

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between, on the one hand, Plaintiff Burbran Pierre (“Pierre”), individually and on behalf of a class he seeks to represent as defined below in Sections I(I) & (BB) (“Class” or collectively “Plaintiffs”), and, on the other hand, Defendant TD Bank N.A. (“TD Bank” or “Defendant”). Plaintiffs and Defendant are collectively referred to herein as the “Parties.”

RECITALS AND BACKGROUND

WHEREAS, on July 3, 2020, Pierre filed a Complaint captioned *Burbran Pierre v. City of New York, et al.*, Case No. 1:20-cv-05116-ALC-VF (S.D.N.Y.) (the “Action”);

WHEREAS, Pierre alleges, *inter alia*, that Defendant violated the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, New York Labor Law, N.Y. Lab. Law §§ 1, *et seq.*, and the Freelance Isn’t Free Act, N.Y.C. Admin. Code §§ 20-927, *et seq.* by failing to timely pay wages, failing to pay minimum wages, failing to pay all wages owed, and failing to provide accurate wage statements and Notices of Pay Rate;

WHEREAS, TD Bank, along with Defendants Duane Reade, Inc., B & H Photo Video Pro Audio, LLC, Bloomberg L.P., and Whole Foods Market Group, Inc. filed a motion to dismiss the Complaint on February 9, 2021, which was fully briefed as of March 30, 2021;

WHEREAS, the Honorable Andrew L. Carter issued an Order & Opinion denying Defendants’ motion to dismiss on August 31, 2021;

WHEREAS, the Parties have engaged in an extensive investigation with respect to Plaintiffs’ claims;

WHEREAS, the Parties agree that bona fide disputed issues exist regarding Pierre’s claims;

WHEREAS, the Parties mutually desire to fully resolve and forever settle the claims asserted by Pierre involving TD Bank in this Action for the purposes of avoiding the time, uncertainties, and significant expenses of further litigation;

WHEREAS, the Parties have engaged in good-faith, arm’s length settlement negotiations;

WHEREAS, the Parties agreed to a settlement in principle on April 25, 2022;

WHEREAS, Class Counsel (defined *infra* § I(F)) analyzed and evaluated the merits of the claims asserted against Defendant and the impact of this Agreement on Plaintiffs (defined *infra* § I(BB)) and—based on this analysis and evaluation of a number of factors, and while recognizing the substantial risk of continued litigation, including the possibility that the Action, if not settled now, might not result in any recovery for several years, if at all, or a recovery that is less favorable—believe that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interest of Plaintiffs;

WHEREAS, in agreeing to the Settlement (defined *infra* § I(JJ)) embodied in this Agreement, the Parties have considered: (i) the facts developed during the pendency of the Action and the laws applicable thereto; (ii) the attendant risks to the Parties of continued litigation and the uncertainty of the outcome of the Action; (iii) the desirability of permitting the Settlement to be memorialized according to the terms of this Agreement; and (iv) the conclusion of the Parties and their respective counsel that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that it is in the Parties' best interests to settle the Action with respect to all claims involving Defendant, as set forth below;

WHEREAS, Defendant denies all of the allegations made by the Plaintiffs in the Action and denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Action. Nevertheless, without admitting or conceding any liability or damages, Defendant has agreed to a settlement on the terms set forth in this Agreement, to avoid the burden, expense, and uncertainty of further litigation; and

WHEREAS, the Parties agree to use their best efforts to obtain a Preliminary Approval Order (defined *infra* § I(CC)) and a Final Approval Order (defined *infra* § I(Q)) from the Court (defined *infra* § I(J)).

NOW, THEREFORE, the Parties enter into this Agreement to dispose of the Action with respect to Defendant, and to fully, finally, and forever discharge, settle, and compromise all Released Claims (defined *infra* §§ I(FF)) against all Parties under the terms and conditions set forth herein:

TERMS OF THE SETTLEMENT

I. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply, in addition to any definitions set forth in other sections hereof:

- A. **“Action”** shall mean and refer to the action captioned *Burbran Pierre v. City of New York, et al.*, Case No. 1:20-cv-05116-ALC-VF (S.D.N.Y.) currently pending before the Honorable Andrew L. Carter.
- B. **“Agreement”** shall mean and refer to the instant Settlement Agreement and Release.
- C. **“Authorized Claimant”** shall mean and refer to Pierre and any Class Member, or the authorized legal representative of such Class Member (defined *infra* § I(I)), who timely files a Claim Form (defined *infra* § I(G)) pursuant to the terms of this Agreement.
- D. **“Application for Final Approval”** shall mean and refer to documents and materials to be filed with the Court pursuant to Section III(J), *infra*, seeking final approval of the Settlement.

- E.** “**Bar Date**” shall mean and refer to the last date as set by the Court by which: (i) any Class Member who wishes to qualify as an Authorized Claimant must timely submit a Claim Form pursuant to Section III(G)(2), *infra*; (ii) a Class Member must affirmatively opt out of the Action if he or she does not wish to participate in the Settlement; or (iii) a Class Member must affirmatively object to the proposed Settlement.
- F.** “**Class Counsel**” shall mean and refer to the law firm Faruqi & Faruqi, LLP.
- G.** “**Claim Form**” shall mean and refer to the form as approved by the Court, a copy of which is attached to the Notice of Settlement (attached to this Agreement as Exhibit B), that Class Members (other than Pierre) must sign and return by the Bar Date to become Authorized Claimants.
- H.** “**Class List**” shall mean and refer to a list of all Class Members, identified by: (i) name; (ii) ID; (iii) social security number; (iv) address of last known residence; and (v) records indicating all compensation paid for time worked at a TD Bank location through the PDP (defined *infra* § I(Y)). If any such information is not available to TD Bank, they shall make all reasonable efforts to obtain this data from the City of New York. The relevant time period applicable to the Class List is from July 3, 2014 through the date of a Preliminary Approval Order (defined *infra* § I(CC)). The Class List is to be used by the Settlement Administrator (defined *infra* § I(KK)) and Class Counsel (defined *infra* § I(F)) to effectuate the terms of this Agreement and to respond to inquiries from Class Members relating to same.
- I.** “**Class**” or “**Class Member**” shall mean and refer to all current and former Officers of the New York City Police Department (“NYPD”), including Pierre, who participated in the PDP at any time from July 3, 2014 through the date of a Preliminary Approval Order and who provided any services whatsoever at a TD Bank location through the PDP and who do not opt out of this Action as set forth below.
- J.** “**Court**” shall mean and refer to the United States District Court for the Southern District of New York.
- K.** “**Days**” shall mean and refer to calendar days, unless otherwise specified.
- L.** “**Defendant**” shall mean and refer to Defendant TD Bank N.A. and have the same meaning as the term TD Bank (defined *infra* § I(QQ)).
- M.** “**Defendant’s Counsel**” shall mean and refer to the law firm O’Melveny & Myers LLP.

