

X10-UWY-CV-12-6015956-S : SUPERIOR COURT  
: :  
ALFONSE FORGIONE : COMPLEX LITIGATION DOCKET  
: :  
VS. : AT WATERBURY  
: :  
WEBSTER BANK, N.A. : July 6, 2016

**JUDGMENT ORDER**

This matter coming to be heard on the Plaintiff's Motion for Final Approval of Class Action Settlement together with the supporting papers filed by Alfonse Forgione, individually and on behalf of the Settlement Class (as defined below), and having heard and considered the evidence and arguments of counsel, the Court makes the findings and grants the relief set forth below.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. The Court incorporates by reference the definitions set forth in the Settlement Agreement, *which is appended hereto.*
2. The Court has subject matter jurisdiction of this matter and all claims asserted against Webster.

**Notice to the Class**

3. The Court finds that the form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement

Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of due process.

#### Class Certification

4. Plaintiff's motion requests certification of a Settlement Class defined as:

All persons who were holders of debit cards issued by Webster Bank and who were charged an overdraft fee during the period from August 16, 2010 to March 15, 2014, for any debit card transaction authorized in real time by Webster when there were sufficient available funds in the customer's account to pay the full amount of the authorized transaction, but later presented to Webster for payment at a time when there were insufficient available funds in customer accounts to pay the full amount of the transaction as a result of other items having been presented and paid.

Excluded from the defined Settlement Class are Webster, any parent, subsidiary, affiliate or controlled person of Webster, Webster's officers or directors, the judicial officers assigned to this litigation, and members of their staffs, and the heirs, successors and assigns of any of the foregoing. The defined Settlement Class also excludes Webster Bank customer Bobby Hatten, who timely submitted a valid request to be excluded.

5. The Court makes the following findings of fact with respect to the proposed Settlement Class:

- a. There are questions of law and fact common to the Settlement Class;
- b. The claims of Representative Plaintiff are typical of the claims of members of the Settlement Class;
- c. Representative Plaintiff and Settlement Class Counsel will fairly and adequately represent the interests of the Settlement Class. There are no conflicts of interest between Representative Plaintiff and members of the Settlement Class;
- d. Questions of law and fact common to Settlement Class Members predominate over any questions affecting only individual members of the Settlement Class; and
- e. Certification of the Settlement Class is superior to other methods for the fair and efficient adjudication of this controversy.

f. The class is too numerous to make joinder of all members feasible.

6. Accordingly, the Court certifies the Settlement Class as defined in Paragraph 4 of this Order, for settlement purposes only, pursuant to Sections 9-7 and 9-8(3) of the Connecticut Practice Book. The names of those persons who timely submitted a valid request to be excluded, and who are therefore not members of the certified Settlement Class by virtue of that request for exclusion, are identified in Exhibit A to this Order. Such persons shall neither share in the distribution of the Settlement Fund nor receive any benefits of the terms of the Settlement Agreement, and shall not be bound by this Judgment Order.

7. As provided for in the Settlement Agreement, if the Settlement Agreement is terminated in accordance with its terms, then the Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party's position on the issue of class certification or any other issue.

#### **Approval of the Settlement**

8. The Court finds that the terms of the Settlement Agreement are in all respects, fair, adequate, reasonable, proper, and in the best interests of the Settlement Class, and therefore approves the Settlement.

9. Representative Plaintiff, Webster, and Settlement Class Members shall consummate the settlement according to the terms of the Settlement Agreement. The Settlement Agreement, and each and every term and provision thereof, shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force and effect of an order of this Court.

10. By entry of this Final Judgment Order Plaintiff and all Releasing Parties (defined in the Settlement Agreement as Settlement Class Members, as well as their respective spouses, executors, representatives, heirs, predecessors, successors, bankruptcy trustees, guardians, wards,

joint tenants, tenants in common, tenants by the entirety, co-borrowers, agents, attorneys and assigns, and all those who claim through them or who assert claims on their behalf), shall be deemed to have fully released and forever discharged the Released Parties (as that term is defined in the Settlement Agreement), and each of them, of and from any and all rights, claims, liabilities, action, causes of action, costs and attorneys' fees, demands, damages and remedies, known or unknown, liquidated or unliquidated, legal, statutory, declaratory or equitable, that Releasing Parties ever had, now have, or may have in the future, that result from, arise out of, are based upon, or relate to in any way the conduct, omissions, duties or matters alleged or that could have been alleged in the Complaint, concerning overdraft charges from signature transactions that occurred before March 15, 2014.

