

# **Exhibit 2**

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into this 25th day of July, 2022, by and among (1) Plaintiffs,<sup>1</sup> for themselves and on behalf of the Settlement Class, and (2) TD Bank, N.A. (“TD Bank”), subject to preliminary and final Court approval as required by Rule 23(e) of the Federal Rules of Civil Procedure. As provided herein, TD Bank, Class Counsel, and Plaintiffs hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class against TD Bank in the action titled *Campagna v. TD Bank, N.A.*, Case No. 1:20-cv-18533-KMW-SAK (D.N.J.) (the “Action”), shall be settled and compromised upon the terms and conditions contained herein.

### **I. Recitals**

1. On April 3, 2020, Plaintiff Natalie Campagna, on behalf of herself and others similarly situated, filed a complaint against TD Bank in the State Court of Muscogee County, Georgia, seeking monetary damages from TD Bank for its allegedly improper business practices associated with secured consumer credit card accounts.

2. On May 8, 2020, TD Bank removed the case to the United States District Court for the Middle District of Georgia. *See* ECF No. 1 in Case No. 4:20-cv-00094-CDL (M.D. Ga.).

3. Thereafter, TD Bank moved to dismiss the complaint for lack of personal jurisdiction and failure to state a claim upon which relief can be granted. *See* ECF No. 10 in Case No. 4:20-cv-00094-CDL (M.D. Ga.).

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<sup>1</sup> “Plaintiffs” and other capitalized terms used in this Introduction and in Section I of this Agreement are defined in Section II below.

4. On December 4, 2020, after briefing on TD Bank's motion was complete, the district court granted TD Bank's motion to dismiss for lack of personal jurisdiction. *See* ECF No. 13 in Case No. 4:20-cv-00094-CDL (M.D. Ga.).

5. On December 8, 2020, Plaintiffs Natalie Campagna and Gloria DeVault, on behalf of themselves and others similarly situated, commenced this Action in the United States District Court for the District of New Jersey. *See* ECF No. 1 in Case No. 1:20-cv-18533-KMW-SAK (D.N.J.).

6. Pursuant to the stipulation of the Parties, which was adopted by the Court (ECF No. 6), TD Bank filed a motion to dismiss on January 19, 2021 (ECF No. 9).

7. On January 22, 2021, Plaintiffs filed an Amended Complaint that, *inter alia*, added Amanda Farmer, Philip Pagliaro, and Yaakov Roziner as named Plaintiffs and added causes of action. *See* ECF No. 10.

8. In response, on February 10, 2021, TD Bank filed a supplement to its motion to dismiss. *See* ECF No. 20.

9. On August 18, 2021, after briefing on TD Bank's motion was complete, the district court issued a written Opinion (ECF No. 31) and entered an Order (ECF No. 32) denying TD Bank's motion to dismiss but rejecting one of Plaintiffs' theories of liability.

10. On September 15, 2021, TD Bank filed an Answer to the Amended Complaint. *See* ECF No. 36.

11. In January 2022, TD Bank began using a new version of the card agreement for secured credit cards that amends the graduation provision at issue in Plaintiffs' complaints.

12. On February 14, 2022, Plaintiffs filed a Second Amended Complaint (ECF No. 64), which TD Bank answered on March 14, 2022 (ECF No. 65).

13. On May 5, 2022, the Parties participated in mediation with Magistrate Judge Joel B. Rosen (ret.) of Montgomery McCracken Walker & Rhoads LLP and reached an agreement in principle to resolve this matter on a class-wide basis.

14. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Settlement Class. The Parties intend this Agreement to bind Plaintiffs, TD Bank, and all Settlement Class Members who do not timely request to be excluded from the Settlement.

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

## **II. Definitions**

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

1. “Account” means a TD Cash Secured Credit Card account.
2. “Action” means *Campagna v. TD Bank, N.A.*, Case No. 1:20-cv-18533-KMW-SAK (D.N.J.).
3. “Administrative Costs” means all fees paid to the Settlement Administrator for its services related to the Settlement and all out-of-pocket costs and third-party expenses of the Settlement Administrator that are associated with providing notice of the Settlement to the Settlement Class, administering and distributing the Settlement to Releasing Parties, or otherwise administering or carrying out the terms of the Settlement, including but not limited to postage and telecommunications costs.
4. “Agreement” means this Settlement Agreement and Release.

5. “Class Counsel” means:

E. Adam Webb  
G. Franklin Lemond, Jr.  
WEBB, KLASE & LEMON, LLC  
1900 The Exchange, SE, Suite 480  
Atlanta, GA 30339

Kenneth J. Grunfeld  
GOLOMB SPIRIT GRUNFELD, PC  
1835 Market Street, Suite 2900  
Philadelphia, PA 19103

and such other counsel as are identified in Class Counsel’s request for attorneys’ fees and costs.

6. “Class Period” means the time period specified in the class definition set forth in paragraph 44 of this Agreement.

7. “Confidential Information” means all documents, data, discovery materials, and other information provided to Class Counsel by TD Bank during the course of the Action, whether by formal discovery or otherwise, that were designated as Confidential or Attorneys’ Eyes Only. Notwithstanding the above, neither documents nor information described in this paragraph that were filed in the public record during the course of this Action, unless currently under seal, shall be Confidential Information.

8. “Court” means the United States District Court for the District of New Jersey, Camden Vicinage.

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

10. “E-Mail Notice” means the form of notice that will be e-mailed to Settlement Class Members for whom TD Bank possesses e-mail addresses, in the form attached hereto as Exhibit A.

11. “Effective Date” means the fifth business day after which all of the following events have occurred:

- a. All Parties, TD Bank’s counsel, and Class Counsel have executed this Agreement;
- b. The Court has entered without material change the Final Approval Order; and
- c. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

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

12. “Escrow Account” means an interest-bearing account, held by an FDIC-insured financial institution, into which TD Bank shall deposit the Settlement Payment Amount. The Escrow Account is to be established consistent with the terms and conditions described in Section XI hereof.

13. “Escrow Agent” means Epiq Systems, Inc. Class Counsel and TD Bank may, by agreement, substitute a different organization as Escrow Agent, subject to approval by the Court. In the absence of agreement, either Class Counsel or TD Bank may move the Court to substitute a different organization as Escrow Agent, upon a showing that the responsibilities of Escrow Agent have not been adequately executed by the incumbent. The Escrow Agent shall administer the Escrow Account.

14. “Final Approval” means the date of the Court’s final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e)(2) and determination of the amount of fees, costs, and expenses awarded to Class Counsel, and the amount of the Service Awards to Plaintiffs. In the event that the Court issues multiple orders addressing the foregoing matters, then the date of Final Approval shall be the date of the last of such orders.

15. “Final Approval Hearing” means a hearing set by the Court for the purpose of determining the fairness, adequacy, and reasonableness of the Settlement and associated procedures and requirements, pursuant to Section X hereof.

16. “Final Approval Order” means the order and judgment that the Court enters upon Final Approval. The proposed Final Approval Order that will be submitted pursuant to the Motion for Final Approval of the Settlement shall be in a form agreed upon by Class Counsel and TD Bank. In the event that the Court issues multiple orders addressing the matters constituting Final Approval, the Final Approval Order includes all such orders.

17. “Long-Form Notice” means the detailed notice of the Settlement that will be posted on the Settlement Website, in the form attached hereto as Exhibit B.

18. “Mail Notice” means the postcard notice that will be mailed by U.S. Postal Service to Settlement Class Members for whom TD Bank does not possess e-mail addresses, in the form attached hereto as Exhibit C.

19. “Net Settlement Fund” means the Settlement Payment Amount less all Court-awarded attorneys’ fees and expenses, Administrative Costs, and the Court-approved Service Awards, as more specifically described in paragraph 91 of this Agreement.

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

21. “Notice Deadline” means the date by which the Settlement Administrator must complete the Notice Program, which shall be the date ninety (90) days after Preliminary Approval.

22. “Notice Program” means the methods provided for in this Agreement for giving Notice and includes E-Mail Notice, Mail Notice, and Long-Form Notice (Exhibits A-C to this Agreement). The form of the E-Mail Notice, Mail Notice, and Long-Form Notice shall be agreed upon by Class Counsel and TD Bank. By mutual agreement of the Parties, changes may be made to any or all of the forms of Notice. Additional description of the contemplated Notice Program is provided in Section VII hereof.

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

24. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first e-mailed or mailed, and that ends no later than sixty (60) days after the Notice Deadline. The deadline for the Opt-Out Period will be specified in the Notice.

25. “Participating Settlement Class Member” means any Settlement Class Member except for Settlement Class Opt-Outs.

26. “Parties” means Plaintiffs and TD Bank.



27. “Plaintiffs” means Natalie Campagna, Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner.

28. “Preliminary Approval” means the entry by the Court of the Preliminary Approval Order.

29. “Preliminary Approval Order” means the Order by the Court approving the form and content of Notice of the Settlement to the Settlement Class pursuant to Fed. R. Civ. P. 23(e)(1) and preliminarily certifying the Settlement Class, in a form substantially the same as in the attached Exhibit D. The proposed Preliminary Approval Order that will be submitted pursuant to the Motion for Preliminary Approval of the Settlement shall be in a form agreed upon by Class Counsel and TD Bank.

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

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

32. “Releases” means all of the releases contained in Section XV hereof.

33. “Releasing Parties” means all Plaintiffs and all Participating Settlement Class Members, and each of their respective past, present, and future heirs, executors, administrators, assigns, beneficiaries, successors, and legal representatives.

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

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

36. “Settlement Administrator” means Epiq Systems, Inc. Class Counsel and TD Bank may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court. In the absence of agreement, either Class Counsel or TD Bank 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.

37. “Settlement Class” means all Account holders within the class defined in Section III hereof.

38. “Settlement Class Member” means any person or entity included in the Settlement Class.

39. “Settlement Class Opt-Outs” means Settlement Class Members who have timely and properly opted out of the Settlement, consistent with Section VIII of this Agreement.

40. “Settlement Fund” means the fund established under Section XI hereof.

41. “Settlement Payment Amount” means the Two Million Two Hundred Fifty Thousand and 00/100 Dollars (\$2,250,000.00) that TD Bank agrees to pay, without admission of liability, as the monetary component of this Settlement, as more specifically described in Section XI of this Agreement.

42. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program, and in any event no later than thirty (30) days after Preliminary Approval, as a means for Settlement Class Members to obtain notice of and information about the Settlement. Additional description of the Settlement Website is provided in Section VII hereof.

43. “TD Bank” means the national bank, a party to this Agreement, now existing as TD Bank, N.A.

### **III. Conditional Certification of the Settlement Class**

44. For settlement purposes only, Plaintiffs shall ask the Court to certify the following “Settlement Class” under Fed. R. Civ. P. 23(b)(3) and 23(e):

All current and former holders of a TD Bank, N.A. Cash Secured Credit Card (a) who opened their TD Cash Secured Credit Card after May 19, 2015 and before January 18, 2022, and (b) who, through the date of Preliminary Approval, (i) maintained their account for seven consecutive billing cycles without committing an act of default, and (ii) were not graduated to an unsecured TD Bank credit card in the cycle following that seven-month period.

