

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into this 26th day of September, 2012, by and among Plaintiff, for herself and on behalf of the Settlement Class, and BMO Harris Bank, N.A., f/k/a Harris, N.A. (“Harris Bank”), subject to the Court’s preliminary and final approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, Harris Bank, Class Counsel and Plaintiff 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 Harris Bank in the actions titled *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK; *Blahut v. Harris, N.A.*, N.D. IL Case No. 1:10-cv-2543 and S.D. Fla. Case No.1:10-civ-21821-JLK, shall be settled, compromised, and dismissed upon the terms and conditions contained herein.

I. Recitals

The following recitals are material terms of this Agreement. This Agreement is made with reference to and in contemplation of the following facts and circumstances:

1. On April 23, 2010, Plaintiff, Stephanie Blahut, filed a putative Class Action Complaint in United States District Court for the Northern District of Illinois seeking monetary damages, restitution and declaratory relief from Harris Bank, arising from the allegedly unfair assessment, collection and disclosure of overdraft fees, styled *Blahut v. Harris Bank, N.A.*

2. On June 14, 2010, the Judicial Panel on Multidistrict Litigation transferred the case for coordination with these proceedings, *In re Checking Account Overdraft Fee Litigation*, MDL No. 2036 (“MDL 2036”). The claims against Harris Bank were assigned to MDL 2036’s so-called Fourth Tranche of cases.

3. On December 6, 2010, Plaintiff filed a First Amended Class Action Complaint which Harris Bank moved to dismiss. (DE # 992, 1074). On March 21, 2011, the Court issued an order in the Fourth Tranche cases, denying the motion to dismiss filed by Harris Bank. (DE # 1323).

4. On April 21, 2011, Harris Bank filed its Answer and Affirmative Defenses to the Complaint. (DE # 1361).

5. On July 6, 2011, following Plaintiff's Motion to Strike Affirmative Defenses, Harris Bank filed an Amended Answer and Affirmative Defenses. (D.E. #1694).

6. On May 23, 2011, Plaintiff served her first request for production of documents, first set of interrogatories and first requests for admissions on Harris Bank. On September 16, 2011, the Parties entered into a Confidentiality Agreement Pertaining to *Fourth Tranche* Actions relating to the production of documents and information. On October 17, 2011, Plaintiff served her Second Request for Production. Harris Bank has responded to the written discovery requests, and Harris has produced to Plaintiff thousands of pages of documents.

7. Beginning in August of 2011, the Parties engaged in preliminary settlement discussions. On November 30, 2011, the Parties participated in a formal mediation session under the auspices of Professor Eric Green of Resolutions, LLC. In advance of the mediation, Harris Bank provided Class Counsel with sample transactional and aggregate data regarding its overdraft fee revenue.

8. As a result of the mediation, the Parties signed a Memorandum of Understanding that memorialized, subject to a mutually agreeable written Settlement Agreement and subject to preliminary approval and final approval by the Court as required by Rule 23 of the Federal Rules of Civil Procedure, the Parties' good faith intention to fully, finally, and forever resolve,

discharge and release all rights and claims of the Settlement Class Members in exchange for Harris Bank's agreement to provide the settlement consideration set forth in paragraphs 51-54 below.

9. On December 20, 2011, the Parties filed a Notice of Settlement with the Court in MDL 2036. (DE # 2281).

10. BMO Harris Bank, N.A. is contemporaneously entering into a separate settlement agreement in the actions titled *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK; *Eno v. M & I Marshall & Ilsley Bank*, M.D. FL Case No. 2:10-376, and S.D. Fla. Case No. 1:10-civ-22730-JLK (the "M & I Settlement"). In connection with this Agreement and the M & I Settlement, BMO Harris Bank, N.A. has provided a sworn declaration describing certain information regarding its ongoing integration of Harris Bank Accounts and accounts covered by the M & I Settlement, demonstrating why providing direct account credits to Settlement Class Members who are Current Account Holders will be unduly burdensome and not feasible in connection with the Settlement Class Members Payments contemplated under this Agreement.

11. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims by the members of the Settlement Class who do not opt out of the Settlement. The Parties intend this Agreement to bind Plaintiff, Harris Bank, and all members of the Settlement Class 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 and the attached exhibits:

12. “Account” means any consumer checking, demand deposit or savings account maintained by Harris Bank in the United States accessible by a Debit Card. For avoidance of doubt, “Account” does not include business accounts, even if such business account is held by a consumer.

13. “Action” means *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK; *Blahut v. Harris, N.A.*, N.D. IL Case No. 1:10-cv-2543 and S.D. Fla. Case No.1:10-civ-21821-JLK, and any and all other cases pending in MDL 2036 as of the date of Preliminary Approval to the extent they assert claims against Harris Bank.

14. “Claim” means a written request submitted by a Past or Current Account Holder to the Settlement Administrator seeking a distribution from the Net Settlement Fund based on Overdraft Fees assessed during the applicable Claims Period.

15. “Claim Form” means a form provided by the Settlement Administrator for the purpose of making a Claim.

16. “Claims Period” means the period of time for which data does not exist or is not reasonably accessible in electronic form that would permit Settlement Class Counsel and Harris Bank to identify all Settlement Class Members and/or calculate the full amount any such Settlement Class Members who do not opt out of the Settlement may be due from the Net Settlement Fund. The Claims Period will be April 23, 2000 through and including September 4, 2003 for Illinois Settlement Class Members only.

17. “Class Counsel” means:

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

18. "Class Period" means the period from April 23, 2000 through the date of Preliminary Approval for Illinois Settlement Class Members, and the period from April 23, 2004 through the date of Preliminary Approval for all non-Illinois Settlement Class Members. Determination of Settlement Class Members' states of residence shall be based on the current or last known mailing addresses maintained in Harris Bank's records of Accounts.

19. "Court" means the United States District Court for the Southern District of Florida, Miami Division.

20. "Current Account Holder" means a Settlement Class Member who had an Account(s) during the Class Period, and who continues to have an Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

21. “Debit Card” means a card or similar device issued or provided by Harris Bank, including a debit card, check card, or automated teller machine (“ATM”) card, that can be used to debit funds from an Account by Point of Sale and ATM transactions.

22. “Debit Card Transaction” means any debit transaction effectuated with a Debit Card, including Point of Sale transactions (whether pinned or pinless) and ATM transactions. For avoidance of doubt, Debit Card Transaction does not include a debit transaction effectuated by check, pre-authorized transaction, by wire transfer, or a transfer to another account such as a credit card account or line of credit.

23. “Debit Re-sequencing” means Harris Bank’s process and/or practice of posting an Account’s Debit Card Transactions each business day from highest to lowest dollar amount.

24. “Debit Re-sequencing Overdraft Practices” means the practice and/or process of Debit Re-sequencing that results in the assessment of additional Overdraft Fees that would not have been assessed if Harris Bank had used other posting, sequencing or processing methods (e.g. sequencing transactions each business day from lowest to highest).

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

a. All Parties, Harris Bank’s counsel, and Settlement Class Counsel have executed this Agreement;

b. Orders have been entered by the Court conditionally certifying the Settlement Class, granting Preliminary Approval of the Settlement, and approving the Class Notice and Notice Program as set forth herein;

c. The Court-approved Notice and Notice program has been implemented as ordered by the Court;

d. The Court has entered a final order with respect to any attorneys' fees and expenses to be awarded to Class Counsel or otherwise awarded in connection with this Settlement, and with respect to any Service Award to Plaintiff, and such order(s) is/are final and non-appealable;

e. The Court has entered without material change the Final Approval Order; and

f. The time for appeal has expired, and no appeal has been timely filed; or the Settlement is affirmed on appeal without material change, no other appeal or petition for rehearing is pending, and the time period during which any petition for rehearing or certiorari could be filed has finally expired and relief from a failure to file same is not available.

26. "Escrow Account" means the account to be established consistent with the terms and conditions described in paragraphs 51 and 55 below. The Escrow Account shall be held at Northern Trust Bank, or such other FDIC insured financial institution mutually agreed upon by the Parties.

