

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

239<sup>TH</sup> JUDICIAL DISTRICT

**[PROPOSED] AMENDED 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 **May 23, 2023, at 10:00 a.m.** before



the Honorable Patrick Sebesta in Courtroom of the 239<sup>th</sup> 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.

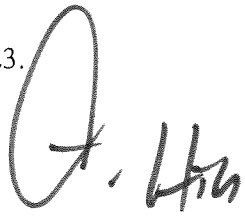
24. Any Settlement Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Settlement Class Member does not enter an appearance, he or she will be represented by Class Counsel.

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

<b>Deadline to Complete Notice Program</b>	60 days before Final Approval Hearing
<b>Deadline to file Motion for Final Approval and Application for Attorneys’ Fees, Costs, and Service Award</b>	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	May 23, 2023 at 10:00 a.m.

SO ORDERED this 18<sup>th</sup> day of January, 2023.



\_\_\_\_\_  
Presiding Judge