the Settlement Administrator prior to the denial of Final Approval or the termination of this Agreement.

d. Settlement Class Member Payments. The \$1,600,000.00 Settlement Fund is allocated \$992,000.00 (62%) to the APPSN Fee Class and \$608,000.00 (38%) to the Multiple Fee Class. If applicable, Settlement Class Members may receive payments as members of the APPSN Fee Class and the Multiple Fee Class. Based on this allocation, payments from the Net Settlement Fund to the Settlement Class Members shall be calculated as follows:

- i. Settlement Class Members of the APPSN Fee Class shall be paid per incurred APPSN Fee calculated as follows: $(0.62 \text{ of the Net Settlement Fund} / \text{Total APPSN Fees}) \times \text{Total number of APPSN Fees charged to and paid by each APPSN Fee Class member}$.
- ii. Settlement Class Members of the Multiple Fee Class shall be paid per

Multiple Fee calculated as follows: $(0.38 \text{ of the Net Settlement Fund} / \text{Total Multiple Fees}) \times \text{Total number of Multiple Fees charged to and paid by each Multiple Fee Class member}$.

iii. Settlement Class Member Payments shall be made no later than 30 days after the Effective Date, as follows:

a) For those Settlement Class Members who are Current Accountholders at the time of the distribution of the Net Settlement Fund, a credit in the amount of the Settlement Class Member Payment they are entitled to receive shall be applied to any Account they are maintaining individually at the time of the credit. If by the deadline for Defendant to apply credits of Settlement Class Member Payments to Accounts Defendant is unable to complete certain credit(s), Defendant shall deliver the total amount of such unsuccessful Settlement Class Member Payment credits to the Settlement Administrator to be paid by check in accordance with subsection 2 below.

b) For those Settlement Class Members who are Past Accountholders at the time of the distribution of the Net Settlement Fund, they shall be sent a check by the Settlement Administrator at the address used to provide the Notice, or at such other address as designated by the Settlement Class Member. For jointly held Accounts, checks will be payable to all members, and will be mailed to the first member listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any check returned by the Postal Service as undeliverable and will re-mail it once to the updated address or, in the case of a jointly held account, and in the Settlement Administrator's discretion, to an Accountholder other than the one listed first. The Settlement Class Member shall have 180 days to negotiate the check. Any checks uncashed after 180 days shall be distributed pursuant to Section XII.

iv. In no event shall any portion of the Settlement Fund revert to Defendant.

XII. Disposition of Residual Funds

71. Within 7 days after the deadline to cash checks sent to Settlement Class Members, any residual funds shall be distributed by check to all Settlement Class Members who either cashed their checks or received an Account credit, unless the amount of residual funds is so small that it would be economically infeasible or impracticable to perform a secondary distribution. All costs associated with a secondary distribution are considered Settlement Administration Costs and payable by the Defendant.

72. If the amount of residual funds is so small that it would be economically infeasible or impracticable to perform a secondary distribution, then within 14 days after the deadline to cash the checks sent to Settlement Class Members by the Settlement Administrator, Plaintiffs shall apply to the Court for a *cy pres* payment to the recipient agreed to by the Parties. Any remaining amounts resulting from uncashed checks shall be distributed to the *cy pres* recipient approved by the Court. Similarly, if there are residual funds remaining 90 days following a secondary distribution, then Plaintiffs shall apply to the Court for a *cy pres* payment to the recipient agreed to by the Parties. Any remaining amounts resulting from uncashed checks shall be distributed to the *cy pres* recipient approved by the Court.

XIII. Releases

73. As of the Effective Date, Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged Defendant and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers,

resellers, distributors, retailers, predecessors, successors and assigns of each of them (“Released Parties”), 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, based on contract, tort or any other theory, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters during the Class Periods that were or could have been alleged in the Action relating to the assessment of APPSN Fees and Multiple Fees (“Released Claims”).

74. Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against Defendant in any forum, action, or proceeding of any kind.

75. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she/it knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she/it 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 Agreement. Further, each of those individuals agrees and acknowledges that he/she/it shall be bound by this Agreement, including by the release herein 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/she/it never receives actual notice of the Settlement and/or never receives

a distribution of funds or credits from the Settlement.

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

XIV. Termination of Settlement

77. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

- a. The Court has entered the Preliminary Approval Order;
- b. The Court has entered the Final Approval Order, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of approval; and
- c. The Effective Date has occurred.

78. If all of the conditions specified in the preceding paragraph are not met, then this Agreement shall be cancelled and terminated.

79. Defendant shall have the option to terminate this Agreement if 5% or more of the total Settlement Class Members opt-out of the Settlement. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section within 10 business days after the end of the Opt-Out Period, or the option to terminate shall be considered waived.

80. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement, and the parties shall jointly file a status report in the Fourteenth Court of Appeals seeking to reopen the Action. In such event, the terms and provisions of this Agreement shall have

no further force and effect with respect to the Parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

XV. Effect of a Termination

81. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiff's, Class Counsel's, and Defendant's obligations under the Settlement shall cease to be of any force and effect; 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 rights, claims and defenses will be retained and preserved.

82. In the event the Settlement is terminated in accordance with the provisions of this Agreement, 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.

XVI. No Admission of Liability

83. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendant has denied and continues to deny each of the claims and contentions alleged in the Petition. Defendant specifically denies that a class could or should be certified in the Action for litigation purposes. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and

protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

84. Class Counsel 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 fully investigated the facts and law relevant to the merits of the claims, conducted significant formal and informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

85. 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.

86. Neither the Settlement, nor any act performed 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 the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (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.

87. In addition to any other defenses Defendant may have at law, in equity, or

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

XVII. Confidentiality

88. None of the Parties or their counsel shall issue any press release or shall otherwise initiate press coverage of the Settlement, nor shall any Party or Party's counsel post about the Settlement on social media or any website other than the fact that the Settlement was reached and that it was a fair and reasonable result. If contacted, the Party or the Party's counsel may respond generally, either online or in person, by stating that a fair and reasonable settlement was reached to the satisfaction of both Parties.

XVIII. Miscellaneous Provisions

89. 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.

90. Binding Effect. This Agreement shall be binding upon, and inure to for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

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

92. 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.

93. Integration and No Reliance. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

94. 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.

95. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Texas, without regard to the principles thereof regarding choice of law.

96. Counterparts. 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.

97. 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 and the Settlement Administrator. As part of their agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against Defendant or its affiliates at any time, including during any appeal from the Final Approval Order.

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

KOPELOWITZ OSTROW P.A.
Jeff Ostrow, Esq.
Jonathan M. Streisfeld, Esq.
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale, FL 33301
ostrow@kolawyers.com
streisfeld@kolawyers.com
Class Counsel

KALIELGOLD PLLC
Jeffrey Kaliel, Esq.
1100 15th Street NW, 4th Floor
Washington, DC 20005
jkaliel@kalielpllc.com
Class Counsel

BRACEWELL LLP
Bryan S. Dumesnil
Nancy McEvily Davis.
711 Louisiana Street, Ste. 2300
Houston, TX 77002
Bryan.Dumesnil@bracewell.com
nancy.davis@bracewell.com
Counsel for Defendant

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.

99. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendant's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

100. 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.

101. Authority. Class Counsel (for the Plaintiff and the Settlement Class Members), and Defendant's Counsel, 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 Plaintiff and Defendant to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

102. Agreement Mutually Prepared. Neither Defendant nor Plaintiff shall be considered to be 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.

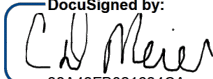
103. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts

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. Both Parties recognize and acknowledge that they reviewed and analyzed data for a subset of the time at issue and that they and their experts used extrapolation to make certain determinations, arguments, and settlement positions. The Parties agree that this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. 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 law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.


104. 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 herein, 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.

Signature Pages to Follow

Dated: 7/10/2022

DocuSigned by:

38A743FB021834CA
CARRIE MEIER
Plaintiff

Dated: 7.5.2022


Jeffrey Ostrow (Jul 5, 2022 13:50 EDT)
JEFF OSTROW, ESQ.
KOPELOWITZ OSTROW P.A.
Class Counsel

Dated: 7/5/22


Jeff Kaliel (Jul 5, 2022 13:57 EDT)
JEFFREY KALIEL, ESQ.
KALIEL GOLD PLLC
Class Counsel

Dated: _____

PROSPERITY BANK

By: _____
ITS _____

Dated: _____

NANCY MCEVILY DAVIS
Counsel for Defendant

Dated: _____

CARRIE MEIER
Plaintiff

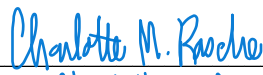
Dated: _____

JEFF OSTROW, ESQ.
KOPELOWITZ OSTROW P.A.
Class Counsel

Dated: _____


JEFFREY KALIEL, ESQ.
KALIEL GOLD PLLC
Class Counsel

Dated: July 7, 2022

PROSPERITY BANK


By: Charlotte M. Rasche
ITS Sr. EVP/General Counsel

Dated: July 7, 2022



NANCY MCEVILLY DAVIS
Counsel for Defendant

Exhibit 1 – Email and Postcard Notice

Carrie Meier v. Prosperity Bank

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH PROSPERITY BANK (“DEFENDANT”) AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES ON DEBIT CARD TRANSACTIONS BETWEEN SEPTEMBER 15, 2016, AND SEPTEMBER 30, 2022, OR CERTAIN NSF FEES AND OVERDRAFT FEES ON AUTOMATIC CLEARING HOUSE (ACH) DEBITS OR CHECKS BETWEEN SEPTEMBER 15, 2016, AND SEPTEMBER 30, 2022, THEN YOU MAY BE ENTITLED TO A PAYMENT OR ACCOUNT CREDIT FROM A CLASS ACTION SETTLEMENT.

Para una notificación en Español, visitar www.XXXXXXXXXXXXXXXXXXXXXX.com.

The District Court for the District of Brazoria, Texas has authorized this Notice; it is not a solicitation from a lawyer.

You may be a member of the Settlement Classes in *Carrie Meier v. Prosperity Bank, District Court of Texas in Brazoria, 239th Judicial District*, in which the Plaintiff alleges that Defendant, improperly assessed certain overdraft fees between September 15, 2016, and September 30, 2022 and/or NSF Fees and overdraft fees between September 15, 2016 and September 30, 2022. Defendant disputes the allegations in the lawsuit and denies any liability or wrongdoing, and Defendant enters into the Settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation. If you are a member of one or both of the Settlement Classes, and if the Settlement is approved, you may be entitled to receive a cash payment or account credit from the \$1,600,000.00 Settlement Fund, which is allocated \$922,000 for the APPSN Fee Class and \$608,000 for the Multiple Fees Class.

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on **[INSERT DATE]**. At that hearing, the Court will consider whether to grant Final Approval of the Settlement, and whether to approve payment from the Settlement Fund for: (1) a Service Award to the Class Representative of up to \$5,000.00; (2) up to 33.33% of the Value of the Settlement for attorneys’ fees; and (3) reimbursement of litigation costs to Class Counsel. If the Court grants Final Approval of the Settlement and you do not request to opt-out from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your Account or a cash payment to you if you are no longer an Account holder.