**Approval of the Plan of Allocation**

11. The Court finds that the Plan of Allocation, <sup>which is appended here to</sup> is in all respects, fair, adequate, reasonable, proper, and in the best interests of the Settlement Class, and therefore approves the Plan of Allocation. The Parties have stipulated and the Court finds that its approval of the Settlement Agreement is a matter separate and independent of its approval of the Plan of Allocation. Accordingly, any appeal of the Court's decision on the Plan of Allocation shall not affect the finality of the other determinations in this Judgment Order.

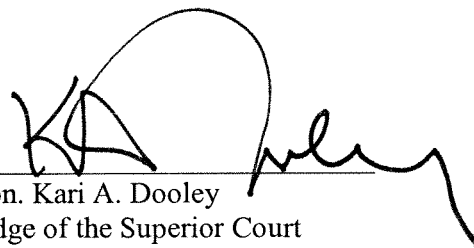
**Final Order and Dismissal with Prejudice**

12. In accordance with the terms of the Settlement Agreement, *Forgione v. Webster Bank, N.A.*, No. X10-UWY-CV-12-6015956-S (Conn. Super., Waterbury Jud. Dist., CLD) <sup>will be</sup> dismissed with prejudice, <sup>upon the expiration of any</sup> appeal period with respect to this judgment.

13. Without affecting the finality of this Judgment in any way, the Court retains continuing jurisdiction over the Settling Parties and the Settlement Class for the administration, consummation, and enforcement of the terms of the Settlement Agreement.

14. In the event the Effective Date does not occur, this Judgment Order shall be rendered null and void and shall be vacated and, in such event, as provided in the Settlement Agreement, this Judgment and all orders entered in connection herewith shall be vacated and null and void.

SO ORDERED.

  
\_\_\_\_\_  
Hon. Kari A. Dooley  
Judge of the Superior Court

Dated: 7/6, 2016

# EXHIBIT A

## ***Forgione v. Webster Bank***

Docket No. X10-UWY-CV-12-6015956-S

### **Requests for Exclusions**

	FIRST NAME	MIDDLE NAME	LAST NAME	OPT OUT ID
1	BOBBY		HATTEN	900000001

X10-UWY-CV-12-6015956-S : SUPERIOR COURT  
ALFONSE FORGIONE :  
VS. : COMPLEX LITIGATION DOCKET  
WEBSTER BANK, N.A. : AT WATERBURY

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Settlement”) is entered into by and between Alfonse Forgione, on behalf of himself and the Settlement Class (as defined below), by and through Proposed Settlement Class Counsel (as defined below), and Webster Bank, N.A. This Agreement is being submitted pursuant to §§ 9-7 *et seq.* of the Connecticut Rules of Court and is subject to preliminary and final approval by the Court.

**DEFINITIONS**

1. As used in this Settlement, the following terms have the meaning specified below:
  - a) “Action” means the action entitled *Forgione v. Webster Bank.*, Docket No. X10-UWY-CV-12-6015956-S, pending in the Connecticut Superior Court, Complex Litigation Docket at Waterbury.
  - b) “Claims Administrator” means a class action claims administrator retained to administer the claims and settlement fund distribution process.
  - c) “Class Period” shall mean August 16, 2010, through March 15, 2014.
  - d) “Complaint” means the Class Action Complaint dated August 6, 2012.
  - e) “Court” means the Connecticut Superior Court, Complex Litigation Docket at Waterbury.
  - f) “Defendant’s Counsel” means James Sicilian, Day Pitney LLP, 242 Trumbull Street, Hartford CT 06103-1212.