27. "Escrow Agent" means Epiq Systems. The Escrow Agent shall administer the Escrow Account. Settlement Class Counsel and Harris Bank may, by agreement, substitute a different organization as Escrow Agent, subject to approval by the Court if the Court has previously granted Preliminary Approval or Final Approval of the Settlement.

28. "Final Approval" means the date that the Court enters an order and judgment granting final approval to the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award to Plaintiff.

29. "Final Approval Order" means the order and judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters

constituting Final Approval, then Final Approval Order includes all such orders. The proposed Final Approval Order will be substantially in the form agreed upon by Settlement Class Counsel and counsel for Harris Bank.

30. “Notice” or “Class Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Mailed Notice, Published Notice, and Long-form Notice substantially in the forms attached hereto as Exhibits 1, 2, and 3, respectively. An additional description of the contemplated Notice Program is provided in Section X, *infra*.

31. “Notice Administrator” means Epiq Systems. Settlement Class Counsel and Harris Bank may, by agreement, substitute a different organization as Notice Administrator, subject to approval by the Court if the Court has previously granted Preliminary Approval or Final Approval of the Settlement.

32. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed or published, and that ends no later than 28 days prior to the Final Approval Hearing. The Opt-Out deadline will be specified in the Notice.

33. “Overdraft Fee” means any fee assessed to an Account when paying an item at a time when the Account has insufficient funds to cover the item. Fees charged to transfer balances from other accounts are excluded.

34. “Parties” means Plaintiff and Harris Bank.

35. “Past Account Holder” means a Settlement Class Member who held an Account at some time during the Class Period but no longer holds an Account as of the date that the Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

36. “Plaintiff” means Stephanie Blahut.

37. “Point of Sale” or “POS” means a transaction in which an Account holder uses his or her Debit Card to purchase a product or service.

38. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement.

39. “Preliminary Approval Order” means the Order the Court enters preliminarily approving the Settlement, substantially in the form attached hereto as Exhibit 4.

40. “Released Claims” means all claims to be released as specified in Section XVII of this Agreement. The “Releases” means all of the releases contained in Section XVII of this Agreement.

41. “Released Parties” means those persons released by the releases contained in Section XVII of this Agreement.

42. “Releasing Parties” means Plaintiff and all Settlement Class Members who do not timely and properly opt out of the Settlement, and each of their respective heirs, assigns, beneficiaries, and successors.

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

44. “Settlement Administrator” means Epiq Systems. Settlement Class Counsel and Harris Bank may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously granted Preliminary Approval or Final Approval of the Settlement.

45. “Settlement Class” means all holders of any Harris Bank Account in the United States who, during the Class Period, incurred one or more Overdraft Fees in connection with Harris Bank’s Debit Re-sequencing Overdraft Practices.

46. “Settlement Class Counsel” means Aaron S. Podhurst of Podhurst & Orseck, P.A.; Bruce S. Rogow of Bruce S. Rogow, P.A.; and Robert C. Gilbert of Grossman Roth, P.A. Settlement Class Counsel are a subset of Class Counsel. They are responsible for handling all Settlement-related matters on behalf of Plaintiff.

47. “Settlement Class Member” means any person included in the Settlement Class.

48. “Settlement Fund” means the fund established under Sections III and IV of this Agreement.

49. “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, 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 order preliminarily approving this Settlement, and such other documents as Settlement Class Counsel and counsel for Harris Bank agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be www.HBOverdraftSettlement.com or such other URL as Settlement Class Counsel and counsel for Harris Bank may subsequently agree upon in writing, provided the URL shall not include the name “Harris Bank.” The Settlement Website shall not include any advertising, and shall not bear or include the Harris Bank logo or Harris Bank trademarks. Ownership of the Settlement

Website URL shall be transferred to Harris Bank within 10 days of the date on which operation of the Settlement Website ceases, which operation shall cease no sooner than the Effective Date.

50. “Tax Administrator” means Epiq Systems. Settlement Class Counsel and Harris Bank may, by agreement, substitute a different organization as Tax Administrator, subject to approval by the Court if the Court has previously granted Preliminary Approval or Final Approval of the Settlement. The Tax Administrator will perform all tax-related services for the Escrow Account as provided in this Agreement.

III. Settlement Consideration

51. **Settlement Fund.** In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section XVII below and the dismissal of the Action upon Final Approval, within fourteen (14) calendar days following Preliminary Approval, Harris Bank shall deposit the sum of Nine Million Four Hundred Thousand Dollars (\$9,400,000.00) into the Escrow Account to create the Settlement Fund as set forth further herein.

52. **Settlement Notice and Administration.** In addition, Harris Bank shall timely advance and pay all costs of providing Notice to the Settlement Class and all costs of the administration of the Settlement, including the fees and expenses of the Settlement Administrator and the Notice Administrator, as set forth in Section V below, except that in the event that those costs, fees and expenses exceed the guaranteed maximum price, any amounts in excess thereof shall be paid out of the Settlement Fund (as set forth in paragraph 58(c)) and not by Harris Bank.

53. **Non-Monetary Consideration.** Subject to Court approval and as additional consideration for the releases of the claims of the Settlement Class Members, Harris Bank agrees to implement (if not already in place) the following changes in practice with respect to Debit Card Transactions for its Accounts:

a. Posting Order: Commencing no later than March 31, 2013, Harris Bank shall change its posting order of transactions to the following: (1) credits; (2) priority debits with ATM withdrawals posted by date and time, or, if date and time information is unavailable, then low to high by amount; (3) all other priority debits (*e.g.* outgoing wires, internal transfers, cash withdrawal/cashed check at teller window, etc.) grouped together and posted low to high by amount; (4) debit card transactions (including PIN and non-PIN transactions) posted by date and time of authorization, or, if date and time information is unavailable, then low to high by amount; (5) ACH transactions posted low to high by amount; (6) checks sorted by check number, with lowest check number posted first, or, if check number information is unavailable, then low to high by amount; and (7) bank initiated transactions (*e.g.*, maintenance fees, overdraft fees, ATM fees, etc.) posted low to high by amount.

b. Overdraft Fee Limits: Commencing no later than March 31, 2013, Harris Bank shall: (i) implement a cap of a maximum of four (4) Overdraft Fees assessed to a single Account on any given day; and (ii) refrain from assessing an Overdraft Fee unless an Account is negative \$5.01 or more.

c. Three Year Period: Harris Bank agrees not to change the posting order described in paragraph 53(a) above and the overdraft fee limits described in paragraph 53(b) above in any material manner that would be less beneficial for its customers, for a period of at least three (3) years following the date(s) of their implementation, except that Harris Bank at all times retains the right on a prospective basis to modify its policies and practices based on amendments or clarifications of applicable law as enacted or interpreted by the courts, Congress, or federal regulators or as necessary for Harris Bank to comply with any such amendment, interpretation or clarification.

54. **Total Cash Consideration.** Except for costs of Notice and settlement administration (in such maximum amount as set forth in paragraph 52 above and Section V below), in no event shall Harris Bank be required to pay more than a total of \$9,400,000 in connection with the Settlement Fund or otherwise in connection with this Settlement. For avoidance of doubt, Harris Bank shall not bear any other fees, costs, charges, or expenses incurred by Plaintiff or by Settlement Class Counsel, including, but not limited to, those of any experts retained by Plaintiff or by Settlement Class Counsel.

IV. Establishing and Maintaining the Settlement Fund.

55. Upon the establishment of the Escrow Account (as set forth above in paragraph 51), the Escrow Agent may, but shall not be required to, cause the Settlement Funds in the Escrow Account to be invested in interest-bearing short-term instruments – to be agreed upon by Settlement Class Counsel and Harris 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”). If the Settlement Funds are invested in interest-bearing short-term Instruments, 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. 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 Settlement Class Counsel and counsel for Harris Bank on at least a monthly basis to discuss potential cash needs for the following month. All costs incurred in connection with investing in the Instruments (regardless where the Escrow Account is held) shall be paid from the Settlement Fund and shall not constitute Settlement Notice and administrative costs.