To obtain a more detailed explanation of the Settlement terms and other important documents, including the Long Form Notice, please visit **[INSERT WEBSITE ADDRESS]. Alternatively, you may call **[INSERT PHONE #]**.**

If you do not want to participate in this settlement—you do not want to receive a credit or cash payment and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than [PARTIES TO INSERT DATE]. If you want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than [PARTIES TO INSERT DATE]. You may learn more about the opt-out and objection procedures by visiting [PARTIES TO PROVIDE WEBSITE ADDRESS] or by calling [Insert Phone #].

Exhibit 2 – Long Form Notice

Carrie Meier v. Prosperity Bank

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH PROSPERITY BANK (“DEFENDANT”) AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES ON DEBIT CARD TRANSACTIONS BETWEEN SEPTEMBER 15, 2016 AND SEPTEMBER 30, 2022, OR CERTAIN NSF FEES AND OVERDRAFT FEES ON AUTOMATIC CLEARING HOUSE (ACH) DEBITS OR CHECKS BETWEEN SEPTEMBER 15, 2016 AND SEPTEMBER 30, 2022, THEN YOU MAY BE ENTITLED TO A PAYMENT OR ACCOUNT CREDIT FROM A CLASS ACTION SETTLEMENT.

Para una notificación en Español, visitar www.XXXXXXXXXXXXXXXXXXXXXX.com.

The District Court for the District of Brazoria has authorized this Notice; it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
DO NOTHING	If you do nothing, you will receive a payment from the Settlement Fund so long as you do not opt-out of the settlement (described in the next box).
OPT-OUT FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS	You can choose to opt-out from the Settlement. This means you choose not to participate in the Settlement. You will keep your individual claims against Defendant, but you will not receive a payment from the Settlement Fund. If you opt-out of the Settlement, but want to recover against Defendant, you will have to file a separate lawsuit.
OBJECT TO THE SETTLEMENT	You can file an objection with the Court explaining why you believe the Court should reject the Settlement. If your objection is overruled by the Court, then you may receive a payment or credit and you will not be able to sue Defendant for the claims asserted in the litigation. If the Court agrees with your objection, then the Settlement may not be approved.

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

BASIC INFORMATION

1. What is the lawsuit about?

The lawsuit being settled is entitled *Carrie Meier v. Prosperity Bank*. The Action is pending in the District Court for the District of Brazoria, 239th Judicial District, Case No. 109569-CV. The case is a “class action.”

That means that the “Class Representative,” Carrie Meier is acting on behalf of current and former Accountholders who were purportedly improperly assessed APPSN Fees between September 15, 2016, and September 30, 2022. Multiple Fees between September 15, 2016, and September 30, 2022. The Class Representative has asserted a claim for breach of contract. Defendant contends that the fees Plaintiff is complaining about were charged properly and in accordance with the terms of its deposit account agreements and applicable law. Defendant therefore denies that its practices give rise to claims for damages by the Plaintiff or any Settlement Class members.

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

You received this Notice because Defendant’s records indicate that you were charged one or more APPSN Fees and/or Multiple Fees that are the subject of the Action. The Court directed that this Notice be sent to all Settlement Class members because each such member has a right to know about the proposed Settlement and the options available to him, her, or it before the Court decides whether to approve the Settlement.

3. Why did the Parties settle?

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

There is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess the fees at issue. There is also uncertainty about whether the Class Representative’s claims are subject to other defenses that might result in no or less recovery to Settlement Class members. Even if the Class Representative was to win at trial, there is no assurance that the Settlement Class members would be awarded more than the current settlement amount, and it may take years of litigation before any payments would be made. By

settling, the Settlement Class Members will avoid these and other risks and the delays associated with continued litigation.

While Defendant disputes the allegations in the lawsuit and denies any liability or wrongdoing, it enters into the Settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation.

WHO IS IN THE SETTLEMENT

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

If you received this notice, then Defendant's records indicate that you are a member of one or both of the Settlement Classes and are entitled to receive a payment/credit to your Account.

YOUR OPTIONS

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

You have three options: (1) do nothing and you will receive a payment/account credit according to the terms of this Settlement; (2) opt-out from the Settlement; or (3) participate in the Settlement, but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

There is no deadline to receive a payment/account credit. If you do nothing, then you will get a payment/credit.

The deadline for sending a letter to opt-out of the Settlement is _____.

The deadline to file an objection with the Court is also _____.

7. How do I decide which option to choose?

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

If you believe the Settlement is unreasonable, unfair, or inadequate and the Court should reject the Settlement, you can object to the Settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the Settlement may not be approved, and no payments will be made to you or any other member of the Settlement Class. If your objection (and any other objection) is

overruled, and the Settlement is approved, then you may still get a payment/credit and will be bound by the Settlement.

If you want to participate in the Settlement, then you don't have to do anything; you will receive a payment/credit if the Settlement is approved by the Court.

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

The Court has to decide that the Settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide Preliminary Approval of the Settlement, which is why you received a Notice. The Court will make a final decision regarding the Settlement at a "Final Approval Hearing," which is currently scheduled for [REDACTED], 2022.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$1,600,000.00, and to separately pay the Settlement Administration Costs.

As discussed separately below, any court-awarded Service Award and attorneys' fees and litigation costs will be paid out of the Settlement Fund. The Net Settlement Fund will be divided among all Settlement Class Members entitled to Settlement Class Member Payments based on formulas described in the Settlement Agreement.

10. How much of the Settlement Fund will be used to pay for attorney fees and costs?

Class Counsel will request the Court to approve payment from the Settlement Fund for attorneys' fees of not more than 33.33% of the Value of the Settlement (as defined in the Settlement Agreement) and reimbursement for litigation costs incurred in prosecuting the Action. The Court will decide the amount of the attorneys' fees and costs after application by Class Counsel which shall be made contemporaneously with the filing of the Motion for Final Approval of the Settlement.

11. How much of the Settlement Fund will be used to pay the Class Representative Service Award?

Class Counsel will request that the Class Representative be paid a Service Award in the amount of up to \$5,000.00 for her work in connection with this Action. The Service Award must be approved by the Court.

12. Who will pay the Settlement Administrator's expenses?

The Settlement Administrator's expenses will be paid separately by the Defendant. None of the fees or costs will be paid from the Settlement Fund; therefore, the payment will not reduce the amount of your payment/credit.

13. How much will my payment/credit?

The balance of the Settlement Fund after the payment of the Service Award, attorneys' fees and costs, also known as the Net Settlement Fund, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments in accordance with the formulas outlined in the Settlement Agreement for the APPSN Fee Class and Multiple Fee Class. Current Accountholders will receive a credit to their Accounts for the amount they are entitled to receive. Past Accountholders shall receive a check from the Settlement Administrator.

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

No. If you received this Notice, then you may be entitled to receive a payment/credit for Relevant Fees without having to make a claim, unless you choose to opt-out of the Settlement.

15. When will I receive my payment/credit?

The Court will hold a Final Approval Hearing on [REDACTED], at [REDACTED] to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments/credits should be issued within 30 days of the Effective Date. However, if someone objects to the Settlement, and the objection is sustained, then there is no Settlement. Even if all objections are overruled and the Court approves the Settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

OPTING-OUT OF THE SETTLEMENT

16. How do I opt-out of the Settlement?

If you do not want to receive a payment/credit, and if you want to keep any right you may have to sue Defendant for the claims alleged in this lawsuit, then you must opt-out of the Settlement.

To opt-out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say "I hereby elect to be excluded from the settlement in the *Carrie Meier v. Prosperity Bank* class action." Be sure to include your name, the last four digits of your former

account number(s) or former **member** number(s), address, telephone number, and email address. Your opt-out request must be postmarked by _____, and sent to:

Carrie Meier v. Prosperity Bank

Attn: _____

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

17. What happens if I opt-out of the Settlement?

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

OBJECTING TO THE SETTLEMENT

18. How do I notify the Court that I do not like the Settlement?

You can object to the Settlement or any part of it that you do not like **IF** you do not opt-out from the Settlement. (Settlement Class members who opt-out from the Settlement have no right to object to how other Settlement Class Members are treated.) To object, you **must** send a written document by mail or private courier (e.g., Federal Express) to the Clerk of Court, Settlement Administrator, Class Counsel, and Defendant's Counsel at the addresses below. Your objection must include the following information:

- a. the name of the Action;
- b. the objector's full name, mailing address telephone number, and email address (if any);
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- d. the number of times the objector has objected to a class action settlement with in the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
- e. 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;
- f. 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 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were

issued by the trial and appellate courts in each listed case in which the objector’s counsel and/or counsel’s law firm have objected to a class action settlement within the preceding five years;

g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity;

h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector’s signature (an attorney’s signature is not sufficient).

All objections must be post-marked no later than _____, and must be mailed to the Clerk of the Court, Settlement Administrator, Class Counsel, and Defendant’s Counsel as follows:

CLERK OF COURT	SETTLEMENT ADMINISTRATOR	CLASS COUNSEL	DEFENDANT’S COUNSEL
<p>Clerk of the District Court for the District of Bazorina</p>	<p><i>Carrie Meier v. Prosperity Bank</i> Settlement Administrator Attn: ADDRESS OF THE SETTLEMENT ADMINISTRATOR</p>	<p>Jeff Ostrow Jonathan M. Streisfeld Kopelowitz Ostrow P.A. 1 West Las Olas Blvd. Suite 500 Fort Lauderdale, Florida 33301</p> <p><i>and</i></p> <p>Jeffrey D. Kaliel Kaliel Gold PLLC 1100 15th Street NW, 4th Floor Washington, DC 20005</p>	<p>Nancy McEvily Davis, Esq. Bracewell LLP 711 Louisiana Street Suite 2300 Houston, TX 77002</p>

19. What is the difference between objecting and requesting to opt-out of the Settlement?

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

20. What happens if I object to the Settlement?

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

THE COURT'S FINAL APPROVAL HEARING

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at [redacted] on [redacted], 2022 at the District Court [redacted] Courthouse for the District Court for Brazoria, Texas, in Courtroom [redacted] (or such other courtroom as the Court designates), which is located at [redacted]. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much of a Service Award to award the Class Representative and Class Counsel for attorneys' fees and litigation costs. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at [www.\[redacted\]](http://www.[redacted]).

22. Do I have to come to the hearing?

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

23. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 18, above, the statement, “I hereby give notice that I intend to appear at the Final Approval Hearing.”

THE LAWYERS REPRESENTING YOU

24. Do I have a lawyer in this case?

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

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

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

26. Who determines what the attorneys’ fees will be?

The Court will be asked to approve the amount of attorneys’ fees at the Final Approval Hearing. Class Counsel will file an application for attorneys’ fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application in the Motion for Final Approval at the website established by the Settlement Administrator.

GETTING MORE INFORMATION

This Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [[WEBSITE](#)].

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

Carrie Meier v. Prosperity Bank
Settlement Administrator
Attn:

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

Jeff Ostrow
Jonathan M. Streisfeld
KOPELOWITZ OSTROW P.A.
One West Las Olas Boulevard
Suite 500

Fort Lauderdale, Florida 33301
954-525-4100
954-525-4300
ostrow@kolawyers.com
streisfeld@kolawyers.com

and

Jeffrey D. Kaniel
KALIEL GOLD PLLC
1100 15th Street NW, 4th Floor
Washington, DC 20005
202-350-4783
jkaniel@kalielpllc.com

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

EXHIBIT B

CARRIE MEIER, on behalf of herself and all
persons similarly situated,

Plaintiff,

v.

