

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.

1.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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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

2. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

12. 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.

13. 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.

14. 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*.

15. 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.

16. 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.

XIX. 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.

XX. 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: _____

CARRIE MEIER
Plaintiff


Dated: _____

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

Dated: _____

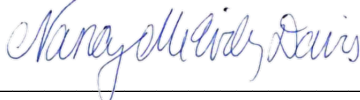
JEFFREY KALIEL, ESQ.
KALIEL GOLD PLLC
Class Counsel

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 [REDACTED].

The deadline to file an objection with the Court is also [REDACTED].

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 [REDACTED], and sent to:

Carrie Meier v. Prosperity Bank

Attn: [REDACTED]

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 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 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 Bazorla</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. Kalief
KALIEL GOLD PLLC
1100 15th Street NW, 4th Floor
Washington, DC 20005
202-350-4783
jkalief@kaliellpc.com

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