Excluded from the Settlement Class are TD Bank; TD Bank’s officers and directors at all relevant times, as well as members of their immediate families and their legal representatives, heirs, successors, or assigns; and any entity in which TD Bank has or had a controlling interest. Also excluded from the Settlement Class are federal, state, and local governments and all agencies and subdivisions thereunder; and any judge to whom this Action is or has been assigned and any member of her immediate family.

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

46. In the event that the Settlement does not receive Final Approval, or in the event the Effective Date does not occur, any order certifying the Settlement Class for purposes of effectuating the Settlement and the terms of this Agreement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the

same to the Court, the Action shall proceed as though the Settlement Class had never been certified pursuant to this Agreement and such findings had never been made, and the Action shall return to the procedural *status quo* in accordance with this paragraph. In addition, the Parties shall not be bound by this Settlement's definition of the Settlement Class; the Parties shall not be permitted to use it as evidence or otherwise in support of any argument or position in any motion, brief, hearing, appeal, or otherwise; and TD Bank shall retain its right to object to the maintenance of this Action as a class action, the suitability of Plaintiffs to serve as class representatives, and the suitability of Class Counsel to serve as class counsel.

47. This Settlement may be terminated as specified in Section XVII hereof.

#### **IV. Settlement Consideration**

48. Subject to approval by the Court, TD Bank shall, without admission of liability, pay the total amount of Two Million Two Hundred Fifty Thousand and 00/100 Dollars (\$2,250,000.00). This Settlement Payment Amount includes all monetary disbursements incurred in connection with the Settlement, including but not limited to (a) all monetary payments to the Settlement Class; (b) all Administrative Costs; (c) all attorneys' fees, costs, and expenses awarded by the Court to Class Counsel; and (d) all Service Awards to be paid to Plaintiffs. For avoidance of doubt, TD Bank shall not be required to pay any additional monetary sums in settlement of the Action, nor shall it be required to bear any other fees, costs, charges, or expenses in connection with the Settlement. TD Bank also shall not be required to take any action or refrain from taking any action as a result of this Settlement except to fulfill its obligations to implement the terms of this Agreement as specifically provided herein.

**V. Settlement Approval**

49. Upon execution of this Agreement by counsel for all Parties, Class Counsel shall promptly submit for the Court's consideration a motion seeking an Order pursuant to Fed. R. Civ. P. 23(e)(1) for Preliminary Approval of the Settlement and entry of a Preliminary Approval Order.

50. The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and TD Bank. The motion for Preliminary Approval shall request that the Court: (1) find that it is likely to approve the terms of the Settlement under Fed. R. Civ. P. 23(e)(2); (2) find that it will likely be able to conditionally certify the Settlement Class for purposes of settlement; (3) designate Plaintiffs as the representatives of the Settlement Class; (4) appoint Class Counsel; (5) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (6) approve the procedures set forth in Section VII hereof and in the Notice Program for Settlement Class Members to exclude themselves from the Settlement Class or for Participating Settlement Class Members to object to the Settlement; (7) stay the Action pending Final Approval of the Settlement; and (8) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and counsel for TD Bank, at which the Court will conduct an inquiry to determine whether the proposed Settlement is fair, reasonable, and adequate after considering the factors listed in Fed. R. Civ. P. 23(e)(2), and whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards to Plaintiffs.

## **VI. Settlement Administrator**

51. 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, providing Notice to Settlement Class Members and distributing payments from the Settlement Fund.

52. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include the following:

- a. Providing notice required by the Class Action Fairness Act (“CAFA”);
- b. Implementing the Notice Program required by this Agreement;
- c. Establishing and maintaining an address for receiving mailed written notifications of exclusion from the Settlement Class;
- d. Establishing and maintaining the Settlement Website as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long-Form Notice, the Preliminary Approval Order, and such other documents as Class Counsel and TD Bank agree to post or that the Court orders posted on the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- f. Responding to any mailed Settlement Class Member inquiries;
- g. Processing all written notifications of exclusion from the Settlement Class;

- h. Providing weekly reports and, no later than five (5) days after the Opt-Out Deadline, a final report to Class Counsel and TD Bank's counsel that summarizes the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and TD Bank's counsel;
- i. Paying any taxes pursuant to paragraph 85;
- j. At Class Counsel's and/or TD Bank's counsel's request, in advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that:
  - (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and
  - (ii) identifies each Settlement Class Member that timely and properly provided written notification of exclusion from the Settlement Class;
- k. After the Effective Date, processing and transmitting Service Awards and any other distributions to Participating Settlement Class Members from the Settlement Fund;
- l. Paying the remainder of the Settlement Fund to TD Bank in the event of a termination of the Settlement pursuant to Section XVII hereof;
- m. Paying invoices, expenses, and costs upon approval by Class Counsel and TD Bank's counsel, as provided in this Agreement; and
- n. Performing the duties of Escrow Agent as described in this Agreement, and any other function related to the administration of the Settlement at the instruction of Class Counsel and TD Bank, including, but not limited

to, verifying that Settlement Funds have been distributed as required by Sections XII, XIII, and XIV hereof.

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

## **VII. Notice to Settlement Class Members**

54. Subject to its statutory and regulatory obligations to protect its customers' private financial information, as well as the execution of a separate Confidentiality Agreement in a form acceptable to TD Bank which affirms the Settlement Administrator's obligations to protect the confidentiality of Settlement Class Members' personal identifying information, within sixty (60) days of Preliminary Approval, TD Bank will provide to the Settlement Administrator a list ("Class List") that identifies, subject to the availability of information in reasonably accessible electronic form, the names, last known mailing addresses, and last known e-mail addresses, if available, of identifiable Settlement Class Members, as well as information sufficient for the Settlement Administrator to distribute the Net Settlement Fund pursuant to the allocation methodology in paragraph 88.

55. Within thirty (30) days of receiving the Class List from TD Bank, or by the time specified by the Court, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of



the Settlement; a date by which Settlement Class Members may exclude themselves from (i.e., opt out of) the Settlement Class; a date by which Participating Settlement Class Members may object to the Settlement; the date, time, and location of the Final Approval Hearing; and the address of the Settlement Website at which Settlement Class Members may access this Agreement, the Long-Form Notice, and other related documents and information. Class Counsel and TD Bank's counsel 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 TD Bank's logos or trademarks or the return address of TD Bank, or otherwise be styled to appear to originate from TD Bank.

56. The Notice Program shall include the following components: (1) E-Mail Notice and/or Mail Notice; (2) Long-Form Notice posted on the Settlement Website; and (3) any other components necessary to satisfy the requirements of due process and Fed. R. Civ. P. 23.

57. The E-Mail Notice and Mail Notice will direct Settlement Class Members to the Long-Form Notice, which will be posted on the Settlement Website. The E-Mail Notice will include a hyperlink to the Long-Form Notice.

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

receives from TD Bank, Class Counsel, and/or Settlement Class Members without prior written consent of the Parties or by order of the Court.

59. The primary method of notice for Settlement Class Members is individual E-Mail Notice to the last known e-mail address shown on TD Bank's records. The secondary method of notice is individual Mail Notice to the last known mailing address shown on TD Bank's records, or at a more current address, if that information can reasonably be obtained by the Settlement Administrator.

60. Within thirty (30) days from the date that the Settlement Administrator receives the Class List, the Settlement Administrator shall (1) send E-Mail Notice to Settlement Class Members for whom the Settlement Administrator was provided an e-mail address; and (2) Mail Notice to Settlement Class Members for whom there are no e-mail addresses on file. If an e-mail is returned as undeliverable, the Settlement Administrator shall mail the Mail Notice to the Settlement Class Member for whom the e-mail was returned as undeliverable. The Settlement Administrator shall run the mailing addresses through the National Change of Address Database before mailing. If the mailed postcard is returned as undeliverable, the Settlement Administrator shall use reasonable efforts to locate a current mailing address for the Settlement Class Member and re-mail the notice to the current mailing address.

61. The Notice Program (which is comprised of E-Mail Notice, Mail Notice, and the posting of the Long-Form Notice on the Settlement Website, all as described herein) shall be completed no later than ninety (90) days after Preliminary Approval. Within seven (7) days after the date the Settlement Administrator completes the Notice Program, the Settlement Administrator shall provide Class Counsel and TD Bank an affidavit that confirms that the Notice Program was completed in a timely manner. Class Counsel shall file that affidavit with

the Court as an exhibit to or in conjunction with Plaintiffs' Motion for Final Approval of the Settlement.

62. As soon as practicable following Preliminary Approval, but no later than thirty (30) days after Preliminary Approval, and prior to the sending of Notice, the Settlement Administrator shall establish the Settlement Website and a toll-free telephone line for Settlement Class Members to call with questions. The Internet address (URL) of the Settlement Website and the toll-free number shall be included in all forms of Notice sent to Settlement Class Members.

63. The Settlement Website shall include this Agreement, the Long-Form Notice, the Preliminary Approval Order, and such other documents as Class Counsel and TD Bank agree to post or that the Court orders posted on the website. The telephone line shall be capable of providing general information concerning the Settlement, including deadlines for objecting to or opting out of the Settlement, and the dates of relevant Court proceedings, including the Final Approval Hearing. The URL of the Settlement Website shall be [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com) or such other URL as Class Counsel and TD Bank may subsequently agree upon in writing. The Settlement Website and toll-free number shall be maintained at least through the Effective Date. The Settlement Website shall not include any advertising, and shall not bear or include TD Bank's logos or trademarks. Operation of the Settlement Website shall cease no later than sixty (60) days after distribution of the Net Settlement Fund to Participating Settlement Class Members has been completed as set forth in Section XIII, or such other date as Class Counsel and TD Bank shall agree, and ownership of the Settlement Website URL shall be transferred to TD Bank within ten (10) days of the date on which operation of the Settlement Website ceases. The Settlement Administrator shall cause to

be maintained a record of activities, including inquiries to the Settlement Website, downloads, phone calls, and/or mailings, and shall ensure that a running tally is kept of the number and types of materials mailed by it or downloaded from the Settlement Website in a computerized database form.

64. Within the parameters set forth in this Section VII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and TD Bank.

### **VIII. Exclusions and Opt-Outs**

65. The Notice shall include a procedure for Settlement Class Members to opt out of the Settlement. A Settlement Class Member may opt out of the Settlement at any time during the Opt-Out Period. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement, including but not limited to the Releases contained in this Agreement.

66. For an opt-out to be considered by the Court, the opt-out must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an opt-out shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an opt-out shall be deemed to have been submitted on the shipping date reflected on the shipping label.

67. For an opt-out to be considered by the Court, the opt-out must set forth:
- a. The name of the Action;
  - b. The person's or entity's full name, address, e-mail address, telephone number, and last four digits of the person or entity's TD Cash Secured Credit Card account number;

- c. A specific statement of the person's or entity's intention to be excluded from the Settlement, and that the individual understands that he or she will receive no money from the Settlement;
- d. The identity of the person's or entity's counsel, if represented; and
- e. The person's signature or the entity's authorized representative's signature and the date on which the request was signed.