PROSPERITY BANK,

Defendant.

IN THE DISTRICT COURT

BRAZORIA, TEXAS

239TH JUDICIAL DISTRICT

**JOINT DECLARATION IN SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

We, Jeff Ostrow and Jeffrey D. Kalief, declare:

1. We are Class Counsel of record for Plaintiff, Carrie Meier, and the proposed Settlement Classes in the above-captioned matter. We submit this Joint Declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. Unless otherwise noted, we have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.¹

2. This Action challenges Defendant's practice of charging Overdraft Fees on APPSN transactions. The Action alleges that Defendant's account documents promised customers that Overdraft Fees would not be assessed when sufficient funds exist to cover debit card transactions where there was a sufficient available balance at the time the transaction was authorized, but an insufficient available balance at the time the transaction was presented to Defendant for payment and posted to an Accountholder's Account.

3. The Action separately alleges that Defendant assessed Multiple Fees on a single

¹The capitalized terms used herein shall have the same meanings as those defined in the Settlement Agreement and Release.

transaction presented more than one time for payment. Plaintiff alleged that Defendant's account documents promised that at most a single fee will be assessed on a single transaction that was returned for insufficient funds and later reprocessed one or more times and returned again or subsequently paid into overdraft.

4. Plaintiff filed her Class Action Petition on September 15, 2020, asserting a claim for breach of contract based upon Defendant's assessment of APPSN Fees on debit card transactions. On December 17, 2020, Plaintiff filed her First Amended Class Action Petition asserting a claim for breach of contract based upon Defendant's assessment of APPSN Fees on debit card transactions as well as Defendant's assessment of Multiple Fees on a single transaction presented more than one time for payment. Defendant filed its Answer to Plaintiff's First Amended Class Action Petition on January 25, 2021.

5. Before filing suit, Class Counsel spent many hours investigating the claims of Plaintiff against Defendant. Class Counsel interviewed Plaintiff to gather information about Defendant's conduct and its impact on consumers, which was essential to their ability to understand the nature of Defendant's conduct, the language of the Account agreement and other documents at issue, and potential remedies.

6. Class Counsel expended significant resources researching and developing the legal claims. They are familiar with the claims as they have litigated and resolved other alleged improper financial institution fee claims with similar factual and legal issues. Class Counsel has experience in understanding the damages at issue, the information critical to determine class membership, and the necessary data to calculate each Settlement Class member's damages.

7. On January 25, 2021, Plaintiff served Defendant with her first set of discovery requests, including document requests and interrogatories, to which Defendant served its responses

and objections on March 10, 2021. On April 22, 2021, the Parties filed a Joint Motion for Entry of Confidentiality and Protective Order. Defendant produced approximately 900 pages of documents, and the Parties have conferred regarding the data available to support the calculations of the damages alleged.

8. On April 20, 2021, Defendant filed a Motion for Summary Judgment. Plaintiff filed her Opposition on June 22, 2021, and simultaneously filed her Second Amended Class Action Petition to correct a scrivener's error. The summary judgment hearing took place on June 29, 2021. This Court granted summary judgment for Defendant on August 2, 2021. On August 30, 2021, Plaintiff filed a timely notice of appeal.

9. Before any appellate briefing occurred, on September 30, 2021, the Fourteenth Court of Appeals issued an abatement order and referred the parties to mediation. Following informal discussions between the Parties' counsel on the appellate issues and Plaintiff's intent to seek a class settlement at mediation, the Parties scheduled mediation with a well-regarded and experienced class action mediator, Hon. Caroline Baker (Ret.) of Baker Mediation, LLC. Class Counsel prepared a detailed, confidential mediation statement. In preparation for mediation, the Parties' counsel conferred on Defendant's estimation of the total amount of fees that are the subject of Plaintiff's claims in the Action.

10. The Parties participated in a lengthy private mediation session on February 28, 2022, which successfully resulted in the Parties reaching an agreement in principle on the terms of a mediated settlement that would resolve Plaintiff's claims and those of the putative classes.

11. On March 14, 2022, the Parties filed a Joint Motion for Extension of Abatement Period and for Remand with the Court of Appeals to extend the abatement period in the appeal and to remand jurisdiction to this Court to review and approve this Settlement. On March 22, 2022,

the Court of Appeals granted that Joint Motion.

12. Between the end of Mediation and July 5, 2022, the Parties negotiated and finalized the terms of the Settlement Agreement.

13. To calculate the Settlement Classes' most probable damages were the case to be tried, and identify the members of the Settlement Classes, Defendant will analyze the transaction data and will work cooperatively with an expert retained by Plaintiff. The expert, Arthur Olsen, is a well-respected data expert in bank fee litigation.

14. Class Counsel has experience in understanding the damages at issue, the information critical to determine class membership, and the necessary data to calculate each Settlement Class member's damages.

15. Class Counsel mediated while fully informed of the merits of Settlement Class members' claims and negotiated the proposed Settlement while zealously advancing the position of Plaintiff and Settlement Class members and being fully prepared to continue to litigate rather than accept a settlement that was not in the best interest of Plaintiff and the Settlement Classes. Further analysis of data relevant to damages was shared following mediation and before executing the Agreement to satisfy the Parties that they should proceed with the Settlement.

16. In summary, prior to negotiating the Settlement, Class Counsel spent significant time conferring with Plaintiff, investigating facts, researching the law, preparing a well-pleaded complaint, opposing a Motion for Summary Judgment, engaging in discovery, working with an expert witness, and reviewing important documents and data. Class counsel also initiated the appeal following the order granting summary judgment, evaluating the prospects of the appeal.

17. The Settlement was the result of an arms-length mediation presided over by the Honorable Caroline Baker (Ret.), a well-respected mediator, between capable and experienced

class action counsel on both sides. The Parties did not discuss attorneys' fees and costs or Service Award until they agreed on the material terms of the Settlement, the Notice Program, and the scope of the Released Claims.

25. The Value of the Settlement is the \$1,600,000.00 Settlement Fund plus the Settlement Administration Costs estimated to be \$115,000.00 (paid separately by the Defendant). The Settlement Fund will be allocated \$992,000.00 (62%) for the APPSN Fee Class and \$608,000.00 (38%) for the Multiple Fee Class. Defendant has also agreed to modify its account disclosures to better inform Accountholders and future customers of its fee practices. This practice change will result in substantial savings for existing Accountholder and future customers.

18. The Settlement Fund represents approximately 13% of the most likely recoverable damages.

19. According to Defendant's records, there are thousands of Settlement Class members.

20. Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs. They are entitled to request, and Defendant will not oppose, attorneys' fees of up to 33.33% of the Value of the Settlement, as well as reimbursement of litigation costs incurred in connection with the Action. Such award is subject to this Court's approval pursuant to with Texas Civil Practice and Remedies Code §26.003 and Tex. R. Civ. P. 42(h)-(i), and will serve to compensate for the time, risk and expense Class Counsel incurred pursuing claims for the Settlement Class.

21. Class Counsel will seek a \$5,000.00 Service Award for Plaintiff as Class Representative. Subject to the Court's approval, that award will separately compensate the Class Representative for her time and effort and for the risks she assumed in prosecuting the Action.

Specifically, Plaintiff provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including (1) submitting to interviews with Class Counsel and approving the Complaint and Amended Complaint; (2) locating and forwarding documents and information to Class Counsel both informally and in response to requests for production; (3) participating in conferences with Class Counsel; and (4) reviewing the settlement documentation. Defendant does not oppose the request for a Service Award.

22. Class Counsel believe that the above benefits fairly and adequately compensate Settlement Class Members for the harm they suffered, and considering the risks of litigation, represents an excellent result for the Settlement Classes.

23. There are no grounds to doubt the Agreement's fairness.

24. Plaintiff and Class Counsel are confident in the strength of their case but are also pragmatic in their awareness of their weaknesses, including that the case was lost on a Motion for Summary Judgement and the chances of winning an appeal are less than 50%. Furthermore, even if the appeal were to be won, Plaintiff and Class Counsel are well aware of the various defenses available to Defendant, both on the merits and as to certification of litigation classes, and the risks inherent to litigation of this magnitude. Plaintiff and the Settlement Classes would have faced significant legal risks in this case, including the current appeal that if not won would end the Action. Even winning the appeal would not guaranty success because Plaintiff will still need to prevail at the class certification and trial stages, each of which could prompt additional appeals. Though plaintiffs around the country have frequently survived motions to dismiss under the two theories of liability being pursued in this Action (and therefore Plaintiff believes it would have been successful on appeal), to date Class Counsel, who regularly litigate these cases around the country, are unaware of any case that has proceeded to trial. Therefore, despite pretrial success in

showing that contracts similar to those at issue in this case could reasonably be construed in favor of the accountholders, genuine risks exist that Plaintiff might not prevail at class certification or would lose at trial or on appeal.

25. Given these risks, a settlement that provides members of the Settlement Class with approximately 13% of the most likely recoverable damages falls within the range of possible approval.

26. Considering the costs and risks of continued litigation, Class Counsel believes the Agreement to be in the Settlement Class members' best interests. Plaintiff's best-case scenario would be full reimbursement of all APPSN Fees and Multiple Fees. However, Defendant disputes that any of those fees were improperly assessed and asserts that said fees were permitted under the relevant account documents, and Defendant won its summary judgment motion on that issue that has been appealed. Given that cases pursuing both legal theories have yet to be successfully tried to judgment, the amount of the Net Settlement Fund to be distributed pro rata to Settlement Class Members is a significant recovery. The added benefit of the account disclosure changes add to the overall fairness of the Settlement.

27. The claims and defenses in this action are complex, as is clear by the record and Class Counsel's efforts in other account fee cases that have been hard fought for years. Not only is this a consumer class action, but it is one involving the intersection of class action law with the laws governing financial institutions as well as contract interpretation law. There is no doubt that continued litigation here would be difficult, expensive, and time consuming. The risks and obstacles in this case are just as great as those in other bank fee cases. This case would likely take many more years as well litigating in this Court and the appellate courts to successfully prosecute. One appeal has already been filed because this Court granted summary judgment dismissing the

claims for both APPSN Fees and Multiple Fees. Should the appeal result in reversal, and the case proceeded to a motion for class certification and trial, considerable time and resources would be expended, and the litigation costs alone would have been hundreds of thousands of dollars.

28. The proposed Settlement is the best vehicle for the Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

29. The Value of the Settlement obtained here is fair and reasonable in light of Defendant's defenses and the challenging and unpredictable path of litigation Plaintiff would have faced absent a settlement.

30. As stated previously, Class Counsel has significant experience in the litigation, certification, trial, and settlement of national class actions, including numerous claims against banks and credit unions, through their active roles similar class actions throughout the country, many of which have settled and received final approval. *See* Class Counsel resumes, attached hereto as *Exhibits 1-2*.

31. Class Counsel has, collectively, decades of experience in class action litigation and has successfully handled national, regional, and statewide class actions in both state and federal courts. Class Counsel has successfully litigated and resolved many other consumer class actions including dozens against financial institutions related to improper fee assessments, recovering hundreds of millions of dollars for those classes. The experience, resources and knowledge Class Counsel brings to this Action is extensive and formidable.