- N.** “**Effective Date**” shall mean and refer to the later of the Court’s entry of a Final Approval Order (defined *infra* § I(Q)) or, if a timely appeal is made, the date of final resolution of such appeal and any subsequent appeals, resulting in final judicial approval of the Settlement.
- O.** “**Fairness Hearing**” shall mean and refer to the hearing before the Court relating to the Application for Final Approval.
- P.** “**Fee & Cost Payments**” means the portion of the Settlement Payment (defined *infra* § I(NN)) to be paid to Class Counsel for reasonable attorneys’ fees and costs, as described in Section II(A)(3)(c), *infra*.
- Q.** “**Final Approval Order**” shall mean and refer to the Order of the Court finally approving the terms and conditions of this Agreement, authorizing distribution of the Settlement Checks (defined *infra* § I(OO)) and Fees & Cost Payments, and dismissing the Action with prejudice.
- R.** “**FLSA**” shall mean and refer to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*
- S.** “**Gross Settlement Fund**” or “**GSF**” means \$8,718,906.64, which is the amount Defendant agrees to pay to fully resolve and settle all claims involving Defendant in this Action, including any claim for attorneys’ fees and costs approved by the Court, all amounts to be paid to Plaintiffs, and any Court-approved Service Award.
- T.** “**Individual Net Amount**” means the allocated amount to be paid to an Authorized Claimant after deducting his or her proportionate share of the Fees and Costs Payment.
- U.** “**Net Allocation Fund**” means the remainder of the Gross Settlement Fund after deductions, payments, and allocations for: (a) the Court-approved Fee & Cost Payments to Class Counsel; and (b) any Court-approved Service Award to Pierre.
- V.** “**NYLL**” shall mean and refer to the New York Labor Law, N.Y. Lab. Law §§ 190, *et seq.*
- W.** “**Objector**” shall mean and refer to a Class Member who properly files an objection to this Agreement and does not include any individual who opts-out of this Agreement.
- X.** “**Opt-Out Statement**” shall mean and refer to a written, signed statement that a Class Member has elected to opt out and not be included in this Agreement.
- Y.** “**Paid Detail Program**” or “**PDP**” shall mean and refer to a program created by the NYPD in or around the Spring of 1998 that allows certain employees of the

NYPD to perform off-duty uniformed security work for private businesses within New York City in return for additional compensation.

- Z.** “Party” or “Parties” shall mean and refer to Pierre, the Class Members, and Defendant, both individually and collectively.
- AA.** “Pierre” shall mean and refer to Plaintiff Burbran Pierre.
- BB.** “Plaintiff” or “Plaintiffs” shall mean and refer to Pierre and Class Members, both individually and collectively.
- CC.** “Preliminary Approval Order” shall mean and refer to the Order entered by the Court: (i) certifying the Class for purposes of effectuating the Settlement; (ii) preliminarily approving the terms and conditions of this Agreement; (iii) appointing Class Counsel as counsel for the Class; (iv) directing the manner and timing of providing Notice to the Class Members; and (v) setting dates to effectuate the terms of this Agreement, including the Bar Date and the date of the Fairness Hearing.
- DD.** “Qualified Settlement Fund” or “QSF” shall mean and refer to the account to be established by the Settlement Administrator under Internal Revenue Code and Treasury Regulations, 26 C.F.R. §§ 1.468B-1, *et seq.* for the purposes of distributing the Settlement Payment (defined *infra* § I(NN)), Settlement Checks (defined *infra* § I(OO)), Service Award (defined *infra* § I(II)), Fee & Cost Payments (defined *infra* § I(P)), and any other monetary obligations pursuant to the terms of this Agreement and/or applicable law. The QSF shall be controlled by the Settlement Administrator, subject to the terms of this Agreement and the Court’s Final Approval Order.
- EE.** “Released Parties” shall mean and refer to Defendant and all of its past, present, and future parents, predecessors, successors, joint venturers, subsidiaries, and affiliated entities, and its and their owners and shareholders, all of their officers, directors, employees, lawyers, insurers, agents and representatives, and each of their successors and assigns as well as, the NYPD and the City of New York, and any and all past or present officials, employees, representatives, trustees or agents of the NYPD or the City of New York or their successors or assigns. Notwithstanding the above, Released Parties does not include other entities, agencies, or individuals (other than the NYPD and City of New York) who participate(d) in the PDP.
- FF.** “Released Claims” means all Released Federal Claims (defined *infra* § I(GG)) and Released State Law Claims (defined *infra* § I(HH)).
- GG.** “Released Federal Claims” means (a) all claims, obligations, demands, damages, actions, rights, causes of action, costs, expenses and liabilities, of whatever kind and nature, character and description, whether known or unknown, and whether anticipated or unanticipated under applicable federal wage and hour law or wage

payment law, including the FLSA and its various provisions, that arise from, are based on, or are in any way related or incidental to Plaintiffs' provision of services at a TD Bank location in New York State through the PDP, including those related to payment of minimum or overtime wages, payment for all hours worked, wage or other employee notices and/or statements, spread of hours, meal and/or rest breaks, payment of final wages upon separation, provision of benefits or benefit credits, keeping records of hours worked or compensation due, restitution, equitable relief, derivative claims and/or penalties, including retaliation claims and any other claim for wages including all claims, whether known or unknown, under the Employee Retirement Income Security Act ("ERISA") that specifically are related to or derivative of the claims released in the preceding sentence; and (b) all claims for penalties, liquidated damages, punitive damages, restitution, equitable relief, violations of any other state or local statutory and/or common law related to these claims, interest, attorneys' fees, or litigation expenses under the FLSA and any federal law wage and hour or wage payment laws based on the claims listed in this sub-paragraph. For avoidance of any doubt, the Released Federal Claims are specifically limited to only apply to claims that relate to Plaintiffs' provision of services through the PDP at any TD Bank location in New York State. The Released Federal Claims are not intended to be a general release of any claim that is unrelated to Plaintiffs' provision of services through the PDP at any TD Bank location in New York State. By submitting a Claim Form in exchange for payment under this Agreement, each Authorized Claimant forever and fully releases the Released Parties from the Released Federal Claims.