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

69. Settlement Class Opt-Outs are not entitled to receive a payment from the Settlement Fund under this Settlement.

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

71. Neither the Parties nor any person acting on their behalf shall seek to solicit or otherwise encourage anyone to opt out of the Settlement.

## **IX. Objections**

72. The Notice shall include a procedure for Participating Settlement Class Members to object to the Settlement, Class Counsel's application for attorneys' fees, costs, and expenses, and/or Service Awards to Plaintiffs. Objections to the Settlement or to the application for fees, costs, expenses, and/or to the Service Awards must be submitted to the Clerk of the Court, Class Counsel, and TD Bank's counsel.

73. For an objection to be considered by the Court, the Participating Settlement Class Member must not have opted out of the Settlement and the objection must be electronically filed or mailed first-class postage prepaid and addressed in accordance with the instructions and the

postmark date indicated on the envelope must be no later than the Objection Deadline, as specified in the Notice.

74. For an objection to be considered by the Court, the objection must set forth:
- a. The name of the Action;
  - b. The objector's full name, address, e-mail address, and telephone number;
  - c. An explanation of the basis upon which the objector claims to be a Settlement Class Member;
  - d. A statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
  - e. A statement with specificity of all grounds for the objection, accompanied by any legal support for the objection known to the objector or the objector's counsel;
  - f. The number of times in which the objector has objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
  - g. The identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
  - h. The number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five (5) years

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

- i. The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- j. A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- k. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- l. The objector's signature (an attorney's signature is not sufficient). Any objection submitted on behalf of a business entity must identify the title of the authorized individual signing the objection.

75. All evidence and legal support a Participating Settlement Class Member wishes to use to support an objection must be filed with the Court on or before the Objection Deadline and sent to the Parties postmarked on or before the Objection Deadline. The Parties may file responses to any objections that are submitted and shall have the right to take discovery, including via subpoenas *duces tecum* and depositions, from any objector.

76. Any Participating Settlement Class Member who timely files and serves an objection in accordance with this section may appear at the Final Approval Hearing, either in person or through an attorney, if the Participating Settlement Class Member files a notice with the Court by the Objection Deadline indicating that he or she wishes to appear at the Final

Approval Hearing. Failure to adhere to the requirements of this section will bar a Participating Settlement Class Member from being heard at the Final Approval Hearing, either individually or through an attorney, unless the Court otherwise orders.

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

**X. Final Approval**

78. Plaintiffs' motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur.

79. Plaintiffs shall file their Motion for Final Approval of the Settlement no later than seven (7) days before the Final Approval Hearing or by such other deadline as the Court may order.

80. At the Final Approval Hearing, the Court will hear argument on and determine whether to enter a Final Approval Order granting Plaintiffs' Motion for Final Approval of the Settlement and Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards for Plaintiffs. In the Court's discretion, the Court also may hear from any Settlement Class Members (or their counsel) who object to the Settlement or to the fee, cost, expense, or Service Award application, provided the objectors filed timely objections that meet all of the requirements listed above.

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



- a. Determine that the Settlement is fair, reasonable, and adequate, and grant Final Approval of the Settlement in accordance with Fed. R. Civ. P. 23(e)(2);
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice satisfied due process requirements;
- d. Dismiss the Action with prejudice and without costs;
- e. Bar and enjoin Plaintiffs and all Participating Settlement Class Members from asserting any of the Released Claims, as set forth in Section XV hereof, including during any appeal from the Final Approval Order;
- f. Release TD Bank and the Released Parties from the Released Claims, as set forth in Section XV hereof; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including TD Bank, Plaintiffs, all Participating Settlement Class Members, and any objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

82. In the event that the Court does not enter the Final Approval Order in a form substantially the same as submitted, as determined by the Parties, the Parties have the right to terminate this Agreement and the Settlement, per Section XVII below. While materiality remains subject to the Parties' determination in their reasonable discretion, material changes shall not include any changes to the legal reasoning or format used by the Court to justify the substantive relief sought by the Final Approval Order. In the event that the Effective Date does not occur, the Final Approval Order is vacated or reversed, or the Settlement does not become final and binding, the Parties agree to request that the Court vacate any dismissal with prejudice.

## **XI. Settlement Fund and Other Consideration**

83. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section XV hereof and the dismissal of the Action with prejudice upon Final Approval, within fourteen (14) days of Preliminary Approval, TD Bank shall deposit the Settlement Payment Amount of Two Million Two Hundred Fifty Thousand and 00/100 Dollars (\$2,250,000.00), into the Escrow Account to create the Settlement Fund as set forth herein.

84. Upon the establishment of the Escrow Account, the Escrow Agent may, but shall not be required to, cause the Settlement Funds in the Escrow Account to be invested, in whole or in part, in interest-bearing short-term instruments or accounts – to be agreed upon by Class Counsel and TD Bank – that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof (the “Instruments”). Class Counsel and TD Bank shall agree on the FDIC-insured financial institution at which the Escrow Account shall be established, which shall not be TD Bank. The Escrow Agent may thereafter re-invest the interest proceeds and the principal as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs, and expenses, and other required disbursements, in a timely manner. Notwithstanding the foregoing, that portion of the Settlement Fund that the Settlement Administrator reasonably estimates needs to be available on a liquid basis to pay on-going costs of settlement administration, as provided in this Agreement, may be placed in one or more insured accounts that may be non-interest-bearing. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account and under the control of the Escrow Agent. The Escrow Agent shall communicate with

Class Counsel and counsel for TD Bank on at least a monthly basis to discuss potential cash needs for the following month. All costs or fees incurred in connection with investment of the Settlement Fund in the Instruments shall be paid out of the investment proceeds or the Settlement Fund.

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

86. The Settlement Fund shall be used for the following purposes:

- a. Distribution of payments to Participating Settlement Class Members pursuant to Sections XII, XIII, and XIV hereof;
- b. Payment of the Court-ordered award of Class Counsel’s attorneys’ fees, costs, and expenses pursuant to Section XVI hereof;
- c. Payment of the Court-ordered Service Awards to Plaintiffs pursuant to Section XVI hereof;

- d. Payment of any residual *cy pres* distribution as set forth in Section XIV hereof, together with any Administrative Costs associated therewith;
- e. Payment of all Taxes, including, without limitation, taxes owed as a result of accrued interest on the Escrow Account, subject to approval by Class Counsel and TD Bank;
- f. Payment of any Administrative Costs, including but not limited to costs related to the Notice Program, sending any notice required by the Class Action Fairness Act, and the administration of the Settlement; and
- g. Payment of additional fees, costs, and expenses not specifically enumerated in subparagraphs (a) through (f) of this paragraph, subject to approval of Class Counsel and TD Bank.

## **XII. Calculation of Distributions from Net Settlement Fund**

87. Within sixty (60) days of Preliminary Approval, TD Bank, in consultation with Class Counsel and their experts, shall identify data – to the extent it exists in reasonably accessible electronic form – sufficient to calculate and implement the allocation of the Net Settlement Fund as provided in Sections XI, XII, and XIII. The calculation of the allocations shall be performed by the Settlement Administrator, as described below, and the implementation of the allocations contemplated by this Section XII shall be undertaken by the Settlement Administrator. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computation. Subject to its statutory and regulatory obligations to protect its customers’ private financial information, and pursuant to the terms of the Confidentiality Order for Discovery in this Action, *see* ECF No. 41,

TD Bank shall make available data and information sufficient to allow Class Counsel and their experts and the Settlement Administrator to determine and confirm the calculations and allocations contemplated by this Agreement and the Settlement Administrator's implementation of such allocations.

88. Net Settlement Fund Allocation: The amount of the distribution from the Net Settlement Fund to which each identifiable Participating Settlement Class Member is entitled for the Class Period (subject to the availability of data) shall be determined using the following methodologies, or such other methodologies as would have an equivalent result.

- a. Base Component. (1) To the extent that the Net Settlement Fund is sufficient in amount, each Participating Settlement Class Member shall be entitled to a base award of Ten and 00/100 dollars (\$10.00) from the Net Settlement Fund, as well as an Additional Component as specified in paragraph 88(b). (2) If the Net Settlement Fund is not sufficient to make a \$10.00 payment to each Participating Settlement Class Member, then the Net Settlement Fund shall be divided equally among Participating Settlement Class Members, and no Additional Component shall be distributed.
- b. Additional Component. To the extent that the Additional Component is to be distributed as provided in paragraph 88(a)(1), it shall be distributed as follows.
  - (1) First, the amount available for Additional Component payments shall be the Net Settlement Fund minus the total amount of Base Component payments to all Participating Settlement Class Members. As an example, and to avoid doubt, if the Net Settlement Fund were One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00) and the total amount of Base Component

payments were One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00), then the amount available for Additional Component payments would be Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00). (2) The amount available for Additional Component payments shall then be divided pro rata among Participating Settlement Class Members according to the period of time that the Participating Settlement Class Member was in a Non-Graduated State. Each Participating Settlement Class Member's Non-Graduated State shall be equal to the number of months that passed between (A) the month following the first period of seven consecutive months of non-default on the Participating Settlement Class Member's Account, and (B) the earliest of (i) the month in which the Participating Settlement Class Member graduated to an unsecured account, (ii) the month in which the Participating Settlement Class Member closed their Account, or (iii) the month of Preliminary Approval. The total amount available for Additional Component payments shall be divided by the total months the Participating Settlement Class Members were in a Non-Graduated State to calculate the Additional Component payment for each month a Participating Settlement Class Member was in a Non-Graduated State ("Monthly Additional Component Value"). If a Participating Settlement Class Member were in a Non-Graduated State for one month, for example, their Additional Component payment would be exactly the Monthly Additional Component Value. If they were in a Non-Graduated State for two months, their Additional Component payment would be double the Monthly Additional Component Value. The amount of each Participating Settlement Class

Member's Additional Component shall be added to the Base Component and paid simultaneously.

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

### **XIII. Distribution of Net Settlement Fund**

90. As soon as practicable, but in no event sooner than thirty (30) days from the Effective Date, the Settlement Administrator shall distribute the Net Settlement Fund as set forth in this Section XIII.

91. The Net Settlement Fund is equal to the Settlement Payment Amount plus any interest earned from the Instruments, less the following:

- a. The amount of the Court-awarded attorneys' fees, costs, and expenses to Class Counsel;
- b. The amount of the Court-awarded Service Awards to Plaintiffs;
- c. The costs of Notice and administration of the Settlement, including a reservation of a reasonable amount of funds for prospective costs of the Notice Program, and administration of the Settlement including tax administration as agreed upon by Class Counsel and TD Bank; and
- d. All other costs and/or expenses incurred in connection with the Settlement not specifically enumerated in subsections (a) through (c) of this

paragraph that are expressly provided for in this Agreement or have been approved by Class Counsel and TD Bank.