32. The Parties recommend Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator, one of the leading notice administration firms in the United States. The Settlement Administrator will oversee the Notice Program, which is designed to provide the best notice practicable and is tailored to take advantage of the information Defendant has available

about the Settlement Class.

33. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice, satisfying all applicable requirements of law and constitutional due process.

34. The Notice Program will properly inform members of the Settlement Classes of the substantive terms of the Settlement. It will advise members of the Settlement Class of their options for opting-out of or objecting to the Settlement, and how to obtain additional information about the Settlement. The Notice Program is designed to reach a high percentage of the Settlement Classes and exceeds the requirements of constitutional due process.

35. The numerosity requirement is satisfied because the Settlement Classes consist of thousands of Accountholders. Each Settlement Class is sufficiently numerous such that joinder of all such persons is impracticable.

36. The Settlement Class members' claims arise from a common nucleus of facts because all Settlement Class members maintained accounts and were assessed APPSN Fees and/or Multiple Fees. Common legal issues also unite the members of the Settlement Classes. They include (1) the elements of Plaintiff's claims and Defendant's defenses, (2) whether Defendant breached its contracts with Plaintiff and Settlement Class members when it assessed APPSN Fees and/or Multiple Fees, (3) whether Plaintiff and the Settlement Class members have sustained damages as a result of Defendant's business practices, and (4) the measure of damages or restitution owed to Plaintiff and Settlement Class members. There are no issues of law that affect only individual Settlement Class members. Thus, commonality and predominance are met.

37. Typicality is also met here. Here, Plaintiff's claims are based on the same facts and underlying legal theories as those of the APPSN Fee Class and Multiple Fee Class. Plaintiff's individual claims are typical of both Settlement Classes. Like other Settlement Class members,

she was charged APPSN Fees and/or Multiple Fees pursuant to the same policies Defendant applied. Plaintiff entered into the same uniform agreement as did other Settlement Class members and was assessed those fees by the uniform policies and bank core processing system in the same alleged improper manner.

38. Plaintiff does not have any claims antagonistic to or in conflict with those of other members of the Settlement Classes. As discussed above, she is pursuing the same legal theories as the rest of the Settlement Class members relating to the same course of Defendant's conduct. Plaintiff and other Settlement Class members' claims turn on the same claims alleged in the Complaint, that Defendant improperly assesses and collects Relevant Fees. In addition, Plaintiff seeks remedies equally applicable and beneficial to herself and all other members of the Settlement Classes. She has actively participated in the litigation.

39. There is no inter-class conflict between the APPSN Fee Class and Multiple Fee Class. Plaintiff represents the interests of both Settlement Classes. The claims for each Settlement Class do not materially differ in their strength and, thus, the settlement value of each claim was essentially the same. Plaintiff and proposed Class Counsel were incentivized to maximize the recovery for both Settlement Classes. Further, the equal strength of the claims also means that the interests of the APPSN Fee Class members and the Multiple Fees Class members do not diverge as to the distribution of the allocated Settlement Fund.

40. Further, Plaintiff is represented by qualified and competent counsel who have extensive experience and expertise prosecuting complex litigation and consumer class actions, including consumer actions similar to the instant bank account fee case, and have been appointed class counsel in prior and similar cases, and have the resources necessary to prosecute this Action to its conclusion. They have recovered hundreds of millions of dollars for classes they represented

in similar cases. Class Counsel are qualified to represent the Settlement Classes and will, along with Plaintiff, vigorously protect the interests of the APPSN Fee Class and the Multiple Fees Class.

41. Finally, a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would create, and there are no other actions of which Plaintiff is aware regarding this matter. Also, it is undisputed that each class member's claim is small, making economically infeasible to pursue the claims individually.

My name is Jeff Ostrow, my date of birth is February 4, 1972, and my address is One West Las Olas Blvd., 5th Floor, Fort Lauderdale, Florida 33301. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Broward County, State of Florida, on this 4th day of November, 2022.

/s Jeff Ostrow
JEFF OSTROW

My name is Jeffrey Douglas Kaliel, my date of birth is March 10, 1978, and my address is 1100 15th St NW, Washington, DC 20005. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C., on this 4th day of November, 2022.

/s Jeffrey D. Kaliel
JEFFREY D. KALIEL

EXHIBIT 1



FIRM RESUME

One West Las Olas Boulevard, Suite 500
Fort Lauderdale, Florida 33301

Telephone: 954.525.4100

Facsimile: 954.525.4300

Website: www.kolawyers.com

Miami – Fort Lauderdale – Boca Raton

OUR FIRM

For over two decades, Kopelowitz Ostrow Ferguson Weiselberg Gilbert (KO) has provided comprehensive, results-oriented legal representation to individual, business, and government clients throughout Florida and the rest of the country. KO has the experience and capacity to represent its clients effectively and has the legal resources to address almost any legal need. The firm's 26 attorneys have practiced at several of the nation's largest and most prestigious firms and are skilled in almost all phases of law, including consumer class actions, multidistrict litigation involving mass tort actions, complex commercial litigation, and corporate transactions. In the class action arena, the firm has experience not only representing individual aggrieved consumers, but also defending large institutional clients, including multiple Fortune 100 companies.

WHO WE ARE

The firm has a roster of accomplished attorneys. Clients have an opportunity to work with some of the finest lawyers in Florida and the United States, each one committed to upholding KO's principles of professionalism, integrity, and personal service. Among our roster, you'll find attorneys whose accomplishments include: being listed among the "Legal Elite Attorneys" and as "Florida Super Lawyers"; achieving an AV® Preeminent™ rating by the Martindale-Hubbell peer review process; being Board Certified in their specialty; serving as in-house counsel for major corporations, as a city attorney handling government affairs, as a public defender, and as a prosecutor; achieving multi-millions of dollars through verdicts and settlements in trials, arbitrations, and alternative dispute resolution procedures; successfully winning appeals at every level in Florida state and federal courts; and serving government in various elected and appointed positions.

KO has the experience and resources necessary to represent large putative classes. The firm's attorneys are not simply litigators, but rather, experienced trial attorneys with the support staff and resources needed to coordinate complex cases.

CLASS ACTION PLAINTIFF

Since its founding, KO has initiated and served as co-lead counsel and liaison counsel in many high-profile class actions. Currently, the firm serves as well as co-lead counsel in a multidistrict class products liability action in the Southern District of Florida, *In re Zantac (Ranitidine) Prods. Liab. Litig.*, MDL 2924, and liaison counsel in a multidistrict class action antitrust case against four of the largest contact lens manufacturers in the Middle District of Florida, *In Re: Disposable Contact Lens Antitrust Litigation*, MDL 2626.

Further, the firm has served or is currently serving as lead or co-lead counsel in dozens of certified and/or proposed class actions against national and regional banks involving the unlawful re-sequencing of debit and ATM transactions resulting in manufactured overdraft fees, and other legal theories pertaining to overdraft fees and insufficient funds (NSF) fees. The cases are pending, or were pending, in various federal and state jurisdictions throughout the country, including some in multidistrict litigation pending in the Southern District of Florida and others in federal and state courts dispersed throughout the country. KO's substantial knowledge and experience litigating overdraft class actions and analyzing overdraft damage data has enabled the firm to obtain about a dozen multi-million dollar settlements (in excess of \$500 million) for the classes KO represents.

Additionally, other current cases are being litigated against automobile insurers for failing to pay benefits owed to insureds with total loss vehicle claims; data breaches; false advertising; defective consumer products and vehicles; antitrust violations; illegal online gambling applications; and suits on behalf of students against colleges and universities arising out of the COVID-19 pandemic.

The firm has in the past litigated certified and proposed class actions against Blue Cross Blue Shield and United Healthcare related to their improper reimbursements of health insurance benefits. Other insurance cases include auto insurers failing to pay benefits owed to insureds with total loss vehicle claims. Other class action cases include cases against Microsoft Corporation related to its Xbox 360 gaming platform, ten of the largest oil companies in the world in connection with the destructive propensities of ethanol and its impact on boats, Nationwide Insurance for improper mortgage fee assessments, and several of the nation's largest retailers for deceptive advertising and marketing at their retail outlets and factory stores.

CLASS ACTION DEFENSE

The firm also brings experience in successfully defended many class actions on behalf of banking institutions, mortgage providers and servicers, an aircraft maker and U.S. Dept. of Defense contractor, a manufacturer of breast implants, and a national fitness chain.

MASS TORT LITIGATION

The firm also has extensive experience in mass tort litigation, including the handling of cases against Bausch & Lomb in connection with its Renu with MoistureLoc product, Wyeth Pharmaceuticals related to Prempro, Bayer Corporation related to its birth control pill YAZ, Howmedica Osteonics Corporation related to the Stryker Rejuvenate and AGB II hip implants, 3M Corporation related to the Combat Arms Earplugs, and the manufacturers of Zantac/Ranitidine. In connection with the foregoing, some of which has been litigated within the multidistrict arena, the firm has obtained millions in recoveries for its clients.

OTHER AREAS OF PRACTICE

In addition to class action and mass tort litigation, the firm has extensive experience in the following practice areas: commercial and general civil litigation, corporate transactions, health law, insurance law, labor and employment law, marital and family law, real estate litigation and transaction, government affairs, receivership, construction law, appellate practice, estate planning, wealth preservation, healthcare provider reimbursement and contractual disputes, white collar and criminal defense, employment contracts, environmental, and alternative dispute resolution.

FIND US ONLINE

To learn more about KO, or any of the firm's other attorneys, please visit www.kolawyers.com.

CLASS ACTION AND MASS TORT SETTLEMENTS

FINANCIAL INSTITUTIONS

Wallace v. Wells Fargo, 17CV317775 (Sup. Ct. Santa Clara 2021) - \$10 million

Doxex v. Community Bank, N.A., 8:19-CV-919 (N.D.N.Y. 2021) - \$3 million

Coleman v. Alaska USA Federal Credit Union, 3:19-cv-0229-HRH (Dist. of Alaska 2021) - \$1 million

Perri v. Notre Dame Federal Credit Union, 71C01-1909-PL-000332 (Cir. Ct. St. Joseph 2021) - \$800,000

Smith v. Fifth Third Bank, 1:18-cv-00464-DRC-SKB (W.D. Ohio 2021) - \$5.2 million

Lambert v. Navy Federal Credit Union, 1:19-cv-00103-LO-MSN (S.D. Va. 2021) - \$16 million

Roberts v. Capital One, N.A., 16 Civ. 4841 (LGS) (S.D.N.Y. 2021) - \$17 million

Baptiste v. GTE Financial, 20-CA-002728 (Cir. Ct. Hillsborough 2021) - \$975,000

Morris v. Provident Credit Union, CGC-19-581616 (Sup. Ct. San Francisco 2020) - \$1.1 million

Lloyd v. Navy Federal Credit Union, 17-cv-01280-BAS-RBB (S.D. Ca. 2019) - \$24.5 million

Farrell v. Bank of America, N.A., 3:16-cv-00492-L-WVG (S.D. Ca. 2018) - \$66.6 million

Bodnar v. Bank of America, N.A., 5:14-cv-03224-EGS (E.D. Pa. 2015) - \$27.5 million