HH. **"Released State Law Claims"** shall mean and refer to: (a) any and all claims, obligations, demands, damages, actions, rights, causes of action, costs, expenses and liabilities, of whatever kind and nature, character and description, whether known or unknown and whether anticipated or unanticipated under any applicable New York state or New York City wage and hour law or wage payment law, including the NYLL and its various provisions, the New York City Administrative Code and its various provisions, and any other county or city wage and hour laws, that arise from, are based on, or are in any way related or incidental to Plaintiffs' provision of services at a TD Bank location in New York State through the PDP, including those related to payment of minimum or overtime wages, payment for all hours worked, wage or other employee or contractor notices and/or statements, spread of hours, meal and/or rest breaks, payment of final wages upon separation, provision of benefits or benefit credits, all claims under the New York City Freelance Isn't Free Act, keeping records of hours worked or compensation due, restitution, equitable relief, derivative claims and/or penalties, including retaliation claims and any other claim for wages and (b) all claims for penalties, liquidated damages, punitive damages, restitution, equitable relief, violations of any other state or local statutory and/or common law related to these claims, interest, attorneys' fees, or litigation expenses under and any state law wage and hour or wage payment laws based on the claims listed in this sub-paragraph. For avoidance of any doubt, the Released State Law Claims are specifically limited to only apply to claims that relate to Plaintiffs' provision of services through the PDP at any TD

Bank location in New York State. The Released State Law Claims are not intended to be a general release of any claim that is unrelated to Plaintiffs' provision of services through the PDP at any TD Bank location in New York State, including, without limitation, claims arising out of Plaintiffs' provision of services for any private business other than TD Bank (*e.g.*, Duane Reade, Inc., B & H Photo Video Pro Audio, LLC, and Bloomberg L.P.) through the PDP. By operation of the Court issuing final approval of this Agreement, each Class Member who does not submit an Opt-Out Statement forever and fully releases the Released Parties from the Released State Law Claims.

- II.** “**Service Award**” shall mean and refer to any Court-ordered payment to Pierre for serving as a representative of the Class, over and above the payment of any Individual Gross Amount to which he is entitled under the Settlement Allocation Formula (defined *infra* § I(MM)).
- JJ.** “**Settlement**” shall mean and refer to the settlement of the Action described by, defined by, and according to the terms of this Agreement.
- KK.** “**Settlement Administrator**” shall mean and refer to Analytics LLC (or such other entity mutually agreed to by the Parties), who shall serve as the qualified administrator selected to administer the allocation and distribution of the Settlement Payment (defined *infra* § I(NN)), the Net Allocation Fund, the Fee & Cost Payments, the Service Award, and the Settlement Checks.
- LL.** “**Settlement Administrator Fee**” shall mean and refer to a sum that does not exceed \$60,000 that shall be paid to the Settlement Administrator as compensation for administering the Settlement and any expenses incurred in connection therewith. Provided that there is a sufficient amount in the GSF remaining after paying Settlement Checks on a claims-made basis to Authorized Claimants, the Service Award, and the Fee & Cost Payments, the Settlement Administrator Fee shall be paid out of the GSF. Should the amounts remaining in the GSF be insufficient to cover the Settlement Administrator Fee, Defendant shall pay such amounts over and above Defendant's payment into GSF up to a cap of \$60,000.
- MM.** “**Settlement Allocation Formula**” shall mean and refer to the formula used to determine the Total Net Payment to Each Authorized Claimant (defined *infra* § I(RR)) pursuant to the terms of this Agreement. Each Authorized Claimant's share of the Net Allocation Fund shall be established in advance of distribution of the Settlement Checks by dividing the total amount allegedly owed to the Authorized Claimant for services provided to TD Bank through the PDP by the total amount owed to all Class Members for services provided to TD Bank through the PDP. This percentage will then be multiplied by the Net Allocation Fund to determine the Total Net Payment to Each Authorized Claimant. The formula is based on actual payroll and compensation data for each individual Authorized Claimant. By way of example, were an Authorized Claimant owed \$1,500 in alleged damages and the total amount of payments to Class Members totaled \$150,000, then the

Authorized Claimant would be entitled to receive 1% of the Net Allocation Fund if they timely submitted a Claim Form. In this example, if the Net Allocation Fund were \$120,000, the Authorized Claimant would be issued a Settlement Check in the amount of \$1,200 (which matches the Authorized Claimant's 1% share of the Net Allocation Fund).

- NN.** “**Settlement Amount**” or “**Settlement Payment**” shall mean and refer to Defendant’s payment of the Gross Settlement Fund of \$8,718,906.64, as outlined in Section II(A)(3)(a), *infra*, to Plaintiffs and Class Counsel.
- OO.** “**Settlement Check**” or “**Settlement Checks**” shall mean and refer to the checks issued to each Authorized Claimant for his or her share of the Net Allocation Fund calculated in accordance with this Agreement, as well as the Service Award to Pierre.
- PP.** “**Settlement Notice**” shall mean and refer the document entitled “Notice of Settlement,” to be approved by the Court in the form substantially similar to the Notice of Settlement attached hereto as Exhibit A. The Settlement Notice will be sent to each Class Member, together with a Claim Form, as described in this Agreement.
- QQ.** “**TD Bank**” shall mean and refer to Defendant TD Bank N.A. and have the same meaning as the term Defendant (defined *supra* § I(L)).
- RR.** “**Total Net Payment to Each Authorized Claimant**” shall mean and refer to the pro rata share of the Net Allocation Fund each Authorized Claimant will receive in accordance with the Net Allocation Formula. The Total Net Payments to each Authorized Claimant shall be made within twenty-one (21) days of the Settlement Administrator’s receipt of the Gross Settlement Fund.

II. PAYMENTS, RELEASES, AND OTHER NON-MONETARY TERMS

A. The Settlement Payment:

1. **Settlement Amount:** In consideration for the Parties’ execution of and compliance with the terms of this Agreement, including the release and waiver of all Released State Law Claims against all Released Parties by all Class Members and Released Federal Claims against all Released Parties by all Authorized Claimants, the Settlement and dismissal with prejudice of the Action (as against Defendant), and satisfaction of all amounts to be paid to the Authorized Claimants and Fee & Cost Payments, Defendant shall remit, via wire transfer to the Settlement Administrator, the Settlement Payment of Eight Million, Seven Hundred and Eighteen Thousand, Nine Hundred and Six Dollars and Sixty-Four Cents (\$8,718,906.64).

2. Method of Defendant's Payment: Defendant shall remit the Settlement Amount via wire transfer to the QSF established by the Settlement Administrator. If the Settlement Administrator has not yet established the QSF at the time payment of the Settlement Amount is due, Defendant shall remit such sums directly to the Settlement Administrator to hold in escrow until the establishment of the QSF.

3. Components and Timing of the Settlement Payment:
 - a. *Gross Settlement Fund:* The Settlement Amount paid by Defendant will be Eight Million, Seven Hundred and Eighteen Thousand, Nine Hundred and Six Dollars and Sixty-Four Cents (\$8,718,906.64). This amount will be paid by Defendant to the QSF within ten (10) days of the Effective Date.

 - b. *Settlement Administrator Fee:* The amount paid to the Settlement Administrator for the administration of the Settlement shall be no more than Sixty Thousand Dollars (\$60,000). Provided that there is a sufficient amount in the GSF remaining after paying Settlement Checks on a claims-made basis to Authorized Claimants, the Service Award, and the Fee & Cost Payments, the Settlement Administrator Fee shall be paid out of the GSF. Should the amounts remaining in the GSF be insufficient to cover the Settlement Administrator Fee, Defendant shall pay such amounts over and above Defendant's payment into GSF, up to a cap of \$60,000.

 - c. *Fee & Cost Payments:* The amounts paid to Class Counsel for reasonable attorneys' fees shall be Two Million, Nine Hundred and Six Thousand, Three Hundred and Two Dollars and Twenty-One Cents (\$2,906,302.21) (the "Fee Payment"), which represents one third (1/3) of the Gross Settlement Fund. The amount paid to Class Counsel as reimbursement of reasonable and actual costs and expenses incurred in furtherance of the Action is Eleven Thousand, Two Hundred and Thirty-Two Dollars and Forty-Nine Cents (\$11,232.49) (the "Cost Payment"). The Fee & Cost Payments represent attorneys' fees, costs, and expenses for services rendered on Plaintiffs' behalf in connection with this Action, negotiations resulting in this Agreement, and acts performed in furtherance of this Agreement. The Settlement Administrator shall pay all Court-approved Fee & Cost Payments within ten (10) days of receiving the GSF. All such payments shall be reported to all governmental taxing authorities by the Settlement Administrator on an IRS Form 1099.
 - i. The Fee & Cost Payments are deducted from the GSF and paid from the QSF to Class Counsel. These amounts shall

constitute full satisfaction of any claims for attorneys' fees or costs. Defendant shall not object, oppose, or otherwise comment on Plaintiffs' application for fees and costs provided the fees and costs requested do not exceed the amounts described in this Agreement.

- ii. Any portion of the Fee & Cost Payments not approved by the Court shall become part of the Net Allocation Fund as set forth in Section II(A)(3)(e), *infra*. Plaintiffs reserve the right to appeal any order issued by the Court regarding an award of attorneys' fees and costs if the attorneys' fees and costs award are below that requested herein.
- d. *Service Award to Pierre*: Class Counsel shall move the Court for the approval of a Service Award in the amount of Ten Thousand Dollars (\$10,000.00) for the time and effort Pierre has expended as a representative of the Class, in furtherance of this Action, and in securing the Settlement.
- i. The Service Award, as well as Pierre's share of the Total Net Payment, as set forth in Section II(B), *infra*, to Pierre shall fully and forever settle Pierre's claims described herein and are paid as consideration for a release from Pierre as set forth in Section II(D)(1), *infra*. Defendant shall not oppose Class Counsel's motion for approval of the payment of such Service Award to Pierre provided the requested amount does not exceed the amounts described in this Agreement.
 - ii. Any Service Award awarded by the Court in connection with this Settlement shall be deducted from the GSF and shall be paid by the Settlement Administrator to Pierre within ten (10) days of receipt of Defendant's payment of the GSF. Any Service Award shall be reported to all governmental taxing authorities by the Settlement Administrator on an IRS Form 1099.
 - iii. Any portion of the Service Award to Pierre not approved by the Court and/or not sought by Class Counsel on behalf of Pierre shall automatically become part of the Net Allocation Fund.
- e. Net Allocation Fund: After the payment of the Fee & Cost Payments and Service Award, the remaining amount of the Gross Settlement Fund shall be Five Million, Seven Hundred and Ninety-One Thousand, Three Hundred and Seventy-One Dollars and Ninety-Four Cents (\$5,791,371.94).

B. Total Net Payment to Each Authorized Claimant:

1. Each Authorized Claimant shall be distributed a pro rata share of the Net Allocation Fund in accordance with the Net Allocation Formula (the “Total Net Payment”). Total Net Payment to each Authorized Claimant shall be distributed by the Settlement Administrator within twenty-one (21) days after receiving the Gross Settlement Fund.
2. 100% of all payments distributed to Authorized Claimants shall be reported without any tax withholdings on an IRS Form 1099.
3. The Settlement Administrator shall report payments of a Court-approved Service Award without tax withholdings to Pierre and to the appropriate taxing authorities on an IRS Form 1099.
4. The Settlement Administrator shall report the Fee & Cost Payments without tax withholdings to Class Counsel and to the appropriate taxing authorities on an IRS Form 1099.
5. If it is subsequently determined by the Parties, a court, or any taxing authority that any portion of the payments distributed to Pierre or any Authorized Claimants are to be reported on an IRS Form W-2, then the Settlement Administrator shall calculate all employer payroll taxes with respect to such payments and shall file all necessary reports as required by law. Defendant shall cooperate with the Settlement Administrator to effectuate payment and proper reporting of employer payroll taxes, including, without limitation, the potential tendering of additional payment into the QSF for employer payroll taxes.
6. If it is subsequently determined by any taxing authority that any payee owes any additional taxes with respect to any money distributed under this Agreement, it is expressly agreed that liability for such taxes rests exclusively with that payee, and that neither the Parties, Class Counsel, Defendant’s Counsel, Defendant, nor the Settlement Administrator is responsible for the payment of such taxes, including, without limitation, any interest and penalties.
7. Any amounts remaining in the GSF following the disbursements described herein, including the distribution and cashing of all settlement checks, shall first be used to pay the Settlement Administration Fee. Should such remaining amounts in the GSF be insufficient to cover the Settlement Administrator Fee, Defendant shall pay the Settlement Administration Fee, up to a cap of \$60,000 over and above the GSF. Any remaining amounts in the GSF shall revert to Defendant.

C. No Admission of Liability:

1. Nothing contained in this Agreement shall be construed as or deemed an admission of liability, damages, culpability, negligence, wrongdoing, violation of law, or other unlawful conduct on the part of Defendant. Defendant expressly denies any liability or wrongdoing of any kind associated with the claims alleged in the Action.
2. This Agreement is a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances. The Parties further acknowledge and agree that neither this Agreement nor anything in it, nor any part of the negotiations that occurred in connection with the creation of this Agreement, shall constitute evidence with respect to any issue or dispute in any lawsuit, legal proceeding, or administrative proceeding, and this Agreement and everything in it shall be inadmissible as evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce its terms.

D. Releases:

1. Pierre: Pierre, on behalf of himself and his heirs, beneficiaries, executors, administrators, trustees, successors-in-interest, and assigns, in consideration of the sums and benefits described in Section II of this Agreement, hereby knowingly and voluntarily releases and covenants not to sue the Released Parties for any and all Released State Law Claims and Released Federal Claims.
2. Class Members and Authorized Claimants:
 - a. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, each individual Class Member who does not timely opt out pursuant to this Agreement forever and fully releases the Released Parties from any and all Released State Law Claims.
 - b. In addition, each Authorized Claimant will specifically and affirmatively release the Released Parties from any and all Released Federal Claims. Authorized Claimants will release their Released Federal Claims by timely submitting a signed Claim Form to the Settlement Administrator or Class Counsel. The Claim Form shall contain the following language:

By signing this Claim Form, I confirm that I have a bona fide dispute with TD Bank N.A. ("TD Bank"), the NYPD, and The City of New York in this Action as to my wages related to my participation in the Paid Detail Program ("PDP"), and thus I

specifically consent to participate in the settlement of this class action and opt-in to the collective action styled as *Burbran Pierre v. City of New York, et al.*, Case No. 1:20-cv-05116-ALC-VF (S.D.N.Y.). I understand that, by joining this lawsuit and agreeing to participate in the settlement of it, I am agreeing to release TD Bank, the NYPD, and the City of New York from all wage and hour claims under all applicable laws, whether known or unknown, that could have been brought in this Action, specifically related to my work through the PDP at any TD Bank location in New York, including all Released Federal Claims and Released State Law Claims as those terms were defined in the Settlement Notice. I understand that this release does not apply to limit any claims that I may have related to any services I performed through the PDP for companies other than TD Bank.

E. Tax Characterization of Payments:

1. The Fee & Cost Payments shall be made without withholding and be reported to the IRS, under Faruqi & Faruqi, LLP's name and taxpayer identification number, on an IRS Form 1099.
2. The Service Award to Pierre shall be made without withholding and be reported to the IRS, under Pierre's name and social security number, on an IRS Form 1099.
3. Based on the claims at issue in this matter, which, with respect to Defendant, primarily seek liquidated damages for allegedly failing to provide timely payment of wages, one-hundred percent of the Total Net Payments to each Authorized Claimant shall be treated as liquidated and other damages and shall be reported on an IRS Form 1099. Such payments will be made without withholding and shall be reported as earned in the year of distribution.
4. Nothing in this Agreement shall be construed as Defendant, Defendant's Counsel, or Class Counsel providing any advice regarding the reporting or payment of taxes or the tax consequences of Pierre's or any Authorized Claimant's participation in any portion of this Agreement. Should any government authority determine that all or any part of the payment(s) made on an IRS Form 1099 to Pierre or any Authorized Claimant under this Agreement is taxable, such Plaintiff shall be solely responsible for the payment of such taxes. However, should all or any part of the payment(s) made on an IRS Form 1099 to Pierre or any Authorized Claimant be determined to be W-2 wages, then Defendant would be responsible for the payment of any employer share of payroll tax stemming from such payments, as further detailed in § II(B)(5).

- F. Reasonable Compromise of Bona Fide Dispute:** The Parties agree that the terms of this Agreement represent a reasonable compromise of disputed issues, arising from a bona fide dispute over the merits of Class Members' claims and agree to represent the same to the Court when seeking Preliminary and Final Approval of the Settlement. The Parties further agree that the Settlement is a fair, reasonable, and adequate resolution of Class Members' claims, and is in the best interests of the Class Members.
- G. Knowing and Voluntary Agreement:** The Parties represent and warrant that they enter into this Agreement knowingly, voluntarily, of their own free will, without any pressure or coercion from any person or entity, and with the full knowledge of its significance.
- H. Advice of Counsel:** The Parties acknowledge that they have had an opportunity to receive advice about the terms and legal effects of the Agreement from counsel of their choosing. The Parties hereby represent that each has consulted their attorney(s) about the Agreement before signing it. The Parties further acknowledge that they have read this Agreement in its entirety, that they have had an opportunity to discuss it with counsel of their choosing, that they understand its terms, that they are fully competent to enter into it, and that they have had a reasonable time within which to consider this Agreement and its terms before signing it.
- I. Modifications to the Agreement:** If the Court refuses to approve this Agreement or any material part thereof, the Parties shall cooperate and work in good faith to address the Court's concerns to modify this Agreement to obtain the Court's approval.
- J. Mutual Full Cooperation:** The Parties agree to reasonably cooperate with each other and to take all steps necessary and appropriate to obtain the Court's approval of this Agreement and all of its terms, and to effectuate the terms of this Agreement, including, without limitation, execution of all necessary documents and such other action(s) as may be necessary to implement the terms of this Agreement. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's approval of the Settlement and this Agreement.
- K. Construction and Severability:** The Parties agree that the terms and conditions of this Agreement are the result of lengthy and extensive arm's length negotiations between the Parties, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party, Defendant's Counsel, or Class Counsel participated in the drafting thereof. If any part of this Agreement is found to be illegal, invalid, or unenforceable, such finding shall not affect the validity of any other part of is Agreement. The Parties request that, before declaring any provision of this Agreement invalid, the Court first attempt to construe all

provisions as valid to the fullest extent possible, consistent with applicable precedents and the intent expressed in this Agreement.