92. Every Participating Settlement Class Member shall be paid from the Net Settlement Fund the portion of the Settlement Payment Amount to which he or she is entitled, calculated as set forth in Section XII (“Settlement Fund Payments”). In no event, however, shall TD Bank be required to pay more than a total of Two Million Two Hundred Fifty Thousand and 00/100 Dollars (\$2,250,000.00) to satisfy its monetary obligations under this Settlement.

93. Settlement Fund Payments will be made by checks with appropriate legends, in a form approved by Class Counsel and TD Bank, to indicate that they are from the Settlement Fund. Prior to mailing Settlement Fund Payment checks, the Settlement Administrator shall attempt to update the last known addresses of the Participating Settlement Class Members through the National Change of Address Database or similar databases. The Settlement Administrator shall not mail Settlement Fund Payment checks to addresses from which Notices were returned as undeliverable. Checks will be cut and mailed by the Settlement Administrator, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for one hundred and eighty (180) days after issuance.

94. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned as undeliverable, and will re-mail it once to the updated address. Settlement Fund Payment checks returned with a forwarding address shall be re-mailed to the new address within seven (7) days.

95. If a Participating Settlement Class Member’s check is not deposited (or cashed) within one hundred and eighty (180) days after the check is mailed, (1) the check shall be null and void, and (2) the Settlement Administrator shall once again follow the procedures set forth



above in paragraph 94 and shall send a second check to the Participating Settlement Class Member, this time to be valid for ninety (90) days after issuance. If that Participating Settlement Class Member's second check also is not deposited (or cashed) within ninety (90) days after the second check is mailed, then (1) the second check shall be null and void; (2) the Participating Settlement Class Member shall be barred from receiving a further Settlement Fund Payment under this Settlement; and (3) the amount of the Participating Settlement Class Member's award shall revert to the Settlement Fund account and be distributed as described in Section XIV.

96. Any Settlement Fund Payment paid to a deceased Participating Settlement Class Member shall be made payable to the estate of the deceased Participating Settlement Class Member, provided that the Participating Settlement Class Member's estate informs the Settlement Administrator of the Participating Settlement Class Member's death before the date that Settlement Fund Payment checks are mailed and provides a death certificate confirming that the Settlement Class Member is deceased. If the Participating Settlement Class Member's estate does not inform the Settlement Administrator of the Participating Settlement Class Member's death before Settlement Fund Payment checks are mailed, then the deceased Participating Settlement Class Member will be barred from receiving a Settlement Fund Payment under this Settlement.

97. The amount of any uncashed or returned checks sent by the Settlement Administrator shall remain in the Settlement Fund for one year from the date that the first distribution check is mailed by the Settlement Administrator, during which time the Settlement Administrator shall make a reasonable effort to locate intended recipients of Settlement Funds whose checks were returned to effectuate delivery of such checks. The Settlement Administrator shall make only one attempt to re-issue a distribution check.

98. The Parties shall have no responsibility or liability for any federal, state, or other taxes owed by Participating Settlement Class Members as a result of, or that arise from, any Settlement Fund Payment or any other term or condition of this Agreement.

99. The Settlement Administrator shall prepare, send, file, and furnish all tax information reporting forms required for payments made from the Settlement Fund Account as required by the Internal Revenue Service pursuant to the Internal Revenue Code and related Treasury Regulations. The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this section.

100. The Settlement Administrator shall provide the Parties with a reconciliation and accounting of the Settlement Fund Account at each of the following times: (1) no later than ten (10) days after the Settlement Fund Payment checks are mailed; (2) no later than ten (10) days after the expiration of the 180-day period for depositing Settlement Fund Payment checks; and (3) no later than ten (10) days after the expiration of the 90-day period for depositing second Settlement Fund Payment checks sent to Participating Settlement Class Members that did not deposit the first check.

#### **XIV. Disposition of Residual Funds**

101. In the event that there is any residual in the Settlement Fund Account after the distributions required by Sections XIII of this Agreement are completed, then the residual funds may be distributed to Participating Settlement Class Members who deposited (or cashed) their own original check through a secondary, pro-rata distribution of the residual less the cost of the secondary distribution.

102. If the residual amount less the cost of the secondary distribution is less than Five Thousand and 00/100 Dollars (\$5,000.00), then subject to Court approval, the funds may be distributed to a residual *cy pres* program. The residual *cy pres* recipient(s) shall be agreed upon by Class Counsel and TD Bank and subject to Court approval. The purpose of any residual *cy pres* distribution shall be to benefit consumer financial literacy education, and to educate and assist consumers with financial services issues through advisory and related services (excluding litigation). Any residual *cy pres* distribution shall be paid as soon as reasonably possible following the completion of the distribution of residual Settlement Fund Payments in paragraph 101, with the Parties and the Settlement Administrator making their best efforts to make such a distribution within one year plus thirty (30) days after the date the Settlement Administrator mails the first Settlement Fund Payments. All costs associated with the disposition of residual *cy pres* funds shall be paid by the Settlement Fund. In the event no money remains in the Settlement Fund within one year plus thirty (30) days after the first Settlement Fund Payment is mailed, the Parties shall have no obligation whatsoever to make any residual *cy pres* distribution. If the Court does not approve any *cy pres* distributions, or if any such approval is reversed on appeal, residual funds shall be distributed in the manner provided by the Final Approval Order addressing distribution of residual funds.

#### **XV. Releases**

103. As of the Effective Date, Plaintiffs and every Participating Settlement Class Member, each on behalf of himself, herself, or itself, and on behalf of his, her, or its respective heirs, executors, assigns, beneficiaries, predecessors, and successors, and any person or entity claiming under them (collectively, "Releasing Parties"), shall automatically be deemed to have fully and irrevocably released and forever discharged TD Bank and each of its present and

former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents (alleged, apparent, or actual), insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively, “Releasees”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that constitute, result from, arise out of, are based upon, or relate to any of the claims that were asserted in the Action, and any of the conduct, allegations, acts, transactions, facts, events, representations, statements, omissions, duties, or matters up to and including the date of Preliminary Approval that were or could have been alleged in this Action by Plaintiffs or by any other Settlement Class Members, whether assertable in the form of a cause of action or as a private motion, petition for relief or claim for contempt, or otherwise, and in any court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, and whether based on any federal, state (including, without limitation, breach of contract, breach of the implied covenant of good faith and fair dealing, the Delaware Consumer Fraud Act, 6 Del. C. §§ 2511, *et seq.*, New York General Business Law § 349 *et seq.*, New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.*, and Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, *et seq.*), local, statutory or common law or any other law, rule, regulation, ordinance, code, contract, common law, or any other source, including the law of any jurisdiction outside the United States (including both direct and derivative claims), including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses (“Released Claims”).

104. With respect to the Released Claims, Releasing Parties shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state, or local law to the extent any such provision is applicable), which reads:

**§1542. CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

105. Plaintiffs or any Participating Settlement Class Member may hereafter discover facts other than or different from those that the Plaintiff or Participating Settlement Class Member now knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraphs 103 and 104 hereof, or the law applicable to such claims may change. Nonetheless, each and every Plaintiff and Participating Settlement Class Member expressly agrees that, as of the Effective Date, he, she, or 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 paragraph and paragraphs 103 and 104 hereof. Further, each and every Plaintiff and Participating Settlement Class Member agrees and acknowledges that he, she, or it shall be bound by this

Agreement, including by the releases contained in this paragraph and in paragraphs 103 and 104 hereof, and that all of their claims or potential 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 the Plaintiff or Participating Settlement Class Member never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

106. Plaintiffs and Participating Settlement Class Members covenant not to sue or otherwise assert any claims against TD Bank challenging practices with respect to the review of TD Cash Secured Credit Card Accounts for graduation during the Class Period.

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

#### **XVI. Payment of Attorneys' Fees, Costs, and Service Awards**

108. Plaintiffs shall file their application for attorneys' fees, costs, and expenses, and for Service Awards for Plaintiffs, no later than thirty (30) days after the Notice Deadline or by such other deadline as the Court may order.

109. TD Bank agrees not to oppose Class Counsel's request for attorneys' fees of up to one-third of the \$2.25 million Settlement Payment Amount, and not to oppose Class Counsel's request for reimbursement of costs and expenses. Class Counsel agree not to make a request for attorneys' fees that exceeds one-third of the \$2.25 million Settlement Payment Amount. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve an award of attorneys'

fees, costs, or expenses in the amount requested by Class Counsel shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination. The Court-approved award of attorneys' fees, costs, and expenses shall constitute full satisfaction of any obligation on TD Bank's part to pay any person, attorney, or law firm for costs, litigation expenses, attorneys' fees, or any other expense incurred on behalf of Plaintiffs or the Settlement Class.

110. Within seven (7) days of the Effective Date, the Escrow Agent shall pay from the Settlement Fund to Class Counsel all Court-approved attorneys' fees, costs, and expenses of Class Counsel, including interest accrued thereon, provided, however, that the Escrow Agent shall not pay any such fees, costs, or expenses from the Settlement Fund to Class Counsel until such time as Class Counsel have jointly agreed upon a plan of allocation of fees, costs, and expenses among all Class Counsel, and have jointly provided payment instructions to the Escrow Agent. In the event that the award of attorneys' fees, costs, and expenses of Class Counsel is reduced on appeal, the Escrow Agent shall only pay to Class Counsel from the Settlement Fund the reduced amount of such award, including interest accrued thereon. Class Counsel shall timely furnish to the Escrow Agent any required tax information or forms before the payment is made.

111. The payment of attorneys' fees, costs, and expenses of Class Counsel pursuant to paragraph 110 hereof shall be made through a deposit by the Escrow Agent into an Attorney Client Trust Account jointly controlled by Class Counsel. After the payment for fees, costs, and expenses has been deposited into this account, Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees, costs, and expenses to each firm.

112. Class Counsel will ask the Court to approve Service Awards of up to Seven Thousand Five Hundred and 00/100 Dollars (\$7,500) for Natalie Campagna and up to Five Thousand and 00/100 Dollars (\$5,000) each for Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner. All Service Awards are to be paid from the Settlement Fund. The Service Awards shall be paid to Plaintiffs in addition to Plaintiffs' Settlement Fund Payments. TD Bank agrees not to oppose Class Counsel's request for the Service Awards. The Parties agree that the Court's failure to approve Service Awards in the amounts requested by Class Counsel shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination. Any Service Awards shall be paid within seven (7) days of the Effective Date.

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

## **XVII. Termination of Settlement**

114. Subject to the limitations set forth in paragraphs 109 and 112 above regarding the Court's determinations with respect to Class Counsel's requests for attorneys' fees, costs, and expenses and Plaintiffs' requests for Service Awards, this Settlement may be terminated by Class Counsel or TD Bank by serving on counsel for the opposing Party and filing with the Court a written notice of termination within forty-five (45) days (or such longer time as may be agreed between Class Counsel and TD Bank) after any of the following occurrences:

- a. Class Counsel and TD Bank agree to termination;
- b. The Court rejects, materially modifies, materially amends or changes, or declines to grant Preliminary or Final Approval of the Settlement;



- c. An appellate court reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
- d. Any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Class Counsel or TD Bank reasonably consider material;
- e. The Effective Date does not occur; or
- f. Any other ground for termination provided for elsewhere in this Agreement.