Morton v. Green Bank, 11-135-IV (20th Judicial District Tenn. 2018) - \$1.5 million

Hawkins v. First Tenn. Bank, CT-004085-11 (13th Jud. Dist. Tenn. 2017) - \$16.75 million

Payne v. Old National Bank, 82C01-1012 (Cir. Ct. Vanderburgh 2016) - \$4.75 million

Swift v. Bancorpsouth, 1:10-CV-00090 (N.D. Fla. 2016) - \$24.0 million

Mello v. Susquehanna Bank, 1:09-MD-02046 (S.D. Fla. 2014) - \$3.68 million

Johnson v. Community Bank, 3:11-CV-01405 (M.D. Pa. 2013) - \$1.5 million

McKinley v. Great Western Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$2.2 million

Blabut v. Harris Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$9.4 million

Wolfgeher Commerce Bank, 1:09-MD-02036 (S.D. Fla. 2013) - \$18.3 million

Case v. Bank of Oklahoma, 09-MD-02036 (S.D. Fla. 2012) - \$19.0 million Settlement

Hawthorne v. Umpqua Bank, 3:11-CV-06700 (N.D. Cal. 2012) - \$2.9 million Settlement

Simpson v. Citizens Bank, 2:12-CV-10267 (E.D. Mich. 2012) - \$2.0 million

Harris v. Associated Bank, 1:09-MD-02036 (S.D. Fla. 2012) - \$13.0 million

LaCour v. Whitney Bank, 8:11-CV-1896 (M.D. Fla. 2012) - \$6.8 million

Orallo v. Bank of the West, 1:09-MD-202036 (S.D. Fla. 2012) - \$18.0 million

Taulava v. Bank of Hawaii, 11-1-0337-02 (1st Cir. Hawaii 2011) - \$9.0 million

**FALSE
PRICING**

Gattinella v. Michael Kors (USA), 14-Civ-5731 (WHP) (S.D. NY 2015) - \$4.875 million

Stathakos v. Columbia Sportswear, 4:15-cv-04543-YGR (N.D. Ca. 2018) - Injunctive relief prohibiting deceptive pricing practices

**CONSUMER
PROTECTION**

Ostendorf v. Grange Indemnity Ins. Co., 2:19-cv-01147-ALM-KAJ (E.D. Ohio 2020) – \$12.6 million

Walters v. Target Corp., 3:16-cv-1678-L-MDD (S.D. Cal. 2020) – \$8.2 million

Papa v. Grieco Ford Fort Lauderdale, LLC, 18-cv-21897-JEM (S.D. Fla. 2019) - \$4.9 million

Bloom v. Jenny Craig, Inc., 18-cv-21820-KMM (S.D. Fla. 2019) - \$3 million

DiPuglia v. US Coachways, Inc., 1:17-cv-23006-MGC (S.D. Fla. 2018) - \$2.6 million

Masson v. Tallahassee Dodge Chrysler Jeep, LLC, 1:17-cv-22967-FAM (S.D. Fla. 2018) - \$850,000

**MASS
TORT**

In re Zantac (Ranitidine) Prods. Liab. Litig., 9:20-md-02924-RLR (S.D. Fla.) - MDL No. 2924 – Co-Lead Counsel

In re Disposable Contact Lens Antitrust Litig., MDL 2626 (M.D. Fla.) - Liaison Counsel

In re: Stryker Rejuvenate and ABG II PRODUCTS LIABILITY LITIGATION, 13-MD-2411 (17th Jud. Cir. Fla. Complex Litigation Division)

In re: National Prescription Opiate Litigation, 1:17-md-02804-DAP (N.D. Ohio) - MDL 2804

In re: Smith and Nephew BHR Hip Implant Products Liability Litigation, MDL-17-md-2775

Yasmin and YAZ Marketing, Sales Practices and Products Liability Litigation, 3:09-md-02100-DRH-PMF (S.D. Ill.) – MDL 2100

In re: Prempro Products Liability Litigation, MDL Docket No. 1507, No. 03-cv-1507 (E.D. Ark.)



JEFF OSTROW

Managing Partner

Bar Admissions

The Florida Bar

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the Eleventh Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Eastern District of Michigan

U.S. District Court, Western District of Tennessee

U.S. District Court, Western District of Wisconsin

Education

Nova Southeastern University, J.D. - 1997

University of Florida, B.S. – 1994

Email: Ostrow@kolawyers.com

Jeff Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice immediately upon graduation from law school in 1997, co-founded the current firm in 2001, and has since grown it to nearly 50 attorneys in 3 offices throughout South Florida. In addition to overseeing the firm's day-to-day operations and strategic direction, Mr. Ostrow practices full time in the areas of consumer class actions, sports and business law. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics.

Mr. Ostrow is an accomplished trial attorney who represents both Plaintiffs and Defendants, successfully trying many cases to verdict involving multi-million dollar damage claims in state and federal courts. Currently, he serves as lead counsel in nationwide and statewide class action lawsuits against many of the world's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$500,000,000 for tens of millions of bank customers, as well as monumental changes in the way banks assess fees. In addition, Mr. Ostrow has litigated consumer class actions against some of the world's largest clothing retailers, health insurance carriers, technology companies, and oil conglomerates, along with serving as class action defense counsel for some of the largest advertising and marketing agencies in the world, banking institutions, real estate developers, and mortgage companies.

Mr. Ostrow often serves as outside General Counsel to companies, advising them in connection with their legal and regulatory needs. He has represented many Fortune 500® Companies in connection with their Florida litigation. He has handled cases covered by media outlets throughout the country and has been quoted many times on various legal topics in almost every major news publication, including the Wall Street Journal, New York Times, Washington Post, Miami Herald, and Sun-Sentinel. He has also appeared on CNN, ABC, NBC, CBS, FoxNews, ESPN, and almost every other major national and international television network in connection with his cases, which often involve industry changing litigation or athletes in Olympic Swimming, the NFL, NBA and MLB.

In addition to the law practice, he is the President of ProPlayer Sports LLC, a full-service sports agency and marketing firm. He represents both Olympic swimmers and select NFL athletes and is licensed by both the NFL Players Association and the NBA Players Association as a certified Contract Advisor. Mr. Ostrow handles all player-team negotiations of contracts, represents his clients in legal proceedings, negotiates all marketing engagements, and oversees public relations and crisis management. He has extensive experience in negotiating, mediating and arbitrating a wide-range of issues on behalf of clients with the NFL Players Association, the International Olympic Committee, the United States Olympic Committee, USA Swimming and the United States Anti-Doping Agency.

He is the founder and President of Class Action Lawyers of American, a member of the Public Justice Foundation, and a lifetime member of the Million Dollar Advocates Forum. The Million Dollar Advocates Forum is the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have won multi-million dollar verdicts. Additionally, he has been named as one of the top lawyers in Florida by Super Lawyers® for several years running, honored as one of Florida's Legal Elite Attorneys, recognized as a Leader in Law by the Lifestyle Media Group®, and nominated by the South Florida Business Journal® as a finalist for its Key Partners Award. Mr. Ostrow is a recipient of the Gator 100 award for the fastest growing University of Florida alumni-owned law firm in the world.'

When not practicing law, Mr. Ostrow serves on the Board of Governors of Nova Southeastern University's Wayne Huizenga School of Business and is a Member of the Broward County Courthouse Advisory Task Force. He is also the Managing Member of One West LOA LLC, a commercial real estate development company. Mr. Ostrow is a founding board member for the Jorge Nation Foundation, a 501(c)(3) non-profit organization that partners with the Joe DiMaggio Children's Hospital to send children diagnosed with cancer on all-inclusive Dream Trips to destinations of their choice. He has previously sat on the boards of a national banking institution and a national healthcare marketing company.



ROBERT C. GILBERT

Partner

Bar Admissions

The Florida Bar
District of Columbia Bar

Court Admissions

Supreme Court of the United States
U.S. Court of Appeals for the 11th Circuit
U.S. District Court, Southern District of Florida
U.S. District Court, Middle District of Florida

Education

University of Miami School of Law, J.D. - 1985
Florida International University, B.S. - 1982

Email: Gilbert@kolawyers.com

Robert C. “Bobby” Gilbert has over three decades of experience handling class actions, multidistrict litigation and complex business litigation throughout the United States. He has been appointed lead counsel, co-lead counsel, coordinating counsel or liaison counsel in many federal and state court class actions. Bobby has served as trial counsel in class actions and complex business litigation tried before judges, juries and arbitrators. He has also briefed and argued numerous appeals, including two precedent-setting cases before the Florida Supreme Court.

Bobby was appointed as Plaintiffs’ Coordinating Counsel in *In re Checking Account Overdraft Litig.*, MDL 2036, class action litigation brought against many of the nation’s largest banks that challenged the banks’ internal practice of reordering debit card transactions in a manner designed to maximize the frequency of customer overdrafts. In that role, Bobby managed the large team of lawyers who prosecuted the class actions and served as the plaintiffs’ liaison with the Court regarding management and administration of the multidistrict litigation. He also led or participated in settlement negotiations with the banks that resulted in settlements exceeding \$1.1 billion, including Bank of America (\$410 million), Citizens Financial (\$137.5 million), JPMorgan Chase Bank (\$110 million), PNC Bank (\$90 million), TD Bank (\$62 million), U.S. Bank (\$55 million), Union Bank (\$35 million) and Capital One (\$31.7 million).

Bobby has been appointed to leadership positions in numerous other class actions and multidistrict litigation proceedings. He is currently serving as co-lead counsel in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.), as well as liaison counsel in *In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.); liaison counsel in *In re 21st Century Oncology Customer Data Security Beach Litig.*, MDL 2737 (M.D. Fla.); and *In re Farm-Raised Salmon and Salmon Products Antitrust Litig.*, No. 19-21551 (S.D. Fla.). He previously served as liaison counsel for indirect purchasers in *In re Terazosin Hydrochloride Antitrust Litig.*, MDL 1317 (S.D. Fla.), an antitrust class action that settled for over \$74 million.

For the past 18 years, Bobby has represented thousands of Florida homeowners in class actions to recover full compensation under the Florida Constitution based on the Florida Department of Agriculture's taking and destruction of the homeowners' private property. As lead counsel, Bobby argued before the Florida Supreme Court to establish the homeowners' right to pursue their claims; served as trial counsel in non-jury liability trials followed by jury trials that established the amount of full compensation owed to the homeowners for their private property; and handled all appellate proceedings. Bobby's tireless efforts on behalf of the homeowners resulted in judgments exceeding \$93 million.

Bobby previously served as an Adjunct Professor at Vanderbilt University Law School, where he co-taught a course on complex litigation in federal courts that focused on multidistrict litigation and class actions. He continues to frequently lecture and make presentations on a variety of topics.

Bobby has served for many years as a trustee of the Greater Miami Jewish Federation and previously served as chairman of the board of the Alexander Muss High School in Israel, and as a trustee of The Miami Foundation.



JONATHAN M. STREISFELD

Partner

Bar Admissions

The Florida Bar

Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the First, Second, Fourth, Fifth Ninth, and Eleventh Circuits

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Western District of Michigan

U.S. District Court, Western District of New York

U.S. District Court, Western District of Tennessee

Education

Nova Southeastern University, J.D. - 1997

Syracuse University, B.S. - 1994

Email: streisfeld@kolawyers.com

Jonathan M. Streisfeld joined KO as a partner in 2008. Mr. Streisfeld concentrates his practice in the areas of consumer class actions, business litigation, and appeals nationwide. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics.