56. 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 Harris Bank or its 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. Harris Bank and its counsel and Plaintiff and Class Counsel shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Harris Bank and its counsel and Plaintiff and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

57. The Settlement Fund shall be used for the following purposes:
- a. Distribution of payments to eligible Settlement Class Members pursuant to Section XIV hereof;
 - b. Distribution of payments to Claimants whose claims the Settlement Administrator has finally approved pursuant to Section XIII hereof;
 - c. Payment of the Court-ordered award of Class Counsel’s attorneys’ fees, costs, and expenses, and/or any other award of fees ordered by the Court in connection with the Settlement, pursuant to Section XVIII hereof;
 - d. Payment of the Court-ordered Service Award to the Plaintiff pursuant to Section XVIII hereof;
 - e. Payment of all costs and expenses that result from establishing and maintaining the Escrow Account pursuant to paragraph 51 and Section IV hereof, and from

investing the Settlement Fund in the Instruments pursuant to paragraph 56 hereof, if any, within thirty days of Settlement Class Counsel's and counsel for Harris Bank's receipt and approval of invoices for such costs and expenses;

f. Payment of all invoices of the Tax Administrator to perform tax-related services for the Escrow Account, within thirty days of Settlement Class Counsel's and counsel for Harris Bank's receipt and approval of invoices received from the Tax Administrator;

g. Payment of all Taxes pursuant to paragraph 56 hereof, including, without limitation, taxes owed as a result of accrued interest on the Escrow Account, in a timely manner consistent with the recommendation of the Tax Administrator, subject to approval by Settlement Class Counsel and counsel for Harris Bank;

h. Payment of that portion of all settlement notice and administration fees, costs and expenses (if any) that in total exceeds the guaranteed maximum price, as set forth in paragraph 58(c) below;

i. Payment of additional fees, costs and expenses not specifically enumerated in subparagraphs (a) through (h) above, subject to agreement and approval of Settlement Class Counsel and counsel for Harris Bank and the Court; and

j. Disposition of residual funds after distribution of payments to Settlement Class Members pursuant to Section XV hereof.

V. Payment of Costs of Settlement Notice and Administration

58. In addition to the payment of the funds to establish the Settlement Fund, and as set forth in paragraph 52 above, Harris Bank shall pay the following:

a. The costs of Notice to the Settlement Class and for the services of the Notice Administrator, within thirty days of Settlement Class Counsel's and counsel for Harris Bank's receipt and approval of invoices received, as provided in Sections IX and X hereof.

b. The Settlement Administrator's costs and fees for services provided pursuant to Section XIV hereof, within thirty days of Settlement Class Counsel's and counsel for Harris Bank's receipt and approval of invoices received from the Settlement Administrator.

c. The Notice Administrator and Settlement Administrator (Epiq) have provided Harris Bank and Settlement Class Counsel with a guaranteed maximum price in a fixed and definitive amount (the "GMP") that may be charged for all Notice and Settlement Administration services to be provided in connection with this Settlement and the M & I Settlement. The GMP is set forth in the services agreement between Harris Bank and Epiq. In the event that the total combined fees, costs and expenses of such Notice and Settlement Administration services in connection with this Settlement and the M & I Settlement, otherwise payable by Harris Bank hereunder and by M & I Bank under the M & I Settlement, exceeds the GMP, all such additional fees, costs and expenses for these Notice and Settlement Administration services (hereinafter, the "Excess Costs") shall be paid directly from the Settlement Fund of this Settlement and from the settlement fund of the M & I Settlement on a *pro rata* basis proportional to the amount of the respective settlement funds, and not by Harris Bank. For the avoidance of doubt, any and all Excess Costs shall be paid directly from the respective settlement funds on the proportional basis provided above, and not by Harris Bank, regardless of whether Epiq or some other entity is serving as Notice Administrator and/or Settlement Administrator, and regardless of whether the Excess Costs are for services that are within or outside the scope of services included in the GMP. In the event Harris Bank has already advanced and/or paid any such Excess Costs, Harris Bank shall be promptly reimbursed such Excess Costs from the respective settlement funds accordingly. For purposes of calculating the amount of any Excess Costs to be paid or reimbursed from the respective settlement funds,

the GMP amount initially provided by Epiq shall control and shall be the sole amount used for that calculation and purpose, regardless of whether Epiq or some other entity is serving as Notice Administrator and/or Settlement Administrator.

d. Other than the costs incurred for the provision of Class Notice and for Settlement Administration services, as specifically addressed in subparagraphs 58(a)-(c) above, in no event shall Harris Bank be required to pay more than a total of \$9,400,000 in connection with this Settlement or otherwise.

VI. Certification of the Settlement Class

59. For purposes of this Settlement only, Plaintiff agrees to ask the Court to certify the Settlement Class (as defined in paragraph 45 above). If the Court does not certify or declines to approve the Settlement Class, or if the Court changes the Settlement Class composition or the terms of the Settlement in any material way not acceptable to Harris Bank after reasonable consultation with Settlement Class Counsel, or if certification of the Settlement Class or approval of the Settlement is reversed, or if certification of the Settlement Class or approval of the Settlement is changed on appeal or review in any material way not acceptable to Harris Bank after reasonable consultation with Settlement Class Counsel, Harris Bank shall have the right to terminate the Settlement pursuant to Section XIX *infra*.

VII. Settlement Approval

A. Preliminary Approval

60. Upon execution of this Agreement by all Parties, Settlement Class Counsel shall promptly move the Court for entry of the Preliminary Approval Order. The motion will request Preliminary Approval of the Settlement consistent with the terms set forth in this Agreement. The proposed Preliminary Approval Order that will be attached to the motion shall be substantially in the form attached hereto as Exhibit 4. The motion shall, *inter alia*, request that

the Court: (i) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (ii) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (iii) approve the Notice program set forth herein and approve the form and content of the Notices of the Settlement, substantially in the forms attached to this Agreement as Exhibits 1, 2, and 3; (iv) approve the procedures set forth in paragraphs 68-70 below for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (v) stay the Action pending Final Approval of the Settlement; and (vi) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Settlement Class Counsel and counsel for Harris Bank, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs and expenses and for a Service Award to Plaintiff.

61. Harris Bank, at its own expense, shall serve or cause to be served a notice of the proposed Settlement, in conformance with the Class Action Fairness Act, 28 U.S.C. § 1715(b) ("CAFA").

VIII. Discovery

62. Class Counsel and Harris Bank already have engaged in certain formal and informal discovery. In addition, and consistent with its statutory and regulatory obligations to protect its customers' private financial information, Harris Bank will continue to cooperate informally with Settlement Class Counsel by providing reasonably available data to permit Settlement Class Counsel and their experts to perform the allocation analysis detailed in Section XII below.

IX. Settlement Administrator

63. Settlement Class Counsel and Harris Bank have jointly selected and Harris Bank shall retain Epiq Systems to serve as the Settlement Administrator. The Settlement Administrator shall administer various aspects of the Settlement as described in paragraph 65 below and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing Mailed Notice to Settlement Class Members; working with the Notice Administrator to effectuate the Published Notice Program pursuant to Section X below; distributing the Settlement Fund as provided herein; repaying Harris Bank its actual notice and administration costs pursuant to paragraph 58(c) and paragraphs 109 and 111 hereof; and paying the remainder of the Settlement Fund to Harris Bank in the event of a termination of the Settlement pursuant to Section XIX hereof. Settlement Class Counsel and counsel for Harris Bank will jointly supervise and oversee the Settlement Administrator.

64. As specified below and subject to the limits set forth in paragraph 58(c) above, all Settlement Administrator fees, charges and expenses, as incurred pursuant to paragraph 105 shall be paid by Harris Bank within 30 days of Settlement Class Counsel's and counsel for Harris Bank's receipt and approval of an invoice.

65. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement (including but not limited to those referenced in paragraph 63 above), are as follows:

a. Obtain from Harris Bank and Settlement Class Counsel the names and address information of identifiable Settlement Class Members (to the extent it is available and to be updated by the Settlement Administrator in the manner reflected herein), and verify and update the addresses received through the National Change of Address database, for the purpose

of mailing the Mailed Notice, and later mailing distribution checks to Settlement Class Members who do not opt out, as provided under the terms of this Agreement;

- b. Review, decide, and respond to all Claims;
- c. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;
- d. Establish and maintain the Settlement Website;
- e. Establish and maintain an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- f. Respond to any mailed Settlement Class Member inquiries;
- g. Process all requests for exclusion from the Settlement Class;
- h. Provide weekly reports and no later than five days after the end of the Opt-Out Period, and a final report to Settlement Class Counsel and counsel for Harris Bank that summarize the number of Claims that week, the total number of Claims received to date, the number and dollar amount of any Claims granted and denied that week, the total dollar amount of any Claims granted and denied to date, and other pertinent Claim information, the number of requests for exclusion received that week, and the total number of exclusion requests received to date, and other pertinent information;
- i. Interface with the Tax Administrator;
- j. At Settlement Class Counsel's and/or Harris Bank's Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each Settlement Class Member who timely and properly requested exclusion from the Settlement Class;

k. Process and transmit distributions to Settlement Class Members from the Net Settlement Fund in accordance with the terms of this Agreement;

l. Pay invoices, expenses and costs upon approval by Settlement Class Counsel and counsel for Harris Bank, as provided in this Agreement;

m. Perform the duties of Escrow Agent as described in this Agreement, and any other Settlement-administration-related function at the instruction of Settlement Class Counsel and counsel for Harris Bank, including but not limited to, verifying that Harris Bank has correctly made a distribution to Settlement Class Members pursuant to paragraph 104 herein;

n. Comply with the terms of the parties' Confidentiality Agreement Pertaining to *Fourth Tranche* Actions and all applicable provisions of this Agreement;

o. Qualify under, and agree to comply with, all applicable confidentiality, privacy, and security protocols required by Harris Bank; and

X. Providing Settlement Notice to Settlement Class Members

66. The Parties have jointly selected and Harris Bank shall retain Epiq Systems as Notice Administrator, to effectuate the Notice Program that provides Notice to the Settlement Class.

67. As soon as practicable following entry of Preliminary Approval, at the direction of Settlement Class Counsel and counsel for Harris Bank, the Notice 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 description of the Claims Process; a date by which Settlement Class Members may exclude themselves from or "opt out" of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon

which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information. Settlement Class Counsel and counsel for Harris Bank 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 and publications provided under or as part of the Notice Program shall not bear or include the Harris Bank logo or trademarks, the return address of Harris Bank, the Harris Bank blue and red colors, or otherwise be styled to appear to originate from Harris Bank.

68. The Notice also shall include a procedure for Settlement Class Members to opt out of the Settlement Class. A Settlement Class Member may opt out of the Settlement Class 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.

69. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and for a Service Award to Plaintiff. Objections to the Settlement or to the application for fees, costs, expenses, and a Service Award must be mailed to the Clerk of the Court, Settlement Class Counsel, and Harris Bank's counsel. For an objection to be considered by the Court, the objection must be postmarked no later than the last day of the Opt-Out Period as specified in the Notice.

70. For an objection to be considered by the Court, the objection must also set forth:
- a. the name of the Action;
 - b. the objector's full name, address and telephone number;

c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;

d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;

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

f. 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;

g. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that 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;

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

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).

71. Notice shall be provided to Settlement Class Members in three different ways: Mailed Notice; Published Notice; and Long-form Notice on the Settlement Website. Not all Settlement Class Members will receive all three forms of Notice, as detailed below.

72. The Mailed Notice shall be substantially in the form attached hereto as Exhibit 1; the Published Notice shall be substantially in the form attached hereto as Exhibit 2; and the Long-form Notice shall be substantially in the form attached hereto as Exhibit 3.

73. Within 28 days from the date that the Settlement Administrator receives from Settlement Class Counsel and Harris Bank the data files that identify the names and last known addresses of the identifiable Settlement Class Members, the Settlement Administrator shall run the addresses through the National Change of Address Database, and shall mail to all such Settlement Class Members postcards that contain the Mailed Notice ("Initial Mailed Notice").

74. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. No later than 63 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Mailed Notice postcards to those Settlement Class Members whose new addresses were identified as of that time through address traces ("Notice Re-mailing Process").

75. The Mailed Notice Program (which is comprised of both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than 63 days before the Final

Approval Hearing. Within seven days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator shall provide Settlement Class Counsel and Harris Bank's counsel an affidavit that confirms that the Mailed Notice Program was completed in a timely manner. Settlement Class Counsel shall file that affidavit with the Court as an exhibit to or in conjunction with Plaintiff's motion for Final Approval of the Settlement. The Settlement Administrator shall also update the list of Settlement Class Members to indicate the updated address information, if any, for the Settlement Class Members and shall provide a copy of the updated list of Settlement Class Members to counsel for Harris Bank within the same time frame required for the affidavit.

76. Subject to the limits set forth in paragraph 58(c) above, Harris Bank shall pay all costs associated with the Mailed Notice Program within thirty days of being approved by Settlement Class Counsel and counsel for Harris Bank.

77. The Notice Administrator shall administer the Published Notice Program, which shall be comprised exclusively of the following components: a 3-column x 10.5-inch advertisement in the Chicago Tribune, Indianapolis Star, Milwaukee Journal-Sentinel, Register Star, Tribune Star, and Wisconsin State Journal. The Published Notice Program shall be commenced as soon as practicable after the Initial Mailed Notice, and shall be completed no later than 63 days before the Final Approval Hearing.

78. Subject to the limits set forth in paragraph 58(c) above, Harris Bank shall pay all costs associated with the Published Notice Program within thirty days of being approved by Settlement Class Counsel and counsel for Harris Bank.

79. Within seven days after the date the Notice Administrator completes the Published Notice Program, the Notice Administrator shall provide Settlement Class Counsel and

counsel for Harris Bank with one or more affidavits that confirm that Published Notice was given in accordance with the Published Notice Program. Settlement Class Counsel shall file that affidavit(s) with the Court as an exhibit to or in connection with Plaintiff's motion for Final Approval of the Settlement.

XI. Final Approval Order and Judgment

80. The Plaintiff's motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the final approval hearing ("Final Approval Hearing") will occur. The date requested for the Final Approval Hearing shall be set so as to comply with all applicable timing requirements of CAFA. Plaintiff and Class Counsel shall file their motion for Final Approval of the Settlement, application for attorneys' fees, costs and expenses and for a Service Award for Plaintiff no later than 49 days prior to the Final Approval Hearing. The motion for Final Approval will request Final Approval of the Settlement consistent with the terms of this Agreement.

81. At the Final Approval Hearing the Court will hear argument on Plaintiff's and Class Counsel's motion for Final Approval of the Settlement, application for attorneys' fees, costs, and expenses and for a Service Award for Plaintiff. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the fee, cost, expense or Service Award application, provided the objectors filed timely objections that meet all of the requirements listed in paragraph 70 above. The Court at the Final Approval Hearing will determine whether to enter the Final Approval Order granting Final Approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and a Service Award. The proposed Final Approval Order shall be substantially in the form agreed upon by Settlement Class Counsel and counsel for Harris Bank. Such Final Approval Order shall, among other things:

- a. Determine that the Settlement and its terms are fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies Due Process requirements;
- d. Dismiss the Action with prejudice and without costs;
- e. Bar and enjoin Plaintiff and all Settlement Class Members, who have not properly opted out, from asserting any of the Released Claims, as set forth in Section XVII, including during any appeal from the Final Approval Order;
- f. Release Harris Bank and the Released Parties from the Released Claims, as set forth in Section XVII and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Harris Bank, all Settlement Class Members, and all objectors, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

XII. Allocation Methodology for Identifiable Settlement Class Members.

82. Consistent with its statutory and regulatory obligations to protect its customers' private financial information, Harris Bank shall make available to Settlement Class Counsel and to their experts certain de-identified Account transaction data – to the extent such data exists in reasonably accessible electronic form – sufficient to determine and implement the allocation of the Settlement Fund. The methodology provided for in paragraph 84 below 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. Any Settlement Class Member for whom Account data is provided under this Agreement shall be identified solely by reference to the random identifier number assigned to the Account.

83. The parties acknowledge that the information available in reasonably accessible electronic form from Harris Bank's databases may be incomplete for limited portions of the Class Period and, therefore, it may not be possible to identify all Settlement Class Members ("Unidentifiable Settlement Class Members") and/or to calculate and make distributions of all amounts that Settlement Class Members may be due from the Net Settlement Fund for the entire Class Period. To the extent that the Parties, consistent with the foregoing data constraints and limitations, can reasonably identify Settlement Class Members and calculate the amount such Settlement Class Members are due from the Net Settlement Fund, a distribution will be provided to them based upon the terms of the allocation set forth in paragraph 84. To the extent that data does not exist in reasonably accessible electronic form that would permit the Parties to identify all Settlement Class Members and/or calculate the full amount such Settlement Class Members may be due from the Net Settlement Fund, the Parties have agreed to utilize an appropriate alternative claims process, as set forth in Section XIII below, to directly compensate such Settlement Class Members consistent with the foregoing data constraints and limitations. The process by which Unidentifiable Settlement Class Members will submit claims to the Settlement Administrator for consideration of payment from the Net Settlement fund is referred to herein as the "Claims Process," as described in Section XIII below.

84. The amount of the distribution from the Net Settlement Fund to which each identifiable Settlement Class Member is entitled for the Class Period shall be determined using the following allocation methodology or such other methodology as would have an equivalent result:

a. All Accounts will be identified in which, on one or more calendar days during the Class Period, Harris Bank assessed two or more Overdraft Fees on such day or days

during which the Account was subject to Debit Re-sequencing Overdraft Practices. If Settlement Class Counsel and their experts and Harris Bank cannot conclusively determine from the Account records whether the Account was subject to Debit Re-sequencing Overdraft Practices on a particular calendar day, it may be assumed for purposes of this paragraph that the Account was subject to Debit Re-sequencing Overdraft Practices on that particular calendar day;

b. For each calendar day on which Harris Bank assessed two or more Overdraft Fees, all transactions posted in such Accounts on that day will be ordered in the following posting order:

i. All credits;

ii. All cashed checks, internal transfers, and fees/charges (Posting Priority 30) from highest to lowest dollar amount;

iii. All ATM and POS Debit Card Transactions, wire transfers, returned deposited checks, and debit memos (Posting Priority 31) from lowest to highest dollar amount;

iv. ACH pre-funded debits (Posting Priority 40) from highest to lowest dollar amount;

v. All other debit transactions, including ACH debits, non-cashed checks, ATM transfers, XIT transfers (Posting Priority 42) from highest to lowest dollar amount.

c. After ordering the transactions as set forth in subparagraph (b) above, each Account – on a daily basis for such calendar days – will be identified in which the number of Overdraft Fees Harris Bank actually assessed exceeds the number of Overdraft Fees that would have been assessed if the Account had been ordered as set forth in subparagraph (b) (“Additional Overdrafts”);

d. The dollar amount of the Additional Overdrafts will be calculated (“Additional Overdrafts Amount”);

e. For each Account in which one or more Additional Overdrafts have been identified, it will be determined how many (if any) Overdraft Fees Harris Bank refunded during the thirty-day period following each calendar day on which any Additional Overdraft occurred (“Refunded Additional Overdrafts”);

f. The dollar amount of the Refunded Additional Overdrafts will be calculated (“Refunded Additional Overdrafts Amount”);

g. All Accounts will be identified in which on any calendar day the Additional Overdrafts Amount exceeds the Refunded Additional Overdrafts Amount. The Refunded Additional Overdrafts Amount will be subtracted from the Additional Overdrafts Amount to determine the “Differential Overdraft Fee”;

h. All Accounts that experienced a Differential Overdraft Fee will be checked against a list of Accounts that Harris Bank closed with negative balances after writing them off as uncollectable (“Uncollectable Accounts”).

i. For any Uncollectable Account that experienced a Differential Overdraft Fee, the Differential Overdraft Fee will be reduced dollar-for-dollar by the dollar amount of the negative closing Account balance. When the dollar amount of the negative closing Account balance equals or exceeds the Differential Overdraft Fee for the Account, the Differential Overdraft Fee shall be reduced to zero for purposes of calculating that Account holder’s distribution, and the Account holder will not receive a distribution from the Settlement Fund for such Account;

j. The foregoing allocation formula will yield the identification of all Account holders whose Accounts experienced a Differential Overdraft Fee greater than zero dollars (“Positive Differential Overdraft Fee”) as well as the amounts of their respective Positive Differential Overdraft Fees.

k. The Parties agree the foregoing allocation formula is exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, the amount of Positive Differential Overdraft Fees, if any, a Settlement Class Member incurred as a result of Debit Re-sequencing Overdraft Practices, and the amount of any distribution, if any, each such Settlement Class Member should receive from the Net Settlement Fund. The fact that this allocation formula is used herein is not intended and shall not be used for any other purpose or objective whatsoever.

XIII. Alternative Claims Process

85. Separate and apart from the allocation methodology set forth for identifiable Settlement Class Members under Section XII hereof, any Past or Current Account Holder (“Claimant”) who sustained two or more Overdraft Fees on a calendar day at any time during the Claims Period applicable to that Claimant may submit a written request (“Claim”) to the Settlement Administrator seeking a distribution from the Net Settlement Fund based on Overdraft Fees assessed during the Claims Period.

86. A Claimant may submit a Claim for Overdraft Fees charged during the Claims Period, whether or not the Claimant is also entitled to a distribution pursuant to the allocation methodology set forth under Section XII with respect to periods not within the Claims Period. A Claimant shall not be entitled to submit a Claim or receive a distribution pursuant to a Claim

respecting any period outside of the Claims Period. To the extent that a Claimant submits a Claim respecting any period outside of the Claims Period, the Claim shall be invalid.

87. A Claim may be submitted by filing a request with the Settlement Administrator using a Claim Form in a form to be attached to the motion for Preliminary Approval and approved by the Court, or by otherwise providing the information that is required by this Section XIII under penalty of perjury. In the event that a Claimant provides information other than by using the Claim Form, the Settlement Administrator may request that the Claimant re-submit the information using the Claim Form. In the event that a Claim is not re-submitted using the Claim Form within 30 calendar days after the Settlement Administrator's request is mailed or emailed (whichever is first), the Claim shall be deemed abandoned and denied without further notice.

88. A Claimant may submit separate Claims with respect to separate Accounts. A Claimant shall submit no more than one Claim with respect to any single Account, regardless of the number of Overdraft Fees assessed. In the event that multiple Claims are submitted with respect to a single Account, whether by a single Claimant or by multiple Claimants who are joint holders of the same Account, only the last-received timely Claim will be considered by the Settlement Administrator

89. The following information and evidence, at a minimum, shall be required with respect to each Claim.

- a. Account Holder's name;
- b. Account Holder's current mailing address and (if available) email address;
- c. Account Holder's telephone number;
- d. Account Numbers subject to the Claim;

e. Identification of each individual Overdraft Fee as to which the Claimant seeks a distribution, including the following:

f. Date the fee was incurred;

g. Dollar amount of the fee;

h. Whether the Claimant knows if the fee was refunded; and

i. Documentation sufficient to substantiate the Claim, as identified on the Claim Form.

90. All Claims must be submitted to the Settlement Administrator no later than 60 days after the Final Approval Hearing. Claim Forms shall be available for download from the Settlement Website, or by writing, calling, or emailing the Settlement Administrator.