115. TD Bank also shall have the right, in its sole discretion, to terminate the Settlement if the number of Settlement Class Opt-Outs exceeds 2% of the number of all Settlement Class Members (the “Termination Option”). TD Bank shall give written notice to Class Counsel of any decision to exercise the Termination Option within fourteen (14) days of TD Bank’s receipt of the last timely opt-out statement received pursuant to paragraph 68. In the event TD Bank exercises the Termination Option, this Settlement shall become null and void and shall have no further force or effect, all funds being held in the Settlement Fund Account shall revert to TD Bank, the Action shall continue, any Preliminary Approval Order shall be automatically vacated, and the Parties shall confer with the Court as to whether and how any notice of the termination should be sent to the Settlement Class, with TD Bank bearing the cost of such notice. Further, the provisions of paragraph 117 shall govern the Parties’ respective post-termination rights and obligations.

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

117. In the event of a termination as provided herein, this Agreement shall be considered null and void; all of TD Bank's obligations under the Settlement shall cease to be of any force and effect; all amounts in the Settlement Fund shall be returned to TD Bank within seven (7) days of termination; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including, but not limited to, Plaintiffs' rights to seek certification of one or more litigation classes and TD Bank's rights to oppose certification, or seek decertification, of any litigation class on any grounds. Further, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

118. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of paragraphs 114 and/or 115 hereof.

#### **XVIII. No Admission of Liability**

119. TD Bank disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind, but expressly denies any such liability or wrongdoing. TD Bank has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to

be completely free of any further claims that were asserted or could have been asserted in the Action.

120. 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 have investigated the facts and law relevant to the merits of the claims and have concluded that the proposed Settlement set forth in this Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class Members.

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

122. Neither the Settlement, nor any act performed, statement made, or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; 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; or (c) is or may be deemed to be, or may be used as, an admission by the Released Parties that any litigation class may be certified.

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

#### **XIX. Miscellaneous Provisions**

124. 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 permits.

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

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

127. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, to defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect so long as this Settlement has not been terminated in accordance with its terms, regardless of events that may occur, or court decisions that may be issued in any other case in any court.

128. 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.

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

130. 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.

131. 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 New Jersey, without regard to the principles thereof regarding choice of law, except to the extent federal law controls the issue in dispute.

132. Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any handwritten signature submitted by facsimile or through e-mail of an Adobe PDF shall be deemed an original. In addition, the Parties agree that any Electronic Signature by a Party to this Agreement is intended to authenticate this writing and has the same force and effect as a handwritten signature. Pursuant to the New Jersey Uniform Electronic Transactions Act, “Electronic Signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

133. 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 also retain jurisdiction over all questions and/or disputes related to the Notice Program, the Settlement Administrator, and the allocation of the attorney fees to attorneys representing Plaintiffs if Class Counsel cannot reach an agreement on the allocation of attorney fees and/or costs and expenses. As part of their respective agreements to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

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

E. Adam Webb  
WEBB, KLASE & LEMON, LLC  
1900 The Exchange, SE, Suite 480  
Atlanta, GA 30339  
Telephone: (770) 444-0773  
Contact@WebbLLC.com

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

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

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

Epiq Systems, Inc.

P.O. Box 6877  
Portland OR 97228-6877

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.

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

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

136. CAFA. The Settlement Administrator shall timely send the notices required by 28 U.S.C. § 1715 no more than ten (10) days after Plaintiffs file the motion seeking a Preliminary Approval Order.

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

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

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

to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

140. Agreement Mutually Prepared. Neither TD Bank nor Plaintiffs, nor any of them, 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.

141. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. TD Bank has provided and is providing information to identify Settlement Class Members and allow for calculation of the settlement payments to Plaintiffs and Participating Settlement Class Members. 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.

142. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read the Agreement and the Releases contained in Section XV hereof, received independent legal advice with respect to the advisability of



entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

143. Return of Confidential Information. Class Counsel, on behalf of themselves and their expert witnesses and consultants as well as others retained by them, acknowledge that during the course of this Action, they have received Confidential Information. No later than thirty (30) days after the Effective Date, Class Counsel shall return to TD Bank all Confidential Information and certify that they and their expert witnesses and consultants do not retain any copies or summaries or compilations or indices of such information. Within the same time period, Class Counsel will identify for TD Bank the expert witnesses, outside consultants, and any other individuals or entities to whom Confidential Information was given, and will advise those persons of this requirement and will ensure their compliance with it. The Parties may stipulate to destruction of Confidential Information in lieu of return to TD Bank. This provision is not intended to cover work product of Class Counsel but is intended to cover Confidential Information that is attached to any work product. Any retained work product which refers or relates to Confidential Information shall continue to be confidential under the terms of the Confidentiality Order for Discovery in this Action. *See* ECF No. 41. Class Counsel shall not use any of the Confidential Information learned or obtained in this Action for any purpose after the Effective Date.

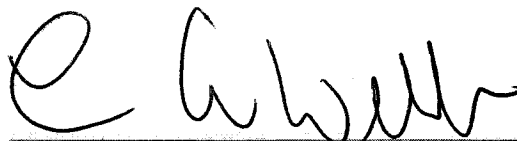
144. Publicity. The Parties shall not issue press releases or similar public statements regarding this Settlement for any purpose, except that Class Counsel may make public statements regarding the Settlement on any resume, future pleadings relating to Class Counsel's experience and results, and Class Counsel's websites. The Parties and their counsel agree that they shall not

make any public statements, whether written or oral, disparaging any other Party, including any statements tending to harm a Party's reputation, business interests, or goodwill.

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FOR PLAINTIFFS:

Dated: 7/25/22



E. Adam Webb  
*Class Counsel*

Dated: 7/25/2022



Kenneth J. Grunfeld  
*Class Counsel*

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

\_\_\_\_\_  
Natalie Campagna

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

\_\_\_\_\_  
Gloria DeVault

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

\_\_\_\_\_  
Amanda Farmer

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

\_\_\_\_\_  
Philip Pagliaro

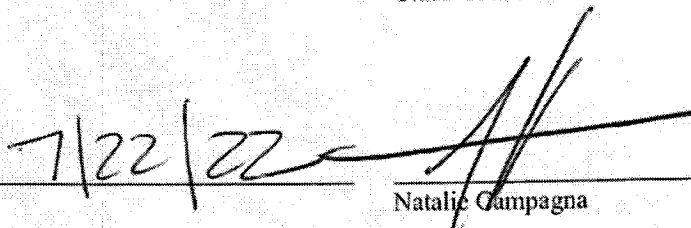
Dated: \_\_\_\_\_

\_\_\_\_\_  
Yaakov Roziner

FOR PLAINTIFFS:

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

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

Dated: 7/22/22 \_\_\_\_\_  
  
Natalie Campagna

Dated: \_\_\_\_\_  
Gloria DeVault

Dated: \_\_\_\_\_  
Amanda Farmer

Dated: \_\_\_\_\_  
Philip Pagliaro

Dated: \_\_\_\_\_  
Yaakov Roziner

FOR PLAINTIFFS:

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

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

Dated: \_\_\_\_\_  
Natalie Campagna

Dated: Jul 24, 2022  
\_\_\_\_\_  
*Gloria DeVault*  
Gloria DeVault (Jul 24, 2022 16:37 CDT)  
Gloria DeVault

Dated: \_\_\_\_\_  
Amanda Farmer

Dated: \_\_\_\_\_  
Philip Pagliaro

Dated: \_\_\_\_\_  
Yaakov Roziner

FOR PLAINTIFFS:

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

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

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

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

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

\_\_\_\_\_  
Natalie Campagna

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

\_\_\_\_\_  
Gloria DeVault

Dated: Jul 20, 2022

*Amanda Farmer*  
Amanda Farmer (Jul 20, 2022 11:13 EDT)

\_\_\_\_\_  
Amanda Farmer

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

\_\_\_\_\_  
Philip Pagliaro

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

\_\_\_\_\_  
Yaakov Roziner

FOR PLAINTIFFS:

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

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

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

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

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

\_\_\_\_\_  
Natalie Campagna


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

\_\_\_\_\_  
Gloria DeVault

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

\_\_\_\_\_  
Amanda Farmer

Dated: Jul 20, 2022

  
\_\_\_\_\_  
Philip Pagliaro (Jul 20, 2022 13:36 PDT)  
\_\_\_\_\_  
Philip Pagliaro

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

\_\_\_\_\_  
Yaakov Roziner

FOR PLAINTIFFS:

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

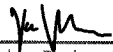
Dated: \_\_\_\_\_  
Kenneth J. Grunfeld  
*Class Counsel*

Dated: \_\_\_\_\_  
Natalie Campagna

Dated: \_\_\_\_\_  
Gloria DeVault

Dated: \_\_\_\_\_  
Amanda Farmer

Dated: \_\_\_\_\_  
Philip Pagliaro

Dated: Jul 25, 2022  
\_\_\_\_\_  
  
Yaakov Roziner (Jul 25, 2022 00:52 EDT)  
\_\_\_\_\_  
Yaakov Roziner



FOR DEFENDANT:



Dated: July 22, 2022

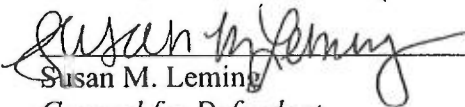
TD Bank, N.A.  
Defendant

Dated: July 25, 2022



Noah A. Levine  
Counsel for Defendant

Dated: JULY 22, 2022



Susan M. Leming  
Counsel for Defendant

# Exhibit “A”

EMAIL NOTICE

**LEGAL NOTICE OF CLASS ACTION SETTLEMENT**

**If you opened a TD Cash Secured Credit Card between May 20, 2015 and January 17, 2022, you may be entitled to benefits from a proposed class action settlement.**

**This is a court-authorized notice of a proposed class action settlement. This is not a solicitation from an attorney, and you are not being sued.**

**PLEASE READ THIS NOTICE CAREFULLY, AS IT EXPLAINS YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM.**

For more information, including a more detailed description of your rights and options, please click here or visit [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**What is the Settlement about?** A Settlement has been reached in a class action lawsuit challenging the review by TD Bank, N.A. (“TD Bank”) of TD Cash Secured Credit Card holders for graduation to an unsecured TD Bank credit card. The lawsuit contends that TD Bank acted improperly by not automatically graduating TD Cash Secured Credit Card holders who used their accounts for seven consecutive billing cycles without a default. The lawsuit contends, among other things, that TD Bank promised in its credit card agreement to graduate cardholders in these circumstances. TD Bank disputes that contention and denies that it engaged in any wrongdoing. The Court has not decided which side is right. Full information regarding the Settlement can be found at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**Why am I being contacted?** TD Bank’s records show that the person to whom this notice is addressed is a member of the Settlement Class. The Settlement Class includes all current and former holders of a TD Cash Secured Credit Card who opened their card on or after May 20, 2015 but before January 18, 2022 (“Class Period”), and who, through the date of Preliminary Approval, maintained their account for seven consecutive billing cycles without committing an act of default, and were not graduated to an unsecured TD Bank credit card in the cycle following that seven-month period.