Mr. Streisfeld has vast and successful experience in class action litigation, serving as class counsel in nationwide and statewide consumer class action lawsuits against the nation's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$500,000,000 for millions of bank and credit union customers, as well as profound changes in the way banks assess fees. Additionally, he has and continues to serve as lead and class counsel for consumers in many class actions involving false advertising and pricing, defective products, and data breach. In addition, Mr. Streisfeld has litigated class actions against some of the largest health and automobile insurance carriers and oil conglomerates, and defended class and collective actions in other contexts.

Mr. Streisfeld has represented a variety of businesses and individuals in a broad range of business litigation matters, including contract, fraud, breach of fiduciary duty, intellectual property, real estate, shareholder disputes, wage and hour, and deceptive trade practices claims. He also assists business owners and individuals with documenting contractual relationships. Mr. Streisfeld also provides legal representation in bid protest proceedings.

Mr. Streisfeld oversees the firm's appellate and litigation support practice, representing clients in the appeal of final and non-final orders, as well as writs of certiorari, mandamus, and prohibition. His appellate practice includes civil and marital and family law matters.

Previously, Mr. Streisfeld served as outside assistant city attorney for the City of Plantation and Village of Wellington in a broad range of litigation matters.

As a member of The Florida Bar, Mr. Streisfeld served for many years on the Executive Council of the Appellate Practice Section and is a past Chair of the Section's Communications Committee. Mr. Streisfeld currently serves as a member of the Board of Temple Kol Ami Emanu-El.

JASON H. ALPERSTEIN

Partner

Bar Admissions

The Florida Bar
New York Bar

Court Admissions

U.S. Court of Appeals for the Sixth Circuit
U.S. Court of Appeals for the Ninth Circuit
U.S. District Court, Southern District of Florida
U.S. District Court, Middle District of Florida
U.S. District Court, Northern District of Florida
U.S. District Court, Southern District of New York
U.S. District Court, Eastern District of New York
U.S. District Court, Eastern District of Michigan
U.S. District Court, Western District of Michigan
U.S. District Court, Northern District of Illinois

Education

University of Miami School of Law, J.D. – 2008
University of Miami School of Business, M.B.A. – 2008
Brown University, B.A. – 2004

Email: alperstein@kolawyers.com

Jason Alperstein is a partner at Kopelowitz Ostrow P.A. (“KO”) and his practice focuses exclusively on the litigation of complex class actions, including cases involving automotive safety defects, mass torts, and data breaches. As a tireless advocate for consumers throughout his career, Jason has developed a track record of success in helping to implement significant business reforms and recover billions of dollars on behalf of those injured by fraudulent schemes and deceptive and unfair business practices.

Jason began his career as a class action litigator with KO in 2009 and rejoined the firm in 2021 after having the privilege of representing consumers around the country in some of the most important and unprecedented class actions. As a partner with Robbins Geller Rudman & Dowd LLP, Jason was an integral member of the team that litigated *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, & Prods. Liab. Litig.*, No. 15-md-2672 (N.D. Cal.), prosecuting claims on behalf of almost 600,000 consumers who were duped into purchasing and leasing Volkswagen, Audi and Porsche vehicles that were marketed as environmentally friendly. In reality, those vehicles had been installed with “defeat devices” that concealed the vehicles’ true emission levels, which were up to 40 times the legal limit permitted by the EPA. Working closely with Lead Counsel and the Plaintiffs’ Steering Committee, Jason was involved in almost all aspects of the litigation, including at the appellate level. A series of settlements were ultimately reached on behalf of purchasers, lessees and dealers that totaled well over \$17 billion, the largest consumer automotive settlement in history.

On the heels of the landmark “Clean Diesel” settlement, Jason helped obtain an \$840 million global settlement in *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices and Prods. Liab. Litig.*, No. 3:17-md-02777-EMC (N.D. Cal.), for similar “defeat devices” installed in Jeep and Dodge diesel trucks and SUVs that were marketed as environmentally friendly “EcoDiesel” vehicles. Jason was also involved in some of the nation’s most significant privacy cases, including *In re Yahoo! Inc. Customer Data Security Breach Litig.*, No. 5:16-md-02752-LHK (N.D. Cal.), where he assisted Lead Counsel in obtaining a \$117.50 million recovery in the largest data breach in history.



Prior to these landmark recoveries, and as a partner with KO, Jason served on lead and co-lead litigation teams in nationwide and statewide class action lawsuits against dozens of the largest banking institutions in connection with the unlawful assessment of checking account overdraft fees. His efforts resulted in over \$250 million in settlements for his clients and significant changes in the way banks charge overdraft fees to their customers. In addition, Jason led consumer class actions against product manufacturers for false and deceptive labeling, and some of the world's largest clothing retailers for their use of false and deceptive comparative pricing in their outlet stores. Before shifting his focus to class action litigation, Jason successfully represented institutional investors in securities fraud and derivative actions seeking damages related to the origination and servicing of residential mortgage-backed securities. He also gained substantial experience representing both plaintiffs and defendants in business litigation disputes involving trademark infringement, theft of trade secrets, fraudulent and negligent misrepresentation, breach of fiduciary duty, breach of contract, tortious interference, and commercial real estate litigation.

Jason has been recognized by several leading industry organizations for the success he has achieved in the class action practice area. For the past three years, *Benchmark Litigation* has named him to its 40 & Under Hot List (previously known as the Under 40 Hot List) for being an “ambitious and accomplished lawyer[] [who] frequently handle[s] major cases – some of which are high-stakes or precedent-setting.” The publication honors “the best and brightest law firm partners who stand out in their practices throughout the US and in Canada.” In 2017, Jason was recognized by *Law360* as a Consumer Protection Rising Star, and from 2014-2019 was selected as a *Florida Super Lawyer* “Rising Star” in the Class Action & Mass Tort category. Jason is also a frequent speaker on issues pertaining to class action practice and procedure, having presented for The Florida Bar, the Florida Alliance of Paralegal Associations, and the Stanford Plaintiffs’ Lawyers Association.

Jason earned a dual Bachelor of Arts degree in Political Science and Sociology, with honors, from Brown University. While at Brown, he was a sprinter on the Varsity Track & Field team, studied at the University of Melbourne in Australia, and served as an intern for Judge Gilbert V. Indeglia of the Superior Court of Rhode Island. Jason received a Juris Doctor degree, cum laude, from the University of Miami School of Law, where he was a member of the Business Law Review, and a Masters of Business Administration in Finance from the University of Miami School of Business, where he was a Graduate Assistant Scholar.

Jason is a native of South Florida and is the past Miami-Dade Area Chair of the Brown Alumni Schools Committee. He also is a founding member of the American Heart Association’s PULSE, has been inducted into the Leadership Broward Foundation, and is a graduate of the National Outdoor Leadership School (NOLS). Prior to practicing law, Jason served as an intern for United States Senator Bob Graham in Washington, D.C., and as an intern for Wolf Blitzer Reports in the Washington, D.C. bureau of CNN.



DANIEL TROPIN

Partner

Bar Admissions

The Florida Bar

Court Admissions

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

Education

University of Virginia, J.D. - 2012

Emory University, B.A. - 2008

Email: tropin@kolawyers.com

Daniel Tropin is a litigator who specializes in complex commercial cases and class action litigation. Mr. Tropin joined the law firm as a partner in 2018, and has a wealth of experience across the spectrum of litigation, including class actions, derivative actions, trade secrets, arbitrations, and product liability cases. Mr. Tropin is appointed to the Leadership Development Committee in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, MDL 2924.

Mr. Tropin graduated from the University of Virginia law school in 2012, and prior to joining this firm, was an associate at a major Miami law firm and helped launch a new law firm in Wynwood. He was given the Daily Business Review's Most Effective Lawyers, Corporate Securities award in 2014. His previous representative matters include:

- Represented bank and credit union accountholders in dozens of class actions challenging overdraft and insufficient funds fees.
- Represented a major homebuilder in an action against a former business partner, who engaged in a fraud and defamation scheme to extort money. Following a jury trial, the homebuilder was awarded \$1.02 billion in damages. The award was affirmed on appeal.
- Represented the former president and CEO of a cruise line against a major international venture capital conglomerate, travel and entertainment company, based on allegations of misappropriation of trade secrets, breach of a non-disclosure agreement, and breach of a partnership agreement.
- Represented the CEO of a rapid finance company in an action seeking injunctive relief to protect his interest in the company.
- Represented a medical supply distribution company in an action that involved allegations of misappropriation and breach of a non-circumvention agreement.
- Represented a mobile phone manufacturer and distributor in a multi-million-dollar dispute regarding membership interests in a Limited Liability Company, with claims alleging misappropriation of trade secrets and breach of fiduciary duty.
- Represented a major liquor manufacturer in a products liability lawsuit arising out of an incident involving flaming alcohol.



KRISTEN LAKE CARDOSO

Partner

Bar Admissions

The Florida Bar
The State Bar of California

Court Admissions

U.S. District Court, Southern District of Florida
U.S. District Court, Middle District of Florida
U.S. District Court, Central District of California
U.S. District Court, Eastern District of Michigan

Education

Nova Southeastern University, J.D., 2007
University of Florida, B.A., 2004

Email: cardoso@kolawyers.com

Kristen Lake Cardoso is a litigation attorney focusing on complex commercial cases and consumer class actions. She has gained valuable experience representing individuals and businesses in state and federal courts at both the trial and appellate levels in a variety of litigation matters, including contractual claims, fraud, breach of fiduciary duty, negligence, professional liability, real estate claims, enforcement of non-compete agreements, trade secret infringement, shareholder disputes, deceptive trade practices, other business torts, as well as consumer protection statutes.

Mrs. Cardoso's class action cases have involved, amongst other things, data breaches, violations of state consumer protection statutes, and breaches of contract. Mrs. Cardoso has represented students seeking reimbursements of tuition, room and board, and other fees paid to their colleges and universities for in-person education, housing, meals, and other services not provided when campuses closed during the COVID-19 pandemic. Ms. Cardoso also represents consumers seeking recovery of gambling losses from tech companies that profit from illegal gambling games offered, sold, and distributed on their platforms. In this litigation she is appointed Interim Executive Committee Member in *In re: Apple Inc. App Store Simulated Casino-Style Games Litigation* (N.D. Cal.). Mrs. Cardoso is also actively litigating cases against major U.S. airlines for their failure to refund fares following flight cancellations and schedule changes.

Mrs. Cardoso is admitted to practice law throughout the State of Florida, as well as in the United States District Courts for the Southern District of Florida and the Northern District of Florida. Mrs. Cardoso attended the University of Florida, where she received her Bachelor's degree in Political Science, cum laude. She received her law degree from Nova Southeastern University, magna cum laude. While in law school, Mrs. Cardoso served as an Articles Editor for the Nova Law Review, was on the Dean's List, and was the recipient of a scholarship granted by the Broward County Hispanic Bar Association for her academic achievements. When not practicing law, Mrs. Cardoso serves as a volunteer at Saint David Catholic School. She has also served on various committees with the Junior League of Greater Fort Lauderdale geared towards improving the local community through leadership and volunteering.