91. The Settlement Administrator shall have final authority to determine the adequacy of the substantiation and the legitimacy of any Claim, based on the calculation methodology applicable to distributions to identifiable Class Members, as such methodology is set forth in paragraph 84 of Section XII above. The Settlement Administrator shall have discretion to require a Claimant to submit additional information and documentation to support a Claim. In exercising its discretion under this paragraph, the Settlement Administrator shall take into account the burden imposed by requiring additional information and documentation, the number and amount of the fees that are the subject of the Claim, and other appropriate considerations.

92. The Settlement Administrator shall provide written notice to all Claimants whose complete and timely Claims it proposes to reject in whole or in part, and shall provide each Claimant an opportunity to remedy curable deficiencies, and/or state any grounds for contesting the proposed decision of the Settlement Administrator, within 30 days of the date the Settlement Administrator sends notice by email or mail (whichever is earlier). A Claimant shall only

receive one 30-day period in which to respond to the Settlement Administrator's proposed rejection of a Claim. Untimely submission of a Claim is not a curable deficiency within the meaning of this paragraph.

93. If submitted by mail, a Claim (or remedial submission) shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), a Claim (or remedial submission) shall be deemed to have been submitted on the shipping date reflected on the shipping label. If submitted electronically, a Claim (or remedial submission) shall be deemed to have been submitted on the date it is uploaded to the Settlement Website.

94. All Claim Forms shall be subject to such anti-fraud procedures and random and/or selective audits as the Settlement Administrator shall adopt in its discretion. The Settlement Administrator shall be responsible for developing an appropriate plan to audit Claim Forms.

95. Within the parameters set forth in this Section XIII, further specific details of the Claims Process shall be subject to the agreement of Settlement Class Counsel and Harris Bank. In the event that the Settlement Administrator determines, in its discretion, that any adjustment to the Claims Process or deadlines is called for, the Settlement Administrator shall confer with Settlement Class Counsel and Harris Bank. Changes may be made to the Claims Process set forth in this Section XIII by agreement between Settlement Class Counsel and Harris Bank, in order to facilitate the working of the Claims Process or accomplishment of the goals of the Claims Process, subject to approval by the Court.

96. The Parties agree the foregoing methodology is exclusively for purposes of computing, retrospectively, in a reasonable and efficient fashion, the amount of any distribution

each Past or Current Account Holder should receive from the Net Settlement Fund based upon Overdraft Fees assessed during the Claims Period. The fact that this methodology is used herein is not intended and shall not be used for any other purpose or objective whatsoever.

XIV. Distribution of Net Settlement Fund to Settlement Class Members

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

a. the amount of the Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses, and/or any other Court ordered award of fees in connection with the Settlement, together with any interest accrued thereon;

b. the amount of the Court-ordered Service Award to the Plaintiff;

c. the amount of Excess Costs paid and/or owed to the Notice Administrator and Settlement Administrator for services provided in connection with this Settlement and the M & I Settlement, and the amount of any Excess Costs to be reimbursed to Harris Bank pursuant to paragraph 58(c);

d. all costs, expenses and fees associated with investing the Settlement Fund in the Instruments;

e. all costs, expenses and fees incurred by the Tax Administrator and any Taxes;

f. the amount of the expenses incurred in connection with establishing and maintaining the Escrow Account, including all fees and costs of the Escrow Agent;

g. a reservation of a reasonable amount of funds for prospective fees, costs and expenses of notice and settlement administration, in the event such fees, costs and expenses are to be paid or reimbursed from the Settlement Fund pursuant to paragraph 58(c) of Section V of this Agreement;

h. additional fees, costs and expenses not specifically enumerated in subparagraphs (a) through (e) above, subject to agreement and approval of Settlement Class Counsel and counsel for Harris Bank.

98. As soon as practicable, but no sooner than 90 days after the Effective Date, the Settlement Administrator shall distribute the Net Settlement Fund to the Settlement Class Members who are determined to be entitled to a distribution as provided herein and who do not opt out. Each Settlement Class Member who had a Positive Differential Overdraft Fee, including each Claimant who the Settlement Administrator has approved and determined is eligible for a distribution, and has not opted out as provided herein shall receive a distribution in the amount of a *pro rata* share of the Net Settlement Fund.

99. The Settlement Administrator shall divide the total amount of the Net Settlement Fund by the total amount of all Settlement Class Members' Positive Differential Overdraft Fees, which yields the "*Pro Rata Percentage*."

100. The Settlement Administrator shall multiply each Settlement Class Member's total Positive Differential Overdraft Fees by the *Pro Rata Percentage*, which yields each Settlement Class Member's "Differential Overdraft Payment Amount."

101. Likewise, the Settlement Administrator shall multiply the dollar amount of each Claimant's finally approved Claim by the *Pro Rata Percentage*. This calculation shall yield each Claimant's "Payable Claim Amount."

102. Every Settlement Class Member who has not opted out shall be paid from the Net Settlement Fund the total Differential Overdraft Payment Amount to which he or she is entitled, and every Claimant shall be paid from the Net Settlement Fund the Payable Claim Amount to which he or she is entitled, calculated as set forth herein ("Settlement Class Member Payments").

103. In no event, however, shall Harris Bank ever be required to pay more than a total of \$9.4 million to the Settlement Class, inclusive of all attorneys' fees, costs, expenses, and the Service Award (exclusive of costs of Notice and Settlement Administration payable by Harris Bank as provided in this Agreement).

104. Based on the sworn declaration provided by BMO Harris Bank, N.A. in connection with this Agreement and the M & I Settlement, all Settlement Class Member Payments shall be in the form of checks, to be issued by the Settlement Administrator from the Settlement Fund. The checks will be cut and mailed by the Settlement Administrator to the addresses that the Settlement Administrator identifies as valid Settlement Class Member addresses. The Settlement Administrator will make reasonable efforts to locate the proper address for any Settlement Class Member whose check is returned by the Postal Service as undeliverable, and will re-mail it at least once to the updated address, or in the case of a jointly held Account, and in the Settlement Administrator's discretion, to an Account Holder other than the one listed first.

105. Subject to the limits set forth in paragraph 58(c) above, Harris Bank shall pay all costs associated with the process of printing and mailing the Settlement Class Member Payments and any accompanying communication to Settlement Class Members who do not opt out within thirty days of Settlement Class Counsel's and Harris Bank's counsel's approving the invoice for payment.

106. Settlement Class Member Payments will contain an appropriate legend, in a form approved by Settlement Class Counsel and Harris Bank's counsel, to indicate that it is from the Settlement. Checks shall be valid for 270 days. For jointly held Accounts, checks will be

payable to all Account Holders and will be mailed to the first Account Holder listed on the Account, except as otherwise provided in paragraph 104 above.

107. THIS PARAGRAPH INTENTIONALLY LEFT BLANK.

108. The amount of the Settlement Fund attributable to uncashed checks and checks returned to the Settlement Administrator, or attributable to Settlement Class Member Payments that have not otherwise been distributed from the Settlement Fund, 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 Settlement Class Members whose checks were returned to effectuate delivery of such checks to the Settlement Class Members entitled to them. The Settlement Administrator shall make only one attempt to re-mail or re-issue a distribution check.