- g) “Effective Date” has the meaning set forth in Paragraph 20 of this Settlement.
- h) “Escrow Account” means an interest bearing account established by Webster in accordance with the terms and conditions set forth in Paragraph 10 of this Settlement.
- i) “Final Fairness Hearing” means the hearing in the Action for the Court to consider final approval of this Settlement and the entry of Judgment.
- j) “Judgment” means the Final Judgment and Order of Dismissal with Prejudice to be entered in the Action in connection with the Settlement after the Final Fairness Hearing.
- k) “Notice” means the Notice of Pendency of Proposed Settlement of Class Action, Settlement Hearing and Fee and Expense Application to be sent to Settlement Class Members, which will be sent to Settlement Class Members pursuant to the Preliminary Approval Order.
- l) “Notice Administrator” means the class action notice administrator retained to provide notice of the proposed settlement to Settlement Class Members.
- m) “Overdraft Fee” means an overdraft fee, insufficient funds fee, returned item fee, extended overdraft fee, or other similar fee charged by Webster to a holder of a Webster Debit Card relating to a Webster Debit Card Transaction.
- n) “Plaintiff” means Alfonse Forgione.
- o) “Preliminary Approval Order” means the Order Preliminarily Approving Settlement and Providing for Notice to the Settlement Class Members.
- p) “Proposed Settlement Class Counsel” means Hassan A. Zavareei and

Jeffrey D. Kaliel, Tycko & Zavareci LLP, 2000 L St. NW, Suite 808, Washington, D.C. 20036 and Robert A. Izard and Mark P. Kindall, Izard Nobel LLP, 29 S. Main St, Suite 305, West Hartford, CT 06107.

q) “Released claims” means all claims and other matters released in and by Paragraph 22 and 23 of this Settlement.

r) “Released Parties” means Webster and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns and all of the present and former directors, officers, employees, agents, attorneys, and shareholders of Webster and each of its and their present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns.

s) “Releasing Parties” means Plaintiff and the Settlement Class Members who have not opted out of the Settlement and each of their respective spouses, executors, representatives, heirs, predecessors, successors, bankruptcy trustees, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, agents, attorneys and assigns, and all those who claim through them or who assert claims on their behalf.

t) “Settlement Class Member(s)” means all persons who are members of the Settlement Class as described in Paragraph 6 of this Settlement.

u) “Settlement Fund” means the \$1,800,000, less any Third Party Notice and Claims Administration Costs previously paid, to be deposited by Defendant in accordance with the terms of this Settlement.

v) “Settling Parties” means Plaintiff and Defendant.

w) “Third Party Notice and Claims Administration Costs” mean all reasonable third party costs of notice and administration, including costs of identifying class

members and disbursing compensation, and including costs, if any, incurred by Webster for third party services or equipment that it cannot reasonably provide through its existing staff and facilities.

x) “Webster” or “Defendant” means Webster Bank, N.A. It also means each and every one of the Released Parties.

y) “Webster Account” means a deposit account at Webster.

z) “Webster Debit Card” means a debit card, check card or any other bank card used for debit purchases, withdrawals or other payments from a Webster Account.

aa) “Webster Debit Card Transaction(s)” means transaction(s) effectuated with or relating to such Webster Debit Card(s), including but not limited to automated teller machine (“ATM”) transactions and point of sale (“POS”) transactions.

#### RECITALS

1. The Action was commenced on or about August 6, 2012, by Alfonse Forgione, individually and on behalf of all others similarly situated.

2. In the Complaint, Plaintiff alleges that he was a Webster account holder and had used a debit card in connection with his account at Webster. Plaintiff further alleges that Webster improperly assessed him (and other Webster customers) Overdraft Fees for one or more debit card transactions that were authorized by Webster at a time when there were sufficient available funds in his account to pay the full amount of the authorized transaction. The Complaint challenges Webster’s compliance with the terms of its Deposit Account Agreement and asserts certain other claims relating to Overdraft Fees. Plaintiff alleges that Webster’s practices were unlawful and caused him and others similarly situated to suffer financial injury.

3. Webster denies the allegations of the Complaint. In particular, Webster asserts that its processing of Webster Debit Card Transactions for Plaintiff and other customers was in accord with its Deposit Account Agreement and that the Deposit Account Agreement clearly and expressly authorized it to charge Overdraft Fees and to take all other actions complained of by Plaintiff, and that all such actions were lawful. Webster believes that the claims in the Action are without merit. Nevertheless, for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Action, and for the purpose of putting to rest the controversies raised or which could have been raised in the Action, and without any admission of any liability or wrongdoing whatsoever, Webster desires to settle the Action and all claims asserted or which could have been asserted in or subsumed by the Action on the terms and conditions set forth in this Settlement.