RACHEL GLASER

Associate

Bar Admissions

The Florida Bar
The California Bar

Court Admissions

U.S. District Court, Southern District of Florida
U.S. District Court, Southern District of California

Education

Nova Southeastern University, J.D., 2020
Florida State University, B.S., 2017

Email: glaser@kolawyers.com

Rachel Feder Glaser is an attorney in KO's Fort Lauderdale office and is an active member of the Florida Bar. Her practice focuses primarily on class action litigation. Ms. Glaser litigates consumer class action lawsuits, including cases against some of the largest financial institutions in Florida and around the United States, challenging their unlawful assessment and collection of account fees. She has also assisted the firm in class actions targeting auto insurance companies across the country, in connection with the failure to provide proper coverage in the event of a total vehicular loss.

Ms. Glaser earned her Juris Doctor, summa cum laude, from Nova Southeastern University, Shepard Broad College of Law, where she served as an Executive Board Member of the Nova Trial Association, Senior Associate for the Nova Law Review, and as a teaching assistant for the Legal Research and Writing department. Ms. Glaser was consistently placed on the Dean's List and received the Book Awards in Legal research and Writing, Evidence, and Trial Advocacy.

While in law school, Ms. Glaser participated in national competitions for both the Nova Trial Association and the Moot Court Honor Society, winning a National Championship at the 2019 Buffalo-Niagara Mock Trial Competition. For her excellence in advocacy, Ms. Glaser was inducted into the Order of the Barristers.

Ms. Glaser received a Bachelor of Science in both Accounting and Finance from Florida State University. While attending Florida State, she interned for the University's Office of Inspector General Services where she assisted internal auditors in investigating allegations related to compliance, fraud, and abuse of university resources.

EXHIBIT 2

KALIEL GOLD PLLC

Kaliel Gold PLLC was founded in 2017 and is a 100% contingency Plaintiff-side law firm. Our attorneys have decades of combined experience and have secured hundreds of millions of dollars for their clients. Our firm's practice focuses on representing consumers in class action litigation and specifically on cases in the consumer financial services sector. In the four years since our firm was founded, our firm has been appointed lead counsel or co-lead counsel in numerous class action and putative class action lawsuits in state and federal courts nationwide including most recently in *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.); *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.); *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1st Cir. Haw.); *Liggio v. Apple Federal Credit Union*, No. 18-cv-01059 (E.D. Va.); *Morris et al. v. Bank of America, N.A.*, No. 3:18-cv-00157-RJC-DSC (W.D.N.C.); *Brooks et al. v. Canvas Credit Union*, 2019CV30516 (Dist. Ct. for Denver Cnty., Colo.); *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.); *White v. Members 1st Credit Union*, Case No. 1:19-cv-00556-JEJ (M.D. Pa.); *Plummer v. Centra Credit Union*, Case No. 03D01-1804-PL-001903 (Cnty. Of Bartholomew, Ind.); *Holt v. Community America Credit Union*, Case No. 4:19-cv-00629-FJG (W.D. Mo.); *Trinity Management v. Charles Puckett*, Case No. GCG-17-558960 (Super. Ct., San Francisco Cnty, Cal.); *Martin v. Le^oN Federal Credit Union*. No. 19-CI-022873 (Jefferson Cir. Ct., Div. One); *Clark v. Hills Bank and Trust Company*, No. LACV080753 (Iowa Dist. Ct. Johnson Cnty.); *Morris v. Provident Credit Union*, Case No. CGC-19-581616 (Super. Ct., San Francisco Cnty., Cal.).

As shown in the biographies of our attorneys and the list of class counsel appointments, Kaliel Gold PLLC is well versed in class action litigation and zealously advocates for its clients. To learn more about Kaliel Gold PLLC, or any of the firm's attorneys, please visit www.kalielgold.com.

JEFFREY D. KALIEL

Jeffrey Kaliel earned his law degree from Yale Law School in 2005. He graduated from Amherst College summa cum laude in 2000 with a degree in Political Science, and spent one year studying Philosophy at Cambridge University, England.

Over the last 10 years, Jeff has built substantial class action experience. He has received "Washington D.C. Rising Stars Super Lawyers 2015" recognition.

Jeff has been appointed lead Class Counsel in numerous nationwide and state-specific class actions. In those cases, Jeff has won contested class certification motions, defended dispositive motions, engaged in data-intensive discovery and worked extensively with economics and information technology experts to build damages models. Jeff has also successfully resolved numerous class actions by settlement, resulting in hundreds of millions of dollars in relief for millions of class members.

Currently Jeff is actively litigating several national class action cases, including actions against financial services entities and other entities involved in predatory lending and financial services targeting America's most vulnerable populations.

Jeff's class action successes extend beyond financial services litigation. He seeks to lead cases that serve the public interest. Jeff has worked with nonprofits such as the Humane Society, Compassion Over Killing, and the National Consumers League to fight for truth in the marketplace on food and animal products.

Jeff has over a decade of experience in high-stakes litigation. He was in the Honors Program at the Department of Homeland Security, where he worked on the Department's appellate litigation. Jeff also helped investigate the DHS response to Hurricane Katrina in preparation for a Congressional inquiry. Jeff also served as a Special Assistant US Attorney in the Southern District of California, prosecuting border-related crimes.

Jeff is a former Staff Sergeant in the Army, with Airborne and Mountain Warfare qualifications. He is a veteran of the second Iraq war, having served in Iraq in 2003.

Jeff is admitted to practice in California and Washington, DC, and in appellate and district courts across the country.

Jeff lives in Washington, D.C. with his wife, Debbie, and their three children.

SOPHIA GOREN GOLD

Sophia Goren Gold is a third-generation Plaintiff's lawyer. A *summa cum laude* graduate of Wake Forest University and the University of California, Berkeley, School of Law, Sophia has spent her entire career fighting for justice.

A fierce advocate for those in need, Sophia's practice centers around taking on financial institutions, insurance companies, and other large corporate interests. Sophia has participated in hundreds of individual and class cases in both state and federal courts across the country. Collectively, she has helped secure tens of millions of dollars in relief on behalf of the classes she represents.

In addition to providing monetary relief, Sophia's extensive litigation experience has resulted in real-world positive change. For example, she brought litigation which resulted in the elimination of the Tampon Tax in the State of Florida, and she was influential in changing the state of Delaware's Medicaid policy, resulting in greater access to life-saving medication.

Sophia is currently representing consumers in numerous cases involving the assessment of improper fees by banks and credit unions, such as overdraft fees, insufficient funds fees, and out of network ATM fees. She is also currently representing consumers who have been the victims of unfair and deceptive business practices.

Sophia is admitted to practice in California and Washington, D.C. When not working, Sophia enjoys spending time with her husband, daughter, and their goldendoodle.

BRITTANY CASOLA

Brittany Casola attended the University of Central Florida in Orlando and graduated in 2012 with a bachelor's degree in Political Science and a minor in Spanish. Brittany earned her Juris Doctorate from California Western School of Law in 2015 and graduated magna cum laude in the top 10% of her class.

Throughout the course of her law school career, she served as a judicial extern to the Honorable Anthony J. Battaglia for the United States District Court, Southern District of California and worked multiple semesters as a certified legal intern for the San Diego County District Attorney's Office. Brittany was awarded Academic Excellence Awards in law school for receiving the highest grade in Trial Practice, Health Law & Policy, and Community Property.

Before joining Kaliel Gold PLLC, Brittany worked as a judicial law clerk for the Honorable Anthony J. Battaglia and as an associate attorney for Carlson Lynch LLP, specializing in consumer complex litigation.

AMANDA ROSENBERG

Amanda Rosenberg graduated *cum laude* from the University of California, Hastings College of the Law in 2011 and the University of California, San Diego in 2008, where she earned departmental Honors with Highest Distinction in history.

Before joining Kaliel Gold PLLC, Amanda represented and advised small businesses and financial institutions in litigation matters including employment disputes, merchant disputes, credit and charge card disputes, wrongful foreclosures, and securities. She has successfully litigated cases in California, Illinois, and Michigan.

Amanda is an active volunteer in her community and has helped numerous individuals understand and navigate their rights in the workplace.

In law school, Amanda worked as an extern for the Honorable Judge Vaughn Walker in the United States District Court, Northern District of California. Amanda was awarded academic excellence awards for receiving the highest grades in Trial Advocacy and Litigating Class Action Employment.

When not working, Amanda loves exploring Michigan's outdoors with her husband, kids, and rescue dog.

CLASS COUNSEL APPOINTMENTS

- *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.);
- *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.);
- *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.).
- *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1st Cir. Haw.);
- *Brooks et al. v. Canvas Credit Union*, 2019CV30516 (Dist. Ct. for Denver Cnty., Colo.).
- *Liggio v. Apple Federal Credit Union*, Civil No. 18-cv-01059 (E.D. Va.);
- *Morris et al. v. Bank of America, N.A.*, Civil No. 3:18-cv-00157-RJC-DSC (W.D.N.C.);
- *White v. Members 1st Credit Union*, Case No. 1:19-cv-00556-JEJ (M.D. Pa.);
- *Plummer v. Centra Credit Union*, Case No. 03D01-1804-PL-001903 (Bartholomew Cnty., Ind.);
- *Holt v. Community America Credit Union*, Case No. 4:19-cv-00629-FJG (W.D. Mo.);
- *Trinity Management v. Charles Puckett*, Case No. GCG-17-558960 (Super. Ct., San Francisco, Cnty., Cal.);
- *Martin v. Le&N Federal Credit Union*. No. 19-CI-022873 (Jefferson Cir. Ct., Division One);
- *Clark v. Hills Bank and Trust Company*, No. LACV080753 (Iowa Dist. Ct. Johnson Cnty.);
- *Morris v. Provident Credit Union*, Case No. CGC-19-581616 (Super. Ct. San Francisco Cnty., Cal.).
- *Bodnar v. Bank of America, N.A.*, 5:14-cv-03224 (E.D. Pa.);
- *In re Higher One OneAccount Marketing and Sales Practice Litigation.*, No. 12-md-02407-VLB (D. Conn.).
- *Shannon Schulte, et al. v. Fifth Third Bank.*, No. 1:09-cv-06655 (N.D. Ill.);
- *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.);
- *Nick Allen, et al. v. UMB Bank, N.A., et al.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson Cnty., Mo.);
- *Thomas Casto, et al. v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha Cnty., W. Va.);
- *Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa Cnty., Okla.);
- *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.);
- *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al*, No. 1:10-cv-21080 (S.D. Fla.);
- *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.);
- *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick Cnty., Kan.);
- *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.); *Galdamez v. I.Q. Data International, Inc.*, No. 1:15-cv-1605 (E.D. Va.);
- *Brown et al. v. Transurban USA, Inc. et al.*, No. 1:15-CV-00494 (E.D. Va.);
- *Grayson v. General Electric Co.*, No. 3:13-cv-01799 (D. Conn.);
- *Galdamez v. I.Q. Data International, Inc.*, No. 1:15-cv-1605 (E.D. Va.).

EXHIBIT C

CARRIE MEIER, on behalf of herself and all
persons similarly situated,

Plaintiff,

v.

PROSPERITY BANK,

Defendant.

IN THE DISTRICT COURT

BRAZORIA, TEXAS

239TH JUDICIAL DISTRICT

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION
SETTLEMENT AND CERTIFYING SETTLEMENT CLASSES**

WHEREAS, Plaintiff, on behalf of herself and the Settlement Classes, has applied for an order, pursuant to Texas Rule of Civil Procedure 42(e), preliminarily approving the Settlement Agreement and Releases entered into between Plaintiff, Carrie Meier, and Defendant, Prosperity Bank, dated July 5, 2022, and the Court having reviewed the Agreement as submitted to the Court with the Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”); and

WHEREAS, this Preliminary Approval Order incorporates the Agreement, and its exhibits, and the terms used herein shall have the meaning and/or definitions given to them in the Agreement, as submitted to the Court with the Motion for Preliminary Approval.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Court finds that the Agreement resulted from extensive arm’s-length negotiations with the assistance of a neutral mediator after the Parties’ counsel had investigated the claims, litigated them, and became familiar with the strengths and weaknesses of those claims. The Settlement appears not to be collusive, has no obvious defects, and at this stage appears sufficiently fair, reasonable, and adequate for the members of the Settlement Classes to warrant

giving Notice of the Settlement to them and to hold a Final Approval Hearing.

2. For purposes of the Settlement, and conditioned upon the Settlement receiving Final Approval following the Final Approval Hearing, this Court hereby conditionally certifies two classes, defined as follows:

APPSN Fee Class. Those current or former Accountholders of Defendant who were assessed APPSN Fees.

Multiple Fee Class. Those current or former Accountholders of Defendant who were assessed Multiple Fees.

Excluded from the Settlement Classes are Defendant, its parents, subsidiaries, affiliates, officers, and directors; all Settlement Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

3. The APPSN Fee Class Period is from September 15, 2016, through and including September 30, 2022.

4. The Multiple Fee Class Period is from September 15, 2016, through and including September 30, 2022.

5. The Court finds that, that the Settlement Classes, including the APPSN Fee Class and Multiple Fee Class, satisfy the requirements of Texas Rule of Civil Procedure 42(e), in that: (a) the number of members of the Settlement Classes are so numerous that joinder is impracticable; (b) there are questions of law and fact common to the members of the Settlement Classes; (c) the claims of Plaintiff are typical of the claims of the members of both Settlement Classes; (d) Plaintiff is an adequate representative of both Settlement Classes and she has retained experienced and adequate Class Counsel; (e) the questions of law and fact common to the members of the Settlement Classes predominate over any questions affecting any individual members of the Settlement Classes; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

6. For purposes of Settlement only, the Court finds and determines that Plaintiff will fairly and adequately represent the interests of the APPSN Fee Class and the Multiple Fee Class, in enforcing their rights in the Action, and appoints her as the Class Representative of both Settlement Classes.

7. For purposes of the Settlement only, the Court appoints as Class Counsel, Jeff Ostrow and Jonathan M. Streisfeld of Kopelowitz Ostrow P.A. and Jeffrey D. Kalief of KaliefGold PLLC.

8. Epiq Class Action & Claims Solutions, Inc. is appointed as Settlement Administrator. The Settlement Administrator shall abide by the terms and conditions of the Agreement that pertain to the Settlement Administrator.

9. The Settlement, on the terms and conditions stated in the Agreement, is preliminarily approved by this Court as being fair, reasonable, and adequate, free of collusion or indicia of unfairness, and within the range of possible final judicial approval.

10. Having reviewed the proposed Notice Program, including the Email Notice, Postcard Notice, and the Long Form Notice submitted by the Parties as Exhibits 1 and 2 to the Agreement, the Court approves, as to form and content, such Notices for the purpose of notifying the APPSN Fee Class and Multiple Fee Class as to the proposed Settlement, the Final Approval Hearing, and the rights of the members of the APPSN Fee Class and Multiple Fee Class. Those Notices contain all of the essential elements necessary to satisfy the requirements of Texas law, including the Texas Rules of Civil Procedure and state due process provisions, including the class definitions, the identities of the Parties and their counsel, a summary of the terms of the proposed Settlement, information regarding the objection procedures and deadline, information regarding opt-out procedures and deadline, and the date and location of the Final Approval Hearing.

11. The Court directs the Settlement Administrator to cause a copy of the Email Notice or Postcard Notice to be sent to all APPSN Fee Class and Multiple Fee Class members in accordance with the Notice Program. The Notice Program (including the Notice re-mailing process) shall be completed before the filing of the Motion for Final Approval.

12. The Email Notice, Postcard Notice, and Long Form Notice shall be updated by Class Counsel and Defendant to include the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court herein. The Court finds and determines Email Notice and Postcard Notice pursuant to this Order constitutes the best notice practicable under the circumstances, constitutes due and sufficient notice of the matters set forth in the Notices to all persons entitled to receive such Notices, and fully satisfies the requirements of due process, Texas Rule of Civil Procedure 42(e), and all other applicable law and rules.

13. Any person falling within the definition of the APPSN Fee Class and/or Multiple Fee Class may, upon request, opt-out from the Settlement. In the event a APPSN Fee Class and/or Multiple Fee Class member requests exclusion from and not to be bound by the Agreement, that member must sign and mail a request for exclusion to the Settlement Administrator, postmarked no later than the last day of the Opt-Out Period. The request must include the name of this Action, the Settlement Class member's name, the last four digits of the member number(s), address, telephone number, and email address, and include a statement indicating the request to be excluded from the Settlement Class. Any member of the APPSN Fee Class and/or Multiple Fee Class who timely and properly requests exclusion in compliance with these requirements will thereafter be excluded from the APPSN Fee Class and/or Multiple Fee Class, will not become a Settlement Class Member, will not have any rights under the Settlement, will not be entitled to receive a Settlement Class Member Payment, and will not be bound by the Agreement or the Final Approval

Order. Any members of the APPSN Fee Class or Multiple Fee Class who do not submit a valid and timely opt-out request shall be bound by all terms of the Agreement and the Final Approval Order. If an Account has more than one Accountholder, and if one Accountholder excludes himself or herself from the APPSN Fee Class and/or Multiple Fee Class, then all Accountholders on that Account shall be deemed to have opted-out of the Settlement with respect to that Account, and no Accountholder shall be entitled to a payment under the Settlement.

14. Any Settlement Class Member who wishes to object to the Settlement, Class Counsel's application for attorneys' fees and costs, or Service Award for the Class Representative, or to appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the APPSN Fee Class and/or the Multiple Fee Class, or why a final judgment should not be entered thereon, may do so, but must proceed as set forth in this paragraph. Only a Settlement Class Member may file an objection. No Settlement Class Member or other person will be heard on such matters unless they have mailed via U.S. Mail or private courier (e.g., Federal Express) a written objection (together with any briefs, papers, statements, or other materials that the Settlement Class Member or other person wishes the Court to consider) to the Clerk of the Court, Class Counsel, Defendant's Counsel, and the Settlement Administrator, on or before the last day of the Opt-Out Period, as set forth in the Notices. To be valid, any written objection must contain:

- a. the name of the Action;
- b. the objector's full name, mailing address, telephone number, and email address (if any);
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- d. the number of times the objector has objected to a class action settlement within the

five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;

e. 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;

f. 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 years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or Defendant may conduct limited discovery on any objector or objector's counsel consistent with the Texas Rules of Civil Procedure.

15. The Court will consider all timely objections. The Parties may argue that an objection should be rejected because information required by the immediately preceding paragraph is omitted. The Court will consider such arguments at the Final Approval Hearing on a case-by-case basis. Any member of either of the Settlement Classes who does not provide a timely and written objection shall have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, Class Counsel's application for attorneys' fees and costs, and the application for Service Award for the Plaintiff as Class Representative.

16. All pretrial proceedings in this action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Preliminary Approval Order.

17. Upon the entry of this Order, the Class Representative and all members of the APPSN Fee Class and Multiple Fee Class shall be provisionally enjoined and barred from asserting any claims against Defendant and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision as to whether to grant Final Approval of the Settlement.

18. This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with the Settlement, shall not be construed or deemed to be evidence of an admission or concession by Defendant of any liability or wrongdoing by Defendant or any of its affiliates, agents, representatives, vendors, or any other person or entity acting on its behalf with respect to the conduct alleged in the Action or that the case was properly brought as a class action, and shall not be construed or deemed to be evidence of an admission or concession that any person suffered compensable harm or is entitled to any relief with respect to the conduct alleged in the Action. Defendant may file the Agreement in any action or proceeding that may be brought against

it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

19. In the event that (a) this Court does not grant Final Approval of the Settlement as provided in the Agreement; (b) this Court does not enter the Final Approval Order as provided in all material respects and substantial form as the Final Approval Order submitted by the Parties with the motion for Final Approval; or (c) the Settlement does not become final for any other reason consistent with the terms of the Agreement, the Agreement shall be null and void and any order or judgment entered by this Court in furtherance of the Settlement shall be vacated *nunc pro tunc*. In such a case, the Parties shall proceed in all respects as if the Agreement had not been executed and the Parties shall in no way be prejudiced in proceeding with or defending this litigation, the conditional class certification effected herein will be null and void, and Defendant shall have the right to object to certification of the APPSN Fee Class, Multiple Fee Class, or any other class at any future time.

20. For the benefit of the Settlement Classes and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

21. Class Counsel and Defendant's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without the Court's further approval, minor form or content changes to the Notices they jointly agree are reasonable or necessary.

22. The Final Approval Hearing shall be held on _____, 2023, at _____

a.m./p.m. before the Honorable Patrick Sebesta in Courtroom ____ of the 239th Judicial District Court in for Brazoria, Texas, located at 111 E. Locust Street, Angleton, Texas 77515, to consider: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether the Final Approval Order should be entered in substance materially the same as the Final Approval Order submitted by the Parties with the Motion for Final Approval; (c) whether to approve Class Counsel’s application for attorneys’ fees and costs, and for a Service Award for the Class Representative; and (d) any other matters that may properly be brought before the Court in connection with the Settlement. The Final Approval Hearing is subject to continuation or adjournment by the Court without further notice to the Settlement Classes and may be done virtually at the Court’s discretion and upon the provision of notice to the Settlement Classes through the Settlement Website. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

23. Class Counsel are to file and serve the Motion for Final Approval and applications for attorneys’ fees and costs and for Service Award for the Class Representative no later than 45 days before the Final Approval Hearing. The applications for Class Counsel’s attorneys’ fees and costs and for Service Award for Plaintiff as Class Representative will be heard concurrently with the request for Final Approval.

24. Any Settlement Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Settlement Class Member does not enter an appearance, he or she will be represented by Class Counsel.

25. The Court hereby sets the following schedule of events:

Deadline to Complete Notice Program	60 days before Final Approval Hearing
Deadline to file Motion for Final Approval and Application for Attorneys’ Fees, Costs, and Service Award	45 days before Final Approval Hearing

Deadline for Settlement Class members to Opt-Out of the Agreement	30 days before Final Approval Hearing
Deadline for Settlement Class Members to make Objections	30 days before Final Approval Hearing
Deadline for Respond to Objections	15 days prior to Final Approval Hearing
Final Approval Hearing	_____, 2023 at _:__.m.

SO ORDERED this ___ day of _____, 2022.

JUDGE PATRICK SEBESTA
 County Court Judge