- L. **Captions and Interpretations:** Section titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only, and in no way define, limit, extend, or describe the scope of this Agreement or any of its provisions.
- M. **Modification:** This Agreement may not be changed, altered, or modified, except in a writing signed by Class Counsel and Defendant's Counsel. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by Class Counsel and Defendant's Counsel.
- N. **Merger Clause:** This Agreement contains the entire agreement between the Parties relating to the Settlement.
- O. **Binding on Assigns:** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.
- P. **Counterparts and Electronic or Facsimile Signatures:** This Agreement may be executed in counterparts electronically and/or via facsimile. When each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one binding Agreement. A photocopy or facsimile of the original documents will have the same force and effect as the original.
- Q. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles. The Parties submit to the jurisdiction of the Court for all purposes relating to the review, approval, and enforcement of this Agreement.
- R. **Breach of Agreement:** Litigation concerning any alleged breach of any provision(s) of this Agreement by any Party shall be pursued solely in the Southern District of New York. The Parties agree that the laws of the State of New York shall apply, without regard to conflict of laws principles.

III. **PROCEDURAL ISSUES**

- A. **Settlement Class:** For purposes of this Settlement, the Parties agree to class certification pursuant to Fed. R. Civ. P. 23 and that the Class shall include all Class Members.
- B. **Retention of the Settlement Administrator:** The Parties have selected Analytics LLC as the Settlement Administrator to carry out the duties, obligations, and responsibilities as described in Section III(C), *infra*. Plaintiffs will request that the

Court approve Analytics LLC as Settlement Administrator, which Defendant will not oppose. In the event the Court fails to approve Analytics LLC as Settlement Administrator, the Parties will jointly select an alternative entity or person to serve as the Settlement Administrator and will request that the Court approve such alternative entity or person.

- C. **Responsibilities of Settlement Administrator:** The Settlement Administrator shall be responsible for: (i) preparing, printing, and disseminating to each Class Member the Settlement Notice and Claim Form, including resending any Settlement Notice and Claim Form returned with a new forwarding address; (ii) copying counsel for all Parties on material correspondence; (iii) preparing, monitoring, and maintaining a telephone number with phone answerers until the expiration of the Settlement Checks or the termination of this Agreement, whichever comes first; (iv) promptly furnishing to counsel for the Parties copies of any requests for exclusion, objections, opt-outs, or other written or electronic communications from Class Members that the Settlement Administrator receives; (v) receiving, retaining, and reviewing the Claim Forms submitted by Class Members; (vi) keeping track of requests for exclusions/opt-outs, including maintaining the original mailing envelope in which the request was mailed; (vii) mailing the Settlement Checks to Authorized Claimants; (viii) preparing and wire transferring Class Counsel's attorneys' fees, expenses, and costs, in accordance with this Agreement and any order of the Court; (ix) within three (3) days of receipt, ascertaining current address and addressee information for each Settlement Notice and Claim Form returned as undeliverable and re-mailing the Settlement Notice and Claim Form to the current address; (x) responding to inquiries of Class Members regarding procedures for filing objections, opting out, and submitting Claim Forms; (xi) referring to Class Counsel all inquiries by Class Members regarding matters not within the Settlement Administrator's duties specified herein; (xii) responding to inquiries of Class Counsel and Defendant's Counsel consistent with the Settlement Administrator's duties specified herein; (xiii) promptly apprising counsel for the Parties of the activities of the Settlement Administrator; (xiv) maintaining adequate records of its activities, including the dates of the mailing of Settlement Notice(s) and mailing and receipt of Claim Forms, returned mail, and other communications and attempted written or electronic communications with Class Members or Authorized Claimants; (xv) confirming in writing, including through a report if necessary, to Class Counsel, Defendant's Counsel, and the Court its completion of the administration of the Settlement; (xvi) timely responding to communications from the Parties or their counsel; (xvii) providing all information, documents, and calculations necessary to determine each Authorized Claimant's allocation of the Gross Settlement Fund; (xviii) providing a weekly email to counsel for the Parties during the time period between the mailing of Settlement Notice until the Fairness Hearing that includes the total number of Authorized Claimants, opt-outs or exclusion, and objections; (xix) throughout the period of settlement administration, providing reports to the Parties, upon request by either Party, regarding the status of the mailing of the Settlement Notice and Claim Forms to Class Members, the settlement administration process, distribution

of the Settlement Checks, or any other aspect of the settlement administration process, subject to the terms of this Agreement; (xx) setting-up and otherwise establishing the QSF; (xxi) promptly providing Defendant with appropriate tax forms and wiring instructions; (xxii) promptly filing all required tax forms on behalf of the QSF; and (xxiii) such other tasks as the Parties mutually agree.

In addition, within fifteen (15) days after the Bar Date, the Settlement Administrator shall submit an affidavit jointly to Class Counsel and Defendant's Counsel by email and overnight delivery, certifying: (a) the number of Authorized Claimants who timely filed their Claim Forms; (b) a list of all Class Members who filed a timely objection; (c) a list of all Class Members who requested to opt out of the Settlement at any time during the Opt-Out Period (defined *infra* § III(H)(2)); and (d) the aggregate payments to all Authorized Claimants.

- D. Notice to Class Members:** Plaintiffs will request that the Court approve the proposed Settlement Notice, attached to this Agreement as Exhibit A, and the proposed Claim Form, attached to this Agreement as Exhibit B. Defendant will not oppose such requests. The Court-approved Settlement Notice will inform Class Members about this Agreement and will also advise them of the opportunity to object, opt out, file a Claim Form, and/or appear at the Fairness Hearing. Within ten (10) days of the entry of the Preliminary Approval Order by the Court or as otherwise ordered by the Court, the Settlement Administrator will mail to all Class Members, via First Class U.S. Mail, the Court-approved Settlement Notices and Claim Forms. The Settlement Administrator will take all reasonable steps necessary to obtain the correct address of every Class Member, including a skip trace, and shall attempt a re-mailing to any Class Member for whom the Settlement Administrator obtains a more recent address, thereby fully satisfying the notice obligation to the Class Members. The Settlement Administrator shall also mail a Settlement Notice and Claim Form to any Class Member who contacts the Settlement Administrator or Class Counsel during the time period between the initial mailing of the Settlement Notice and the Bar Date and requests that their Settlement Notice and Claim Form be re-mailed. The Settlement Administrator will notify Class Counsel and Defendant's Counsel of any Settlement Notice and Claim Form sent to a Class Member that is returned as undeliverable after the first mailing, as well as any such Settlement Notice and Claim Form returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement.
- E. Access to the Settlement Administrator:** The Parties will have equal access to the Settlement Administrator. Upon request from the Settlement Administrator, Class Counsel will reasonably assist the Settlement Administrator in locating Class Members.
- F. Preliminary Approval Motion:**
1. Promptly after both Parties execute this Agreement, Class Counsel shall file a motion for preliminary approval, which shall include, without limitation:

(i) the proposed Settlement Notice attached hereto as Exhibit A; (ii) the proposed Claim Form attached hereto as Exhibit B; (iii) a proposed Preliminary Approval Order; (iv) a fully executed version of this Agreement; and (v) any appropriate or necessary documents, memoranda, affidavits, and/or exhibits for purposes of certifying a Class under Fed. R. Civ. P. 23 and preliminarily approving the Settlement. The proposed Settlement Notice, proposed Claim Form, and proposed Preliminary Approval Order approved by the Parties shall be submitted with the motion for the Court's approval. Defendant shall be given sufficient time to review a draft of the motion for preliminary approval before filing to ensure it is consistent with this Agreement. Defendant will not oppose Plaintiffs' motion, provided it is consistent with the terms of this Agreement.

2. In the motion for preliminary approval, Class Counsel shall seek the implementation of dates for effectuating the terms of this Agreement, including: (i) the setting of the Bar Date for individuals to submit Claim Forms, opt out of this Settlement, and/or provide objections to this Settlement, which date will be forty-five (45) days from the initial mailing of Settlement Notice and Claim Form to the Class Members by the Settlement Administrator; and (ii) a Fairness Hearing for Final Approval of the Settlement before the Court at the earliest date practicable after the Bar Date.
3. In the motion for preliminary approval, Class Counsel shall inform the Court of the intended process to obtain a Final Approval Order in accordance with the Court-approved schedule so that, at the Fairness Hearing, the Court may, among other things: (i) approve the Settlement as fair, adequate, and reasonable; (ii) incorporate the terms of the Released Claims, as described herein; (iii) dismiss the Action with prejudice with respect to Defendant; (iv) approve the Fee & Cost Payments and Service Award; (v) enter a Final Approval Order; and (vi) order any other relief necessary to effectuate this Settlement.

G. Class Lists, Settlement Notices and Claim Forms to Class Members:

1. Within three (3) days of the Preliminary Approval Order being entered by the Court, Defendant's Counsel shall provide in electronic form: (i) the Class List to the Settlement Administrator and Class Counsel. Defendant shall take all reasonable steps to gather any information in the Class List not already in its possession from the City of New York. If, after three (3) days of the issuance of the Preliminary Approval Order, the City of New York has not yet provided such information, Defendant shall inform Class Counsel, and the Parties shall meet and confer over whether it is necessary for them to move to amend any deadline in the Preliminary Approval Order.
2. Claim Forms are to be submitted to the Settlement Administrator via mail,

email, or facsimile. Claim Forms submitted to Class Counsel must be sent by Class Counsel to the Settlement Administrator to be deemed effective. Class Members that send their Claim Forms by the Bar Date will be deemed Authorized Claimants. To be effective for the purposes of becoming an Authorized Claimant, a Claim Form must be post-marked, emailed, or faxed to the Settlement Administrator by the Bar Date. The Bar Date shall be: (i) sixty (60) days from the date of the initial mailing or as otherwise set by the Court; and (ii) an additional fifteen (15) days for any Class Members who did not receive or did not timely receive the Settlement Notice, or were unable to file the Claim Form within sixty days (60) days due to such factors as military service, hospitalization, or other extraordinary circumstances. To the extent that the envelope does not contain a post-mark, the date that the Class Administrator stamps the envelope or claim form “received” shall apply.

3. The Settlement Notice and Claim Form shall be published in English and sent to Class Members.
4. Each individual Class Member who fails to timely file a Claim Form shall not be entitled to recovery from this Settlement, unless otherwise agreed to by the Parties or the Court but shall be deemed to have released the Released State Law Claims unless such individual has opted out pursuant to the procedures set forth in Section III(H), *infra*.

H. Settlement Opt-Outs:

1. Class Members who choose to opt out of the Settlement as set forth in this Agreement must mail via First Class U.S. Mail a written, signed statement to the Settlement Administrator stating that he/she/they is/are opting out of the Settlement, and include his/her/their name, address, and telephone number. A statement stating that a Class Member is opting out of the Settlement must include language such as, “I opt out of the TD Bank NYPD PDP wage-and-hour settlement” or other words to that effect (“Opt-Out Statement”). To be effective, an Opt-Out Statement must be post-marked by the Bar Date.
2. The last day to opt out of the Settlement shall be on the Bar Date. The time from the initial mailing of the Settlement Notices and Claim Forms to the Bar Date is hereinafter referred to as the “Opt-Out Period.”
3. The Settlement Administrator shall stamp the received date on the original of each Opt-Out Statement that it receives and serve copies of each Opt-Out Statement on Class Counsel and Defendant’s Counsel no later than three (3) days after receipt. The Settlement Administrator shall, within 24 hours of the end of the Opt-Out Period, send a final list of all Opt-Out Statements to Class Counsel and Defendant’s Counsel by both email and overnight

delivery. The Settlement Administrator shall retain the stamped originals of all Opt-Out Statements and originals of all envelopes accompanying Opt-Out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.

4. Unless determined otherwise by the Court, any Class Member who does not submit an Opt-Out Statement pursuant to this Agreement within the Opt-Out Period shall be deemed to have accepted the Settlement and the terms of this Agreement, will be bound by the Final Approval Order in this case, and will have any Released Claims released and dismissed with prejudice. Only those Class Members who timely complete and return a Claim Form post-marked by the Bar Date will be deemed Authorized Claimants. Defendant shall have no obligation to pay any amounts allocated to Class Members who do not submit a timely Claim Form as set forth in this Agreement. For purposes of this Agreement, Pierre is deemed to be an Authorized Claimant and is not required to return or execute a Claim Form.

I. Objections:

1. Class Members who wish to present objections to the proposed Settlement at the Fairness Hearing (“Objector”) must first do so in writing. To be considered, such statement must be mailed to the Settlement Administrator via First Class U.S. Mail, post-marked by the Bar Date. The statement must include all reasons for the objection, and any supporting documentation. The statement must also include the name, address, and telephone number for the Objector. The Settlement Administrator will stamp the date received on the original and send copies of each objection, supporting documents, as well as a copy of the Settlement Notice and Claim Form mailed to the Objector, to Class Counsel, and Defendant’s Counsel by email delivery no later than three (3) days after receipt of the objection. The Settlement Administrator will also file the date-stamped originals of any and all objections with the Court within three (3) days after the end of the Opt-Out Period.
2. An Objector has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his/her/their intention to do so in writing at the time he/she/they submit(s) such objection. An Objector may withdraw his/her/their objection at any time.
3. The Parties may file with the Court written responses to any filed objections up until three (3) days before the Fairness Hearing.

J. Fairness Hearing and Application for Final Approval and Dismissal:

1. Within ninety (90) days after the Bar Date, in accordance with the schedule set by the Court in the Preliminary Approval Order and, to the extent

scheduled by the Court, in advance of the Fairness Hearing, Class Counsel shall file supporting documents and materials for Final Approval of the Settlement (“Application for Final Approval”). The Application for Final Approval may contain a report from the Settlement Administrator, an application for attorneys’ fees and costs, an application for Pierre’s service award, and supporting affidavits and documents from Class Counsel and Class Members regarding the fairness, adequacy, and reasonableness of the Settlement or any aspect related to this Agreement. The Application for Final Approval may also include a proposed Final Approval Order. Defendant shall be given sufficient time to review a draft of the Final Approval Motion before it is filed to ensure it is consistent with this Agreement. Defendant will not oppose Plaintiffs’ motion, provided it is consistent with the terms of this Agreement.

2. At the Fairness Hearing and/or through the Application for Final Approval, the Parties shall request that the Court, among other things, issue a Final Approval Order: (i) certifying the Class for purposes of Settlement; (ii) approving the Agreement as fair, reasonable, adequate, and binding on all Class Members who have not timely opted out of the Settlement; (iii) directing the Settlement Administrator to distribute the Settlement Checks to the Authorized Claimants; (iv) directing the Fee & Cost Payments to be distributed from the QSF; (v) directing Pierre’s Service Award to be paid from the QSF; (vi) directing the Settlement Administrator Fee to be paid from the remainder of the QSF, unless the QSF contains insufficient funds to pay the same, in which case Defendant shall pay the Settlement Administrator Fee, up to a cap of \$60,000, on top of the GSF; (vii) dismissing with prejudice of all Released Claims asserted in the Action, including the applicable Released Claims of all Authorized Claimants who did not opt out of the Settlement, specifically related to their PDP work with Defendant; and (viii) retaining jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby.
3. Additionally, the Parties shall request that the Final Approval Order direct the Settlement Administrator to: (i) provide a list to Class Counsel and Defendant’s Counsel of the Authorized Claimants along with a verification that it has distributed the Settlement Checks; and (ii) retain copies of all of the endorsed Settlement Checks.
4. Additionally, the Parties shall request that the Final Approval Order direct Class Counsel to file: (i) the list of Authorized Claimants as received from the Settlement Administrator with the representation to the Court that it constitutes a comprehensive list of all Class Members who have opted-into the FLSA collective action and released the Released Federal Claims; and (ii) the list of Class Members who did not timely opt out of or object to the

Settlement and thus are deemed to have waived the Released State Law Claims.

5. The Settlement Payments contemplated hereunder are expressly contingent on the Court's issuance of a Final Approval Order. If the Court refuses or otherwise fails to issue a Final Approval Order, the Parties shall return to their positions prior to the filing of the motion for preliminary approval of the Settlement.

K. Termination of Agreement:

1. If this Settlement is not consummated for any reason, including, without limitation, a ruling by the Court declining to enter a Preliminary Approval Order or Final Approval Order, the Parties shall first endeavor to resolve the matter jointly and in good faith with the goal of effectuating settlement. This may include seeking reconsideration of the Court's ruling, renegotiating this Agreement, or taking any other actions to address any issues with the Settlement identified by the Court. To the extent such efforts fail, the Parties may then continue to litigate the Action as though this Agreement had never been executed, in which case the Class shall automatically be decertified without prejudice to any Party and, specifically, without prejudice to Pierre's right to move for class certification and/or conditional collective certification (with respect to Defendant) at a later date or to Defendant's right to oppose class and/or collective certification.
2. If this Agreement is not approved in its entirety by the Court, with the exception of the amount of the Fee & Cost Payments, the amount of the Service Award, and/or any modifications that the Parties determine in their reasonable and good faith judgment not to be material modifications, or if the Settlement as set forth in this Agreement is terminated, cancelled, declared void, or fails to become effective in accordance with its terms, the Parties shall proceed as follows:
 - a. This Agreement shall be deemed null and void and its terms and provisions shall have no further force or effect.
 - b. The Parties may continue to litigate the Action as though this Agreement had never been executed, in which case the Class shall automatically be decertified without prejudice to any Party and, specifically, without prejudice to Pierre's right to move for class certification and/or conditional collective certification (with respect to Defendant) at a later date or to Defendant's right to oppose class and/or collective certification.

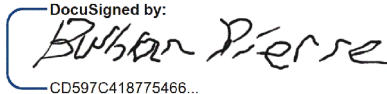
- c. Neither this Agreement, nor any other related papers or orders, may be cited to, used, or deemed admissible in any judicial administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.
- d. None of the Parties shall be deemed to have waived any claims, objections, defenses, or arguments.
- e. In the event this Agreement is terminated after Settlement Notices are sent, the Settlement Administrator shall provide notice to Class Members informing them that the Settlement was voided and that as a result, no payments will be made. The Settlement Administrator shall further provide notice to Class Members that, whether they submitted a Claim Form or not, they retain all rights and privileges under the law and litigation in this Action will continue. Such notice may contain any additional information jointly agreed upon by Class Counsel and Defendant's Counsel. Such notice shall be mailed by the Settlement Administrator via U.S. First Class Mail, postage prepaid, to the addresses contained in the Class List.

**** Remainder of page intentionally left blank. Signatures on following page. ****

WHEREFORE, the Parties hereto have knowingly and voluntarily caused this Agreement to be signed as of the day and dates indicated below.

FOR PLAINTIFFS:

Burbran Pierre

Signature:  _____
DocuSigned by:
Burbran Pierre
CD597C418775466...

Date: 6/7/2022 | 2:01 PM PDT

FOR DEFENDANT:

TD Bank N.A.

Signature: Cory Nelson

Print Name: Cory Nelson

Date: June 16, 2022