**What are the Settlement terms?** TD Bank agreed to provide \$2,250,000 to the Settlement Class, which includes money for (a) payments to Class members, (b) attorneys’ fees and expenses, (c) settlement administration costs, and (d) service awards to the named plaintiffs.

**How do I get my Settlement payout?** Once the Court approves the Settlement, you will automatically receive a

check. The amount you receive will include a base amount and, if there are sufficient funds, an additional amount that will depend on how long you held your secured card after the seven consecutive billing cycles without a default. To confirm your mailing address for delivery of your check and for information about how the awards will be calculated, please visit [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**Your other options.** If you do not want to be bound by the Settlement, you may exclude yourself by [DATE], 2022. If you do not exclude yourself, you will release your claims against TD Bank. Alternatively, you may object to the Settlement by [DATE], 2022. The Long Form Notice available at the Settlement website, listed below, explains how to exclude yourself or object. The Court will hold a hearing on [DATE], 2022 to consider whether to approve the Settlement and to consider a request by counsel for the Settlement Class for attorneys’ fees and expenses of up to \$750,000 and service awards of up to \$7,500 for one of the named plaintiffs and up to \$5,000 for each of the other four named plaintiffs who brought this case on behalf of the Settlement Class. Details about the hearing are in the Long Form Notice. You may appear at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear for you at the hearing.

**Questions?** If you have questions, please visit the Settlement website at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com). You may also write with questions to Epiq Systems, Inc., P.O. Box 6877, Portland OR 97228-6877, or call the tollfree number at 844-808-4836. **Please do not contact TD Bank or the Court for information.**

# Exhibit “B”

**LONG FORM NOTICE**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

A settlement has been reached in a class action lawsuit pending in the United States District Court for the District of New Jersey titled *Campagna v. TD Bank, N.A.*, Case No. 1:20-cv-18533-KMW (D.N.J.) (the “Action”). In the Action, five people who have held TD Cash Secured Credit Cards allege that TD Bank, N.A. (“TD Bank”) improperly failed to graduate TD Cash Secured Credit Card holders to an unsecured TD Bank credit card. The lawsuit contends that TD Bank acted improperly by not automatically graduating TD Cash Secured Credit Card holders who used their cards for seven consecutive billing cycles without a default. The lawsuit contends, among other things, that TD Bank promised in its credit card agreement to graduate cardholders in these circumstances. TD Bank disputes that contention and denies that it engaged in any wrongdoing. The Court has not decided which side is right. The Court has tentatively approved the proposed settlement agreement (available at [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com)) to which the parties have agreed (the “Settlement”).

Current and former holders of TD Cash Secured Credit Cards who opened their TD Cash Secured Credit Card on or after May 20, 2015 but before January 18, 2022 (“Class Period”), and who, through the date of Preliminary Approval, maintained their account for seven consecutive billing cycles without committing an act of default but were not graduated to an unsecured TD Bank credit card in the cycle following that seven-month period, may be eligible to receive a check.

Read this notice carefully. This notice advises you of the benefits that may be available to you under the proposed Settlement and your rights and options as a Settlement Class Member.

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING AND RECEIVE A CHECK</b>	If you are entitled under the Settlement to a check, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, a check will be mailed to the address you maintain(ed) with TD Bank and you will give up your right to bring your own lawsuit against TD Bank about claims related to graduation from a TD Cash Secured Credit Card to an unsecured TD Bank credit card during the Class Period. Please go to <a href="http://www.TDBankSecuredClassAction.com">www.TDBankSecuredClassAction.com</a> to confirm your mailing address for delivery of your check.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	Receive no benefits from the Settlement. This is the only option that allows you to retain your right to bring another lawsuit against TD Bank about claims related to graduation from a TD Cash Secured Credit Card to an unsecured TD Bank credit card during the Class Period.
<b>OBJECT</b>	Write to the Court if you wish to object to the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement. You may speak at a hearing about the fairness of the Settlement if you submit an objection that complies with the requirements in Question 16 (below) and a letter saying that you intend to appear and wish to be heard that complies with the requirements in Question 20 (below).

These rights and options—**and the deadlines to exercise them**—are explained in this notice.

The Court still has to decide whether to approve the Settlement. If it does, and any appeals are resolved, benefits will be distributed to members of the Settlement Class who do not exclude themselves from the Settlement.

**WHAT THIS NOTICE CONTAINS**

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- 2. What is this litigation about?
- 3. Why is this a class action?
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## **BASIC INFORMATION**

### **1. Why is there a notice?**

A court ordered that this notice be provided because you have a right to know about the proposed Settlement of this class action lawsuit and its effect on you. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge Karen M. Williams, of the United States District Court for the District of New Jersey, is overseeing this case, *Campagna v. TD Bank, N.A.*, Case No. 1:20-cv-18533-KMW (D.N.J.). The persons who sued—Natalie Campagna, Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner—are the Plaintiffs. TD Bank, N.A. (“TD Bank”) is the Defendant.

### **2. What is this litigation about?**

The lawsuit claims that TD Bank breached its contracts with TD Cash Secured Credit Card holders and violated state consumer protection statutes when TD Bank did not automatically graduate TD Cash Secured Credit Card holders to an unsecured TD Bank credit card when those cardholders used their accounts for seven consecutive billing cycles without committing an act of default.

You can review the complaint in this lawsuit on the website [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com). TD Bank denies that it engaged in any wrongdoing.

### **3. Why is this a class action?**

In a class action, one or more people called Class Representatives (in this case, Plaintiffs) sue on behalf of themselves and other people with similar claims. Together, all the people with similar claims are members of a Class.

### **4. Why is there a Settlement?**

The Court has not decided in favor of either Plaintiffs or TD Bank (together, the “Parties”). Instead, the two sides have agreed to a Settlement. In doing so, the Parties avoid the costs and uncertainty of litigation and a trial, and Settlement Class Members (except those who exclude themselves) receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that TD Bank did anything wrong. TD Bank denies all claims in this case. The Class Representatives and their lawyers believe the proposed Settlement is in the best interests of Settlement Class Members.

## **WHO IS PART OF THE SETTLEMENT?**

If you received notice of the Settlement from a postcard or email addressed to you, then the Parties believe you are in the Settlement Class. But even if you did not receive a postcard or email with notice of the Settlement, you may still be a member of the Settlement Class, as described below.

If you did not receive a postcard or email addressed to you but you believe you are in the Settlement Class, as defined below, you may contact the Settlement Administrator.



**5. Who is included in the Settlement?**

You are a member of the Settlement Class if you reside in the United States, opened a TD Cash Secured Credit Card between May 20, 2015 and January 17, 2022 (“Class Period”), and, through the date of Preliminary Approval, maintained your account for seven consecutive billing cycles without committing an act of default, and were not graduated to an unsecured TD Bank credit card in the cycle following that seven-month period.

**6. What if I am not sure whether I am included in the Settlement?**

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the Settlement website at [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com) or call the toll-free number, **844-808-4836**. You may also send questions to the Settlement Administrator at Epiq Systems, Inc., P.O. Box 6877, Portland OR 97228-6877.

**THE SETTLEMENT BENEFITS**

**7. What does the Settlement provide?**

If the Court approves the Settlement and it becomes final, TD Bank will provide two million two hundred fifty thousand dollars (\$2,250,000.00) to settle the Action (the “Settlement Payment Amount”). After paying attorneys’ fees to Class Counsel of up to \$750,000.00 and Court-approved Service Awards of up to \$7,500.00 to one of the Plaintiffs and up to \$5,000.00 to each of the other four Plaintiffs for their participation in the lawsuit, the remaining cash relief (the “Net Settlement Fund”) will be distributed among the Settlement Class. Settlement Class Members’ cash awards will be distributed by check.

**8. How much will my payment be?**

Each Settlement Class Member will receive a base cash award and, if there are sufficient funds in the Net Settlement Fund (*see* Question 7), an additional payment based on how long they held or have held their secured card after the seven consecutive billing cycles without a default. Specifically, to the extent that the Net Settlement Fund is sufficient, each Settlement Class Member will be entitled to a base award of \$10.00. If there are additional funds in the Net Settlement Fund, each Settlement Class Member will receive an additional payment based on how long they were or have been in the secured card since the seven months without default.

**9. When will I receive my payment?**

Settlement Class Members do not need to do anything to receive the cash awards under the Settlement. If the Court approves the Settlement and it becomes final, and you do not exclude yourself from the Settlement (*see* Questions 11 to 13), then a check will automatically be sent by mail to the address you maintain(ed) with TD Bank. Please go to [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com) to confirm your mailing address for delivery of your check.

Payments will be sent only after the Court grants final approval to the Settlement and after any appeals are resolved (*see* “The Final Approval Hearing” below). If there are appeals, resolving them can take time. Please be patient.

## 10. What am I giving up if I participate in the Settlement?

If the Settlement receives Final Approval from the Court, every Settlement Class Member who has not excluded himself or herself from the Settlement Class, each on behalf of himself, herself, or itself, and on behalf of his, her, or its respective heirs, executors, assigns, beneficiaries, predecessors, and successors, and any person or entity claiming under them (collectively, “Releasing Parties”), shall automatically be deemed to have fully and irrevocably released and forever discharged TD Bank and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents (alleged, apparent, or actual), insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively, “Releasees”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to any of the claims that were asserted in the Action, and any of the conduct, allegations, acts, transactions, facts, events, representations, statements, omissions, duties, or matters up to and including the date of Preliminary Approval that were or could have been alleged in this Action by Plaintiffs or by any other Settlement Class Members, whether assertable in the form of a cause of action or as a private motion, petition for relief or claim for contempt, or otherwise, and in any court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, and whether based on any federal, state (including, without limitation, breach of contract, breach of the implied covenant of good faith and fair dealing, the Delaware Consumer Fraud Act, 6 Del. C. §§ 2511, et seq., New York General Business Law § 349 et seq., New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, et seq., and Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, et seq.), local, statutory or common law or any other law, rule, regulation, ordinance, code, contract, common law, or any other source, including the law of any jurisdiction outside the United States (including both direct and derivative claims), including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses (“Released Claims”). Each Settlement Class Member who does not exclude himself or herself from the Settlement Class will also be bound by all of the decisions by the Court.

Section XV of the Settlement Agreement describes the legal claims that you give up if you remain in the Settlement. The Settlement Agreement is available at [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com).

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want benefits from the Settlement, and you want to keep the right to sue TD Bank on your own about the claims in this case or any other Released Claims, then you must take steps to opt out of the Settlement. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Settlement.