4. Plaintiff and Proposed Settlement Class Counsel believe that the claims asserted in the Action have merit. Plaintiff and Proposed Settlement Class Counsel, however, recognize and acknowledge the risks, expense and length of continued proceedings necessary to prosecute the Action against Webster through motion practice, trial, and potential appeals. Proposed Settlement Class Counsel have also taken into account the uncertain outcome and the risks of further litigation, as well as the difficulties and delays inherent in such litigation. Proposed Settlement Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class. Plaintiff and Proposed Settlement Class Counsel have determined that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

5. The Settling Parties, by and through their respective duly authorized counsel of record, hereby agree that the Action, and all matters and claims in the Complaint, and all matters and claims arising out of or related to the allegations or subject matter of the Complaint

and Action, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the below terms and conditions.

### **TERMS OF THE SETTLEMENT**

In consideration of the complete and final settlement of the Action, and under the terms and conditions herein, the Settling Parties agree as follows:

#### **Certification of the Settlement Class**

6. For settlement purposes only, the Settling Parties agree to request that the Court certify a Settlement Class defined as follows:

All persons who were holders of debit cards issued by Webster and who were charged an overdraft fee during the period from August 16, 2010 to March 15, 2014, for any debit card transaction that was authorized in real time by Webster when there were sufficient available funds in the customer's account to pay the full amount of the authorized transaction, but later presented to Webster for payment at a time when there were insufficient available funds in customer accounts to pay the full amount of the transaction as a result of other items having been presented and paid.

Excluded from the Settlement Class are Webster, any parent, subsidiary, affiliate or controlled person of Webster, Webster's officers or directors, the judicial officers assigned to this litigation, and members of their staffs, and the heirs, successors and assigns of any of the foregoing. Also excluded from the Settlement Class is any person who timely submits a valid request to be excluded from this Settlement.

7. If the Court does not certify the Settlement Class, or changes or alters the composition of the Settlement Class in any way not acceptable to Defendant or Plaintiff, in their sole discretion, Defendant and Plaintiff each shall have the right to terminate the Settlement by serving on the opposing Settling Party and filing with the Court a notice of termination within ten (10) days of its receipt of notice of the Court's ruling.

### Settlement Consideration

8. **Monetary Consideration.** Subject to approval by the Court, the total monetary consideration to be provided by Webster pursuant to the Settlement shall be \$ 1,800,000, inclusive of all attorneys' fees, costs, and expenses, incentive payments and Third Party Notice and Claims Administration Costs.

### Attorneys' Fees, Costs, and Expenses

9. Proposed Settlement Class Counsel shall seek approval of the Court for attorneys' fees and reimbursement of reasonable costs and expenses incurred by Proposed Settlement Class Counsel in litigating, handling, and resolving the Action. Webster agrees not to oppose such application(s). All attorneys' fees, costs and expenses will be paid from the Settlement Fund. Webster shall have no other or further liability for the attorneys' fees, costs, and/or expenses of Plaintiff, Proposed Settlement Class Counsel, or any Settlement Class Member.

a) Any attorneys' fees and expenses awarded by the Court to Proposed Settlement Class Counsel shall be paid out of the Escrow Account immediately upon entrance of the Court's award of attorney fees and expenses (the "Fee and Expense Award"). In the event that the Fee and Expense Award is reversed or modified, then such of Proposed Settlement Class Counsel who have received any portion of the Fee and Expense Award shall within ten (10) business days from receiving notice from Defendants' counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. Each such Proposed Settlement Class Counsel law firm receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it,

agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph.

b) Notwithstanding any other provision of this Settlement, any order of the Court regarding the Fee and Expense Application, the incentive award to Plaintiff set out in Paragraph 11, *infra*, the Plan of Allocation, and/or any appeal from any such order(s), is neither material to, nor part of this Settlement, and shall not operate to terminate or cancel this Settlement, or affect or delay the Judgment approving this Settlement. Neither a modification nor reversal on appeal of any order of the Court regarding the Fee and Expense Award, the Plaintiffs' Incentive Award and/or the Plan of Allocation shall constitute grounds for any Party to cancel, terminate or withdraw from this Settlement.

**Establishment of the Settlement Funds**

10. a) Within thirty (30) business days of the entry of the Preliminary Approval Order, Defendant shall deposit the Settlement Fund into an escrow account established at Webster which shall invest the same in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof (the "Instruments"), and shall reinvest the proceeds of these Instruments as they mature in similar Instruments at their current market rates. Webster shall waive all standard account fees for the Escrow Account and fees for service as Escrow Agent. Any fees to be paid by Webster or the Claims Administrator to third parties in connection with the investment of the Settlement Fund as required by the terms of this subparagraph will be paid from the Settlement Fund.

b) No monies shall be disbursed from the Settlement Fund, except as provided in this Settlement, by an order of the Court, or by the joint written instructions of

Defendants' Counsel and Proposed Settlement Class Counsel.

c) The Settlement Fund held by Webster in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the Court's jurisdiction, until such time as such funds shall be distributed pursuant to the Settlement or further order of the Court.

d) The Parties agree to treat the Settlement Fund at all times as a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendant and Defendant's 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 ("Taxes") shall be paid out of the Settlement Fund. Defendants and Defendant's Counsel shall not have any liability or responsibility for the Taxes. The Settlement Fund shall indemnify and hold Defendants and Defendant's Counsel harmless for Taxes (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and expenses incurred in connection with the preparation of any tax returns or compliance with tax laws shall be treated as, and considered as, Third Party Notice and Claim Administration Costs and shall be timely paid out of the Settlement Fund without prior order from the Court. Webster (notwithstanding anything herein to the contrary) shall withhold from distribution to Settlement Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and related expenses. Defendant and their counsel are not responsible and shall not have any liability for the administration of the Settlement Fund. The Parties agree to cooperate with Webster, each other,



and their respective tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section.

e) In the event that the Judgment is not entered or, if it is entered, it does not become final, or if the Settlement is voided pursuant to Paragraphs 26, 27 or 28 hereof, the then-existing Settlement Fund (less amounts then due and owing for Third Party Notice and Claims Administration Costs) shall be returned and paid to Defendant free and clear of any further obligations pursuant to this Settlement.

#### **Incentive Awards**

11. Defendant agrees to not oppose application by Plaintiff for an incentive award to Plaintiff in an amount not to exceed \$5,000 (five thousand dollars). Such incentive award is subject to approval of the Court and shall be paid by the Escrow Agent within ten (10) days of the Effective Date.

#### **Preliminary Approval**

12. The Parties shall file a motion for preliminary approval in the Action, which motion shall attach this Settlement. The Parties shall request that, after the Notice is given, the Court, in accordance with Section 9-9 of the Connecticut Rules of Court hold the Final Fairness Hearing and finally approve the Settlement and enter the Judgment. At or after the Final Fairness Hearing, Proposed Settlement Class Counsel will request that the Court approve the proposed Plan of Allocation, the Fee and Expense Application and the Lead Plaintiffs' Incentive Award.

#### **Notice to Settlement Class Members and Claims Administration**

13. The parties have agreed that the cost of notice and the costs of claims administration shall come out of the Settlement Fund, and that Webster will cooperate to

facilitate notice and claims administration to reduce the costs associated with providing notice and distributing settlement funds to Settlement Class Members. Third Party Notice and Claims Administration Costs shall be paid from the Settlement Fund Escrow Account. It is expressly understood and agreed to by Settling Parties that neither Proposed Settlement Class Counsel, nor Settlement Class Members shall be responsible for any of these fees, costs, or expenses.

14. To the extent possible, notice to Settlement Class Members shall be by first class mail or by electronic mail for Settlement Class Members who have authorized Webster to send them monthly statements and other notices by this method.

#### **Distribution of the Settlement Fund**

15. The Third Party Notice and Claims Administration Costs, any taxes on the Settlement Fund, Court-approved attorneys' fees, costs and expenses, and Plaintiff's Incentive Award shall be deducted prior to the distribution of the remainder of the Settlement Fund in the Escrow Account. The distribution of the remainder of the Escrow Account will proceed in accordance with the Plan of Allocation agreed to by the Parties, which Plan of Allocation will be submitted to the Court as part of the request for Preliminary and Final Approval. In the event that the amount of reimbursement for verified claims exceeds the funds available in the Escrow Account, Settlement Class Members will receive a proportionate reimbursement.