XV. Disposition of Residual Funds After Distribution to the Settlement Class Of Settlement Class Member Payments.

109. Within one year plus thirty days after the date the Settlement Administrator mails the first Settlement Class Member Payment, any funds remaining in the Settlement Fund shall be distributed as follows:

a. First, the funds shall be paid to Harris Bank in such amount as to reimburse Harris Bank for the actual amounts paid by Harris Bank to the Settlement Administrator or Notice Administrator for costs of Class Notice and Settlement Administration;

b. Second, at the election and complete discretion of Settlement Class Counsel, any funds remaining after distribution pursuant to subparagraph 109(a) above may be distributed to Settlement Class Members who received Settlement Class Member Payments on a *pro rata* basis, to the extent feasible and practical in light of the costs of administering such

subsequent payments (all such costs to prepare and transmit such additional payments to be paid by the Settlement Fund); or

c. Third, in the event all funds remaining in the Settlement Fund are not distributed pursuant to paragraph 109 (a) and (b) above, the remaining funds shall be distributed through a residual *cy pres* program. The residual *cy pres* recipient(s) shall be agreed upon by Harris Bank and Settlement Class Counsel, and approved by the Court. 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 distribution of funds to the Settlement Class Members.

d. In the event Settlement Class Counsel and counsel for Harris Bank are unable to agree on the *cy pres* distribution plan or recipient(s) pursuant to paragraph 109 (c), they shall bring the matter, together with supporting materials and argument, to the Court for determination.

e. All costs associated with the disposition of residual funds – whether through an additional distribution to Settlement Class Members or through a residual *cy pres* program – shall be borne solely by the Settlement Fund.

f. In the event no money remains in the Settlement Fund after distribution under subparagraph 109(a), the Parties shall have no obligation whatsoever to make any residual *cy pres* or other distribution as contemplated by subparagraphs (b) or (c) above or otherwise.

XVI. Effect of a Termination

110. The grounds upon which this Agreement may be terminated are set forth in paragraphs 125 and 126 of this Agreement. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of Harris Bank's obligations under the

Settlement shall cease to be of any force and effect; the amounts in the Settlement Fund shall be returned to Harris Bank in accordance with paragraph 127; 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, Plaintiff's right to seek class certification and Harris Bank's right to oppose class certification.

111. In the event of a termination as provided in paragraphs 125 and/or 126 the Escrow Agent shall return the Settlement Fund to Harris Bank within seven days of termination, less any money that the Settlement Fund has already paid, or incurred an obligation to pay, in accordance with the terms of this Agreement, for Settlement-related Notice and Administration costs and expenses.

112. This Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of paragraphs 125 and/or 126

113. In the event the Settlement is terminated in accordance with the provisions of paragraphs 125 and/or 126, 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, without prejudice to Plaintiff's right to seek class certification, and Harris Bank's right to oppose class certification. 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.

XVII. Releases

114. As of the Effective Date, Plaintiff and each Settlement Class Member, (except those who have timely opted out and are identified as opt-outs in the attachment to the Final Judgment) each on behalf of himself or herself and on behalf of his or her respective heirs,

assigns, beneficiaries, and successors (collectively, the “Releasing Parties”), shall automatically be deemed to have fully and irrevocably released and forever discharged Harris 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, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively the “Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters from the beginning of time up through and including Preliminary Approval that were or could have been alleged in the Action, including, without limitation, any claims, actions, causes of action, demands, damages, losses, or remedies relating to, based upon, resulting from, or arising out of (a) the calculation, assessment, imposition, amount, or collection of one or more Overdraft Fees assessed on a Harris Bank Account in connection with Debit Card Transactions, (b) Harris Bank’s past or current policies and practices concerning authorization, processing, sequencing, or Overdraft Fees, or (c) Debit Re-sequencing or posting order. The foregoing release includes, by way of example but not limitation, any and all of the following: (1) the authorization, approval, processing, handling, sequencing, or posting of any Debit Card Transaction; (2) any failure to allow customers to opt out of overdraft protection; (3) any refusal to allow customers to opt out of overdraft protection; (4) any failure to publicize or disclose the ability of the holder of any Harris Bank Account to opt-out of overdrafts; (5) any failure to notify or to obtain advance approval or affirmative consent from

customers when a Debit Card Transaction would or might cause a Harris Bank Account to become overdrawn or further overdrawn or an Overdraft Fee to be assessed; (6) any failure to alert a customer that a Debit Card Transaction would trigger an Overdraft Fee; (7) any failure to provide customers with the opportunity to cancel Debit Card Transactions; (8) any alleged manipulation or reordering of transactions for the purpose of increasing the number of Overdraft Fees; (9) any imposition of an Overdraft Fee when a different system for authorizing or posting transactions would have resulted in fewer such fees; (10) any failure to provide customers with accurate balance information; (11) any assessment of allegedly exorbitant or excessive Overdraft Fees; (12) any imposition or assessment of a continuous overdraft fee, continued overdraft fee, or uncleared overdraft fee incurred in connection with Debit Re-sequencing; (13) any failure adequately or clearly to disclose, in one or more agreements, posting order, Debit Re-sequencing, overdrafts, Overdraft Fees, or the manner in which Debit Card Transactions are or would be approved, processed, or posted to Harris Bank Accounts; (14) any conduct or statements encouraging the use of Harris Bank Debit Cards; and (15) any advertisements relating to any of the foregoing.

115. Provided Harris Bank has paid to the named Plaintiff, consistent with the terms of this Agreement, any Service Award approved and ordered by the Court, the named Plaintiff (on her own behalf and on behalf of her respective heirs, assigns, beneficiaries, and successors) and without in any way limiting the generality of the foregoing release, the Released Claims shall further specifically extend to and include 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 the Accounts of the named Plaintiff at issue in the Action.

116. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraphs 114 and/or 115, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she 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 114 and/or 115. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases contained in this paragraph and in paragraphs 114 and/or 115, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement or never receives a distribution of funds from the Settlement.

117. AS OF THE EFFECTIVE DATE, PLAINTIFF AND EACH SETTLEMENT CLASS MEMBER WHO DOES NOT OPT OUT OF THE SETTLEMENT SHALL FURTHER AUTOMATICALLY BE DEEMED TO HAVE WAIVED AND RELEASED ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY § 1542 OF THE CALIFORNIA CIVIL CODE OR SIMILAR LAWS OF ANY OTHER STATE OR JURISDICTION. SECTION 1542 OF THE CALIFORNIA CIVIL CODE READS: “§ 1542. CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND

TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

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

XVIII. Attorneys’ Fees, Costs, and Service Award

A. Class Counsel’s Fees and Costs

119. Harris Bank agrees not to oppose Class Counsel’s request for attorneys’ fees of up to thirty-three percent (33%) of the Settlement Fund and not to oppose Class Counsel’s request for reimbursement of costs and expenses. Any award of attorneys’ fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The determination of Class Counsel’s request for attorneys’ fees shall be based on controlling Eleventh Circuit precedent and not based on state law. The Parties agree that the Court’s failure to approve, in whole or in part, any award for attorneys’ fees shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

120. The Parties negotiated and reached this agreement regarding the terms of paragraph 119 only after reaching agreement on all other material terms of this Settlement.

B. Payment of Attorneys’ Fees and Costs

121. Within three business days of the Effective Date, the Escrow Agent shall pay from the Settlement Fund to Settlement Class Counsel all Court-approved attorneys’ fees, costs,

and expenses of Class Counsel, including interest accrued thereon, and pay any other court awarded fees. Provided, however, that the Escrow Agent shall not pay any such fees, costs or expenses from the Settlement Fund to Settlement Class Counsel until such time as Settlement 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 any award of attorneys' fees, costs, and expenses is reduced on appeal, the Escrow Agent shall only pay to Settlement Class Counsel from the Settlement Fund the reduced amount of such award, including interest earned thereon, as such amounts are approved by the Court. Settlement Class Counsel shall timely furnish to the Escrow Agent any required tax information or forms before the payment is made.

122. The payment of attorneys' fees, costs and expenses of Class Counsel pursuant to paragraph 121 shall be made through a deposit by the Escrow Agent into an Attorney Client Trust Account jointly controlled by Settlement Class Counsel. After the fees, costs and expenses have been deposited into this account, Settlement Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees, costs and expenses to that firm.

C. Class Representative Service Award

123. Class Counsel will ask the Court to approve a service award of \$5,000 for the Plaintiff ("Service Award"). Any Service Award shall be paid from the Settlement Fund. The Service Award shall be paid to Plaintiff in addition to Plaintiff's Settlement Class Member Payments. Harris Bank shall not oppose Class Counsel's request for payment of the Service Award. The Parties agree that the Court's failure to approve, in whole or in part, any service award shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

124. The Parties negotiated and reached this agreement regarding the Service Award only after reaching agreement on all other material terms of this Settlement.

XIX. Termination of Settlement

125. This Settlement may be terminated by either Harris Bank or Settlement Class Counsel by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 45 days after any of the following occurrences:

- a. Settlement Class Counsel and Harris Bank agree to termination;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. an appellate court reverses the Final Approval Order, and the Settlement is not reinstated 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 Harris Bank or Settlement Class Counsel seeking to terminate the Settlement reasonably considers material;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement.

126. Harris Bank also shall have the right to terminate the Settlement by serving on Settlement Class Counsel and filing with the Court a notice of termination within fourteen (14) days of its receipt from the Settlement Administrator of the final report specified in paragraph 65(h) above, if the number of Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds the number or percentage specified in the separate letter agreement executed concurrently with this Settlement by Harris Bank's counsel and Settlement

Class Counsel. The percentage shall be confidential except to the Court, who shall upon request be provided with a copy of the letter agreement for *in camera* review.

127. In the event of a termination of the Settlement, and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Escrow Account, the balance of the Settlement Fund shall be refunded and remitted to Harris Bank as provided in paragraphs 110 and 111. Harris Bank shall have no right to seek reimbursement from Plaintiff or Class Counsel for any funds disbursed from the Escrow Account pursuant to paragraphs 56-57 above.

128. In the event of a termination of the Settlement pursuant to this Section the parties retain all of their pre-Settlement litigation rights and defenses, including Plaintiff's right to seek class certification and Harris Bank's right to oppose class certification, as provided in paragraphs 110 and/or 113.

XX. No Admission of Liability

129. Harris Bank disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Harris 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.

130. Class Counsel and Plaintiff 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 fully investigated the facts and law relevant to the merits of the claims, have conducted formal and informal discovery, and have conducted independent

investigation of the challenged practices. Class Counsel and Plaintiff have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

131. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.

132. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff 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.

133. In addition to any other defenses Harris 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.

XXI. Miscellaneous Provisions

134. References to Harris Bank in Third-Party Materials. In the course of pursuing claims against defendant banks other than Harris Bank in MDL-2036, Class Counsel are serving

subpoenas and seeking discovery from third-party consultants to the banking industry. Settlement Class Counsel shall provide Harris Bank promptly with copies of all materials received by Settlement Class Counsel through such subpoenas and discovery that Settlement Class Counsel reasonably determine refer to, mention or pertain to Harris Bank.

135. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

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

137. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, 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 regardless of events that may occur, or court decisions that may be issued in MDL 2036 or in any other case in any court.

138. Exhibits. Each and every exhibit to this Agreement is an integral and material part of this Agreement and is incorporated herein by this reference as though fully set forth herein,

139. 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.

140. Integration. This Agreement (along with the letter agreement referenced in paragraph 126 hereof and any exhibits hereto) 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 by any Party hereto, except as provided for herein.

141. Return of Confidential Information: Provided the Effective Date has occurred, a party in the possession of Confidential or Highly Confidential matter, including, but not limited to, any and all transactional customer data exchanged between the Parties and excluding that which is contained in pleadings and correspondence, shall either: (a) return such matter no later than sixty (60) days after the Effective Date to counsel for the producing party who provided such matter, or (b) destroy such matter upon consent of the producing party who provided the matter and certify in writing within sixty (60) days after the Effective Date that the matter has been destroyed.

142. 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.

143. 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 Illinois, without regard to the principles thereof regarding choice of law.

144. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

145. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any

suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice program, the Settlement Administrator, the Notice Administrator, and the Tax Administrator. As part of their respective agreements to render services in connection with this Settlement, the Settlement Administrator, the Notice Administrator, and the Tax Administrator shall consent to the jurisdiction of the Court for this purpose.

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

Bruce S. Rogow, Esq.
BRUCE S. ROGOW, P.A.
500 E Broward Boulevard # 1930
Fort Lauderdale, FL 33394
Telephone: 954-767-8909
Facsimile: 954-764-1530
Email: brogow@rogowlaw.com

Aaron S. Podhurst, Esq.
PODHURST ORSECK, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130
Telephone: 305-358-2800
Facsimile: 305-358-2382
Email: apodhurst@podhurst.com

Robert C. Gilbert, Esq.
GROSSMAN ROTH, P.A.
2525 Ponce de Leon Boulevard, 11th Floor
Coral Gables, FL 33134
Telephone: 305-442-8666
Facsimile: 305-779-9596
Email: rcg@grossmanroth.com

With a copy to:

Jeffrey M. Ostrow, Esq.
KOPELOWITZ OSTROW P.A.
200 S.W. First Avenue, 12th Floor
Fort Lauderdale, FL 33301
Telephone: 954-525-4100
Facsimile: 954-525-4300
Email: ostrow@kolawyers.com

All notices to Harris Bank, provided for herein, shall be sent by email and facsimile with a hard copy sent by overnight mail to:

Lucia Nale, Esq.
Debra Bogo-Ernst, Esq.
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 701-7403
Facsimile: (312) 706-8474 (fax)
Email: lnale@mayerbrown.com
Email: dernst@mayerbrown.com

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.

147. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by the Parties and their respective counsel and approved by the Court.

148. 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.

149. Authority. The Plaintiff and Harris 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 Plaintiff and Harris 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.

150. Agreement Mutually Prepared. Neither Harris Bank nor Plaintiff, 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.

151. 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. Harris Bank has provided and is providing information that Plaintiff reasonably requests to identify Settlement Class Members and the alleged damages they incurred. 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.

152. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Releases contained in Section XVII above, 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.

INTENTIONALLY LEFT BLANK

PLAINTIFF
STEPHANIE BLAHUT

Dated: September 16, 2012

Stephanie N. Blahut
Print Name Stephanie N. Blahut

BRUCE S. ROGOW, P.A.

Dated: September __, 2012

Bruce S. Rogow
*Co-Lead Counsel and Settlement Class
Counsel*

PODHURST ORSECK, P.A.

Dated: September __, 2012

Aaron S. Podhurst
*Co-Lead Counsel and Settlement Class
Counsel*

GROSSMAN ROTH, P.A.

Dated: September __, 2012

Robert C. Gilbert
*Coordinating Counsel and Settlement Class
Counsel*

KOPELOWITZ OSTROW P.A.

Dated: September __, 2012

Jeffrey M. Ostrow
Class Counsel


PLAINTIFF
STEPHANIE BLAHUT

Dated: September __, 2012

Print Name _____

BRUCE S. ROGOW, P.A.

Dated: September 26, 2012



Bruce S. Rogow
Co-Lead Counsel and Settlement Class Counsel

PODHURST ORSECK, P.A.

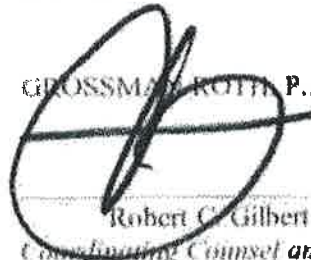
Dated: September 26, 2012



Aaron S. Podhurst
Co-Lead Counsel and Settlement Class Counsel

GROSSMAN ROTH P.A.

Dated: September 26, 2012



Robert C. Gilbert
Coordinating Counsel and Settlement Class Counsel

KOPELOWITZ OSTROW P.A.

Dated: September 26 2012



Jeffrey M. Ostrow
Class Counsel

BMO HARRIS BANK, N.A.

Dated: September 26, 2012

Lucia Nale
By: _____
Its: _____

MAYER BROWN LLP

Dated: September __, 2012

Lucia Nale
Counsel for BMO Harris Bank, N.A.

MAYER BROWN LLP

Dated: September __, 2012

Debra Bogo-Ernst
Counsel for BMO Harris Bank, N.A.

BMO HARRIS BANK, N.A.

Dated: September __, 2012

By: _____
Its: _____

MAYER BROWN LLP

Dated: September 26, 2012



Lucia Nale
Counsel for BMO Harris Bank, N.A.

MAYER BROWN LLP

Dated: September 26, 2012



Debra Bogo-Ernst
Counsel for BMO Harris Bank, N.A.