### **11. How do I exclude myself from the Settlement?**

To exclude yourself from the Settlement, you must submit a statement with the following information:

- The name of this Action (*Campagna v. TD Bank, N.A.*, Case No. 1:20-cv-18533-KMW (D.N.J.));
- Your full name, address, e-mail address, telephone number, and last four digits of your TD Cash Secured Credit Card account number;
- The identity of the counsel representing you in this Action, if any;
- A statement that you want to be excluded from the Settlement in this Action, and that you understand you will receive no money from the Settlement; and
- Your signature and date of execution.

You must mail your exclusion request, postmarked no later than [DATE], 2022, to **Epiq Systems, Inc., P.O. Box 6877, Portland OR 97228-6877**.

### **12. If I do not exclude myself, can I sue TD Bank for the same thing later?**

No. If you do not exclude yourself, you will give up the right to sue TD Bank for the claims that the Settlement resolves. You must exclude yourself from the Settlement Class if you want to pursue your own lawsuit.

### **13. If I exclude myself, can I still get a payment?**

No. You will not receive a payment if you exclude yourself from the Settlement.

## **THE LAWYERS REPRESENTING THE ENTIRE SETTLEMENT CLASS**

### **14. Do I have a lawyer in the case?**

The Court has appointed lawyers to represent you and others in the Settlement Class as “Class Counsel”:

E. Adam Webb  
G. Franklin Lemond, Jr.  
WEBB, KLASE & LEMOND, LLC  
1900 The Exchange, SE, Suite 480  
Atlanta, GA 30339

Kenneth J. Grunfeld  
GOLOMB SPIRIT GRUNFELD, PC  
1835 Market Street, Suite 2900  
Philadelphia, PA 19103

Class Counsel will represent you and others in the Settlement Class. You will not be charged for these counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

**15. How will the lawyers be paid?**

Class Counsel intend to request up to \$750,000.00 for their attorneys’ fees and reasonable costs and expenses in connection with this case. The attorneys’ fees and expenses awarded by the Court will be paid out of the Settlement Payment Amount. Class Counsel will file their motion seeking attorneys’ fees and expenses by [DATE]. That motion will be available at [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com). The Court will review Class Counsel’s request and determine the amount of fees and expenses to award.

Class Counsel will also request that Service Awards of up to \$7,500.00 to one of the Class Representatives and up to \$5,000.00 to each of the other four Class Representatives, to be paid out of the Settlement Payment Amount for their service as representatives of the entire Settlement Class.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

**16. How do I tell the Court if I do not like the Settlement?**

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel’s request for attorneys’ fees and expenses, and/or Class Counsel’s requests for Service Awards for the Class Representatives. To object, you must submit a letter to each of the following addresses:

<u>The Court</u>	<u>Counsel for TD Bank</u>	<u>Class Counsel</u>
Clerk of the Court U.S. DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Mitchell H. Cohen Building & U.S. Courthouse 4th & Cooper Streets, Courtroom 4(a) Camden, NJ 08101	Noah A. Levine WILMER CUTLER PICKERING HALE AND DORR LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007	E. Adam Webb G. Franklin Lemond, Jr. WEBB, KLASE & LEMOND, LLC 1900 The Exchange, SE Suite 480 Atlanta, GA 30339

Your objection must be postmarked on or before [DATE], 2022 and must include:

- The name of this Action (*Campagna v. TD Bank, N.A.*, Case No. 1:20-cv-18533-KMW (D.N.J.));
- Your full name, address, e-mail address, and telephone number;
- All grounds for the objection, accompanied by any legal support for the objection known to you or your counsel;
- A list of all documents that you ask the Court to consider;

**QUESTIONS? CALL 844-808-4836 OR VISIT [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com)**

- A statement of whether your objection applies only to you, to a specific part of the class, or to the entire class;
- The identity of all counsel who represent you in this matter, 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;
- The number of times you have objected to a class action settlement in the past five (5) years, including the caption of each case in which you made such objection and a copy of any orders related to or ruling on your prior objections in each case;
- If applicable, the number of times your counsel or your counsel's law firm have objected to a class action settlement in the past five (5) years, including the caption of each case in which you made such objection and a copy of any orders related to or ruling on your prior objections in each case;
- Whether you intend to appear and/or testify, or counsel representing you intends to appear, at the hearing that the Court has scheduled to determine whether to grant final approval of the Settlement and Class Counsel's request for attorneys' fees and Service Awards to the Class Representatives (the "Final Approval Hearing");
- The identity of all counsel representing you who will appear at the Final Approval Hearing;
- A list of all persons who you or your counsel will call to testify at the Final Approval Hearing in support of the objection; and
- Your signature (an attorney's signature is not sufficient).

#### **17. What is the difference between objecting and asking to be excluded?**

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement *only if you do not exclude yourself*. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, then you cannot object to the Settlement because it no longer affects you.

### **THE FINAL APPROVAL HEARING**

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement and whether to approve Class Counsel's request for attorneys' fees and expenses and for Service Awards for the Class Representatives. You may attend and you may ask to speak, but you don't have to do so.

#### **18. When and where will the Court decide whether to approve the Settlement?**

The Court has scheduled a Final Approval Hearing on [DATE], 2022 at [TIME] at the United States District Court for the District of New Jersey, located at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Courtroom 4A, Camden, New Jersey 08101. The hearing may be virtual or moved to a different date or time without additional notice, so it is a good idea to check [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com) for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also consider any requests by Class Counsel for attorneys' fees and expenses and for Service Awards for the Class Representatives. If there are objections, the Court will consider them at the hearing. After the hearing, the Court will decide whether to approve the Settlement, the

**QUESTIONS? CALL 844-808-4836 OR VISIT [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com)**

request for attorneys' fees and expenses, and the request for Service Awards. We do not know how long these decisions will take.

No. Class Counsel will answer any questions the Court may have. But you may attend the

#### **19. Do I have to attend the hearing?**

hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submit your written objection on time, to the proper addresses, and it complies with the requirements set forth in Question 16 above and in Section IX of the Settlement Agreement, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

#### **20. May I speak at the hearing?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must submit an objection that complies with the requirements set forth in Question 16 above and send a letter saying that you intend to appear and wish to be heard. Your notice of intention to appear must include the following:

- Your full name, address, and telephone number;
- A statement that this is your "Notice of Intention to Appear" at the Final Approval Hearing for Settlement in *Campagna v. TD Bank, N.A.*, Case No. 1:20-cv-18533-KMW (D.N.J.);
- The reasons you wish to be heard;
- Copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and
- Your signature (an attorney's signature is not sufficient).

You must submit your Notice of Intention to Appear so that it is received no later than [DATE], 2022, to the addresses in Question 16 above. You cannot speak at the hearing if you exclude yourself from the Settlement.

#### **21. What happens if I do nothing at all?**

##### **IF YOU DO NOTHING**

If you do nothing, you will receive the benefits to which you are entitled under this Settlement.

#### **22. How do I get more information?**

##### **GETTING MORE INFORMATION**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can obtain the complete Settlement Agreement at [www.TDBankSecuredClassAction.com](http://www.TDBankSecuredClassAction.com). You also may write with questions to the Settlement Administrator at **Epiq Systems, Inc., P.O. Box 6877, Portland OR 97228-6877**, or call the toll-free number, **844-808-4836**. **Please do not contact TD Bank or the Court for information.**

# Exhibit “C”

**POSTCARD NOTICE**

Campagna v. TD Bank, N.A.  
Settlement Administrator  
c/o Epiq Systems, Inc.  
P.O. Box 6877  
Portland OR 97228-6877

POSTAGE

**Important Notice About  
Class Action Settlement**

[Settlement Class Member Address Block]

You are receiving this Notice because you may be entitled to benefits from a proposed class action settlement. This Notice explains what the class action is about, what the settlement will be, and how your rights may be affected. More information about the settlement and the settlement agreement are available at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

*A federal court authorized this Notice.  
This is not a solicitation from a lawyer.*



**What is the Settlement about?** A Settlement has been reached in a class action lawsuit challenging the review by TD Bank, N.A. (“TD Bank”) of TD Cash Secured Credit Card holders for graduation to an unsecured TD Bank credit card. The lawsuit contends that TD Bank acted improperly by not automatically graduating TD Cash Secured Credit Card holders who used their accounts for seven consecutive billing cycles without a default. The lawsuit contends, among other things, that TD Bank promised in its credit card agreement to graduate cardholders in these circumstances. TD Bank disputes that contention and denies that it engaged in any wrongdoing. The Court has not decided which side is right. Full information regarding the Settlement can be found at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**Why am I being contacted?** TD Bank’s records show that the person to whom this notice is addressed is a member of the Settlement Class. The Settlement Class includes all current and former holders of a TD Cash Secured Credit Card who opened their card on or after May 20, 2015 but before January 18, 2022 (“Class Period”), and who, through the date of Preliminary Approval, maintained their account for seven consecutive billing cycles without committing an act of default but were not graduated to an unsecured TD Bank credit card in the cycle following that seven-month period.

**What are the Settlement terms?** TD Bank agreed to provide \$2,250,000 to the Settlement Class, which includes money for (a) payments to Class members, (b) attorneys’ fees and expenses, (c) settlement administration costs, and (d) service awards to the named plaintiffs.

**How do I get my Settlement payout?** Once the Court approves the Settlement, you will automatically receive a check. The amount you receive will include a base amount and, if there are sufficient funds, an additional amount that will depend on how long you held your secured card after the seven consecutive billing cycles without a default. To confirm your mailing address for delivery of your check and for information about how the awards will be calculated, please visit [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com).

**Your other options.** If you do not want to be bound by the Settlement, you may exclude yourself by [\[DATE\]](#), 2022. If you do not exclude yourself, you will release your claims against TD Bank. Alternatively, you may object to the Settlement by [\[DATE\]](#), 2022. The Long Form Notice available at the Settlement website, listed below, explains how to exclude yourself or object. The Court will hold a hearing on [\[DATE\]](#), 2022 to consider whether to approve the Settlement and to consider a request by counsel for the Settlement Class for attorneys’ fees and expenses of up to \$750,000 and service awards of up to \$7,500 for one of the named plaintiffs and up to \$5,000 for each of the other four named plaintiffs who brought this case on behalf of the Settlement Class. Details about the hearing are in the Long Form Notice. You may appear at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear for you at the hearing.

**Questions?** If you have questions, please visit the Settlement website at [www.TDBankSecuredCardClassAction.com](http://www.TDBankSecuredCardClassAction.com). You may also write with questions to Epiq Systems, Inc., P.O. Box 6877, Portland OR 97228-6877, or call the tollfree number at 844-808-4836. **Please do not contact TD Bank or the Court for information.**

# Exhibit “D”

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

NATALIE CAMPAGNA, GLORIA DEVAULT, AMANDA FARMER, PHILIP PAGLIARO, and YAAKOV ROZINER, on behalf of themselves and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:20-cv-18533-KMW-SAK
	)	
TD BANK, N.A.,	)	
	)	
Defendant.	)	
	)	
	)	

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENT, CONDITIONAL CERTIFICATION OF THE  
SETTLEMENT CLASS, AND APPROVAL OF NOTICE PLAN**

Plaintiffs’ Motion for Preliminary Approval of Settlement, Conditional Certification of the Settlement Class, and Approval of Notice Plan (the “Motion”) came before this Court on July 25, 2022. The Court, having fully reviewed the Motion, the supporting Memorandum of Law and Joint Declaration of Plaintiffs’ Counsel filed in support thereof, including the Settlement Agreement and Release (the “Agreement”) and the Notice of Settlement (the “Notice”), and for good cause appearing, HEREBY ORDERS AS FOLLOWS:

1. The Court grants preliminary approval of the Parties’ settlement (the “Settlement”) based upon the terms set forth in the Agreement, which is attached as Exhibit 2 to the Joint Declaration of Plaintiffs’ Counsel and is incorporated in full by this reference and made a part of this Order. The Settlement appears to be fair, adequate, and reasonable to the Settlement Class (defined below).
  
2. All capitalized terms defined in the Agreement shall have the same meaning when used in this Order.

3. The Settlement falls within the range of reasonableness of a settlement that could ultimately be given final approval by this Court, and appears to be presumptively valid, subject only to any objections that may be raised at the Final Approval Hearing and final approval by this Court. The Court notes that TD Bank, N.A. (“TD Bank” or “Defendant”) has agreed to provide a Settlement Payment Amount of an aggregate of \$2,250,000.00, which shall encompass all compensation to the Settlement Class, inclusive of any award of attorneys’ fees, costs, and expenses to Class Counsel; the Service Awards to the named Plaintiffs for their respective contributions to prosecuting the Class’s claims in this Action; and all Administrative Costs, estimated to be approximately \$160,000.

4. The Court finds and concludes that the Settlement is non-collusive and is the result of arms-length negotiations between the Parties after Class Counsel had adequately investigated Plaintiffs’ claims and become familiar with their strengths and weaknesses.

5. In accordance with the Agreement, the Court hereby certifies the following Settlement Class for purposes of this Settlement: “All current and former holders of a TD Bank, N.A. Cash Secured Credit Card (a) who opened their TD Cash Secured Credit Card after May 19, 2015 and before January 18, 2022, and (b) who, through the date of Preliminary Approval, (i) maintained their account for seven consecutive billing cycles without committing an act of default, and (ii) were not graduated to an unsecured TD Bank credit card in the cycle following that seven-month period.” Excluded from the Settlement Class are TD Bank; TD Bank’s officers and directors at all relevant times, as well as members of their immediate families and their legal representatives, heirs, successors or assigns; and any entity in which TD Bank has or had a controlling interest. Also excluded from the Settlement Class are federal, state, and local governments and all agencies and subdivisions thereunder; and any judge to whom this Action is or has been assigned and any member of her immediate family. Any persons that exclude

themselves from the Settlement in accordance with the provisions set forth in the Notice also shall be excluded. The Class Period is defined as the time between (and including) May 20, 2015 and January 17, 2022.

6. The Court hereby preliminarily finds and concludes, for the purposes of settlement only, that the Settlement Class satisfies all of the requirements for certification under Fed. R. Civ. P. 23(a) and 23(b)(3).

7. With respect to the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), the Court makes the following findings:

- a. The Settlement Class, which has approximately 123,000 members, satisfies the standard for numerosity in Fed. R. Civ. P. 23(a)(1).
- b. There are sufficient questions of fact and law that are common to the Settlement Class regarding the review by TD Bank of TD Cash Secured Credit Card holders for graduation to an unsecured TD Bank credit card, thereby satisfying the standard for commonality in Fed. R. Civ. P. 23(a)(2).
- c. For purposes of settlement only, Plaintiffs' claims are typical of the Settlement Class Member because they concern the same alleged TD Bank policies and practices, arise from the same legal theories, and allege the same types of harm and entitlement to relief, thereby satisfying the typicality requirement of Fed. R. Civ. P. 23(a)(3).
- d. Webb, Klase, & Lemond, LLC and Golomb Spirt Grunfeld, PC will fairly and adequately represent the Settlement Class and are appointed as Class Counsel.
- e. Named Plaintiffs Natalie Campagna, Gloria DeVault, Amanda Farmer, Philip Pagliaro, and Yaakov Roziner will fairly and adequately represent

the Class and are appointed as Class Representatives.

- f. For purposes of settlement only, common questions of law and fact predominate over individualized issues, because Plaintiffs' claims arise from whether TD Bank is liable to Settlement Class Members for failing to automatically graduate them to an unsecured TD Bank credit card after they maintained their accounts for seven consecutive billing cycles without committing an act of default.
- g. The Court further finds that the superiority requirement is satisfied because it is likely that recovery on an individual basis would be exceeded by the cost of litigating on an individual basis.

8. The Court approves Epiq Systems, Inc. (hereinafter the "Settlement Administrator") to perform the duties of the Settlement Administrator as set forth in this Order and the Agreement.

9. The Court directs that Epiq Systems, Inc. act as the Escrow Agent.

10. The Court finds that the proposed Notice comports with Fed. R. Civ. P. 23 and all constitutional requirements, including those of due process. Non-material modifications to the form and content of the Notice may be made without further order of the Court.

11. The Court further finds that the Notice adequately advises the Settlement Class about the class action; the terms of the proposed Settlement, the benefits to each Settlement Class Member, and the proposed fees, costs, and expenses to Class Counsel; each Settlement Class Member's right to object or opt out of the Settlement, and the timing and procedures for doing so; Preliminary Approval by the Court of the proposed Settlement; and the date of the Final Approval Hearing as well as the rights of Settlement Class Members to file documentation in support of or in opposition to, and appear in connection with, said hearing.

12. The Court further finds, as specifically described in the Agreement, that the sending of the E-Mail Notice to all Settlement Class Members for whom TD Bank has provided the Settlement Administrator with an e-mail address; the mailing of the Mail Notice to all Settlement Class Members to their last known address for whom TD Bank has not provided an e-mail address, with updates from the National Change of Address database; and the maintenance of a Settlement Website containing the Second Amended Complaint, the Agreement, the Long-Form Notice, the Preliminary Approval Order, and any other documents that Class Counsel and TD Bank agree to post or that the Court orders posted, until sixty (60) calendar days after distribution of the Net Settlement Fund to Settlement Class Members has been completed, constitute reasonable notice to Settlement Class Members of their rights with respect to the class action and proposed Settlement.

13. Within sixty (60) calendar days of the Court's preliminary approval of the Settlement, TD Bank will provide the Settlement Administrator with the following information for each Settlement Class Member: (1) name; (2) last known e-mail address, if available; and (3) last known mailing address.

14. Within thirty (30) calendar days of receiving the names, last known mailing addresses, and last known e-mail addresses, if available, of identifiable Settlement Class Members from TD Bank, the Settlement Administrator shall send the Notice to Settlement Class Members in the manner specified in the Agreement.

15. The Court orders that any request for exclusion from the Settlement must, in order to be timely and valid, be postmarked no later than sixty (60) days after the Notice Deadline; include the Settlement Class Member's name, address, e-mail address, telephone number, and last four digits of his or her TD Cash Secured Credit Card account number(s); state that the Settlement Class Member wants to be excluded from the Settlement in *Campagna v. TD Bank*,

*N.A.*, Case No. 1:20-cv-18533-KMW-SAK (D.N.J.), and that the Settlement Class Member understands that he or she will receive no money from the Settlement; identify his or her counsel, if represented; and must be personally signed and dated by the Settlement Class Member.

16. If more than 2% of the total number of Settlement Class Members submit timely and valid opt-out requests, TD Bank shall have the option to void the Settlement. To exercise this option, TD Bank's counsel must send written notification to Class Counsel within fourteen (14) calendar days of TD Bank's receipt of the last timely opt-out statement.

17. Any Participating Settlement Class Member who does not timely and validly request exclusion from the Settlement may object to the Settlement by filing an objection with the Court with copy to Class Counsel and TD Bank's counsel. Any objection must (1) state the objector's full name, address, e-mail address, and telephone number; (2) include the case name and case number of this Action (*Campagna v. TD Bank, N.A.*, Case No. 1:20-cv-18533-KMW-SAK (D.N.J.)); (3) include an explanation of the basis upon which the objector claims to be a Settlement Class Member; (4) include a statement with specificity of all grounds for the objection, accompanied by any legal support for the objection; (5) state whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (6) state the number of times in which the objector has objected to a class action settlement within the five (5) years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case; (7) state the identity of all counsel who represent the objector in this matter, including any former or current counsel who may be entitled to compensation for any reason related to the objection; (8) provide a list of all other class action settlements to which the



objector's counsel or counsel's law firm filed an objection within the five (5) years preceding the date that the objector or their counsel files the objection; (9) provide a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (10) state whether the objector intends to appear at the Final Approval Hearing and, if so, the identity of all counsel representing the objector who will appear at the Final Approval Hearing; and (11) include the objector's signature (an attorney's signature is not sufficient). To be timely, the objection must be postmarked no later than sixty (60) days after the Notice Deadline. Any Participating Settlement Class Member who does not timely submit such a written objection will not be permitted to raise such objection, except for good cause shown, and any Participating Settlement Class Member who fails to object in the manner prescribed by this Order will be deemed to have waived, and will be foreclosed from raising, any such objection.

18. Plaintiffs and Class Counsel shall file their motion for their application for attorneys' fees, costs, and expenses, and for Service Awards for Plaintiffs, no later than thirty (30) days after the Notice Deadline.

19. The Final Approval Hearing shall be held before this Court on \_\_\_\_\_ at \_\_\_\_\_, at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Courtroom 4(a), Camden, NJ 08101, to consider the fairness, adequacy, and reasonableness of the proposed Settlement preliminarily approved by this Order, and to consider the motion of Class Counsel for an award of reasonable attorneys' fees and costs and for Service Awards for the Class Representatives.

20. Plaintiffs and Class Counsel shall file their Motion for Final Approval of the Settlement no later than seven (7) days before the Final Approval Hearing.

21. Any party to this case, including any Participating Settlement Class Member, may be heard in person or by counsel, in support of, or in opposition to, the Court's

determination of the good faith, fairness, reasonableness, and adequacy of the proposed settlement, the requested attorneys' fees and costs, the requested Service Awards for the Class Representatives, and any order of Final Approval and judgment regarding such settlement, fees, costs, and payments; provided however, that no person shall be heard in opposition to such matters unless such person has complied with the conditions set forth in the Notice.

22. The Court orders that if for any reason the Court does not execute and file an order of Final Approval and judgment, or if such a Final Approval order is reversed, the Agreement and the proposed Settlement that is the subject of this Order, and all evidence and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation as more specifically set forth in the Agreement.

23. The Agreement shall not be construed as an admission or evidence of liability.

24. Pending further order of this Court, all proceedings in this matter except those contemplated herein and in the Agreement are stayed.

25. The Court expressly reserves the right to adjourn or continue the Final Approval Hearing without further notice to Settlement Class Members.

IT IS SO ORDERED.

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

\_\_\_\_\_  
Hon. Karen M. Williams  
United States District Judge