16. The Settling Parties agree to establish and maintain for no less than six (6) months after the Effective Date a mechanism to resolve claims, if any, submitted by Settlement Class Members in response to the notice identified in Paragraph 14, *supra*, and attached hereto as Exhibit A.

#### **Cy Pres Distribution**

17. If there are funds remaining in the Escrow Account after the distributions are

completed pursuant to Paragraph 15 of this Settlement, the Claims Administrator shall distribute all such remaining funds through the *cy pres* distribution. All funds resulting from returned or un-cashed checks shall remain in an account maintained by the Webster for six (6) months, at which time the money will be distributed through the *cy pres* distribution. In the event that all funds remitted from Escrow Account to the Webster are paid to Settlement Class Members, Webster will have no obligation to distribute a *cy pres* under this Paragraph or as part of the Settlement.

18. The *cy pres* shall be distributed to a nonprofit financial literacy educational organization or organizations agreed upon by Webster and Settlement Class Counsel, and approved by the Court. Should the parties be unable to agree on the recipient(s) they shall present their respective prospective recipients to the Court, with any supporting materials and argument, and the Court shall decide the recipient(s).

19. The *cy pres* distribution shall be paid as soon as is practicable following the distribution of funds to Settlement Class Members and the expiration of the six month period referenced in paragraph 17.

#### **Effective Date of Settlement**

20. The Effective Date of the Settlement shall be the twenty-fifth (25<sup>th</sup>) day after the Court has entered final Judgment, if no appeal has been filed therefrom. If an appeal has been filed, the Effective Date shall be ten (10) days after the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmation is no longer subject to further appeal or review.

#### **No Admission of Liability**

21. Webster expressly denies any and all liability in this Action. By entering into this

Settlement, Webster is not admitting any liability whatsoever to Plaintiff, any Settlement Class Member or any other person or entity, or the truth of any allegations or circumstances, nor is Webster waiving any claim, counterclaim, defense, or affirmative defense except to the extent otherwise expressly provided by this Settlement.

#### Releases

22. As of the Effective Date, the Releasing Parties, and each of them, shall be deemed to have fully released and forever discharged the Released Parties, and each of them, of and from any and all rights, claims, liabilities, action, causes of action, costs and attorneys' fees, demands, damages and remedies, known or unknown, liquidated or unliquidated, legal, statutory, declaratory or equitable, that Releasing Parties ever had, now have, or may have in the future, that result from, arise out of, are based upon, or relate to in any way to the conduct, omissions, duties or matters alleged or that could have been alleged in the Complaint, concerning overdraft charges from signature transactions that occurred before March 15, 2014.

23. Plaintiff and other Settlement Class Members may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the claims released pursuant to the terms of this Paragraph and Paragraph 22 of this Settlement, 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 waived and fully, finally, and forever settled and released any known or unknown, suspected or 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 Paragraph 22 of this Settlement. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Settlement, including by the releases contained in this Paragraph and in Paragraph 22 of this

Settlement, 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, never submits a Claim Form, or never receives a distribution of funds from the Settlement. The foregoing shall be construed to operate as a waiver and release of any and all provisions, rights and benefits conferred either by Section 1542 of the California Civil Code, or by any statute of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code.

24. Releasing Parties, and each of them, shall be enjoined from prosecuting any equitable or legal proceeding against any Released Party with respect to any of the Released Claims or any of the actions taken by a Released Party that are authorized or required by this Settlement Agreement or by the Judgment. The Court shall retain jurisdiction to enforce the judgment, releases, and bar to suits contemplated by this Settlement and by the Judgment.

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

#### Discovery

26. The Settling Parties have already engaged in substantial discovery, both formal and informal, over the past several months since this Action was commenced. Webster has cooperatively and extensively participated in discovery with Proposed Settlement Class Counsel

designed to address the allegations set forth in the Complaint. Proposed Settlement Counsel have reviewed a substantial amount of documents and data relating to liability and damages issues. In addition, Plaintiff shall be entitled to reasonable discovery to confirm the substantial data and documents already provided as part of informal discovery in the course of settlement negotiations. The period for confirmatory discovery shall begin as of the date of this Settlement Agreement and shall last for a period of thirty (30) days thereafter, with the understanding between the parties that additional discovery may be necessary after the Preliminary Approval Order. Webster shall cooperate in good faith to facilitate the confirmatory discovery. All materials provided to Proposed Settlement Class Counsel that are confidential shall be designated as such and retained by Proposed Settlement Class Counsel in confidence, subject to Court order that either party may find it necessary to seek and which is obtained and entered by the Court. At the conclusion of confirmatory discovery, Proposed Settlement Class Counsel shall, based upon all facts known to them, determine in good faith whether in their opinion the Settlement is fair, reasonable, and adequate. If Proposed Settlement Class Counsel determines that the Settlement is not in their opinion fair, reasonable, and adequate, Proposed Settlement Class Counsel shall terminate the Settlement and give notice to Webster of such termination within ten (10) days after confirmatory discovery concludes. In such case, the Settlement shall be null and void, and the Settling Parties shall return to their original positions. In such event Proposed Settlement Class Counsel shall return to Webster all confidential material.

#### **Termination of Settlement**

27. This Settlement may be terminated as provided in this Paragraph and Paragraphs 26 and 28 of this Settlement. This Settlement may also be terminated by either Settling Party by providing written notice to counsel for the opposing Party and the Court within ten days after

any of the following occurrences:

- a) any court rejects, modifies, amends, or declines to approve the Settlement;
- b) any court incorporates into, or deletes or strikes from, the Preliminary Approval Order, Judgment, or the Settlement, any provision which the Settling Party seeking to terminate the Settlement, in its sole discretion, regards as material; or
- c) any court makes any order precluding Plaintiff or Webster from proceeding in whole or in part with the Settlement.

28. If prior to the Settlement Hearing, persons who otherwise would be Settlement Class Members have filed with the Court valid and timely requests for exclusion ("Requests for Exclusion") from the Settlement Class in accordance with the provisions of the Notice, and such persons in the aggregate are in an amount greater than the number specified in a separate Supplemental Agreement between the Parties (the "Supplemental Agreement"), Webster shall have, in its sole and absolute discretion, the option to terminate the Settlement in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement will not be filed with the Court unless and until a dispute among the Parties concerning its interpretation or application arises.

29. In the event of a termination in accordance with the provisions of the Settlement:
- a) The Settlement, except for this Paragraph and Paragraph 31, shall be null and void and of no further effect;
  - b) Any certification of the Settlement Class by the Court will be vacated;
  - c) The Settling Parties will be returned to their positions *quo ante* with respect to all facets of the Action, including, without limitation, with respect to the appropriateness of class certification, as if the Settlement had not been entered into;

d) Neither the Settlement terms nor any publicly disseminated information regarding the Settlement, including, without limitation, the mailed or published notices, court filings, orders, and public statements relating to the Settlement, may thereafter be used as evidence for any purpose whatsoever; and

e) The fact of, and any documents, findings, decisions, or orders relating to, any failure of a court to approve the Settlement or any modification or amendment of the Settlement by a court, as well as the fact and contents of any objections which may have been filed to the Settlement, may not be used as evidence for any purpose whatsoever.

30. Nothing in the preceding Paragraph is intended or will be construed to limit a Settling Party's right to use or to offer the Settlement in evidence in any action or proceeding in any court or other tribunal to enforce or implement its terms, to support or defend the Settlement, including on any appeal from the Judgment, or to enforce or assert a claim or defense of res judicata, collateral estoppel, claim or issue preclusion, settlement, release, merger and bar, or any similar claim or defense against a Settlement Class Member.

31. In the event of a termination, the balance of the Escrow Account shall be immediately refunded and remitted to Webster. Webster shall have no right to seek reimbursement from Plaintiff or Proposed Settlement Class Counsel for any funds distributed from the Escrow Account or for money spent or costs incurred for Notice or Claims Administration.

#### **General Provisions**

32. This Settlement constitutes the entire agreement between and among the Settling Parties with respect to the settlement of the Action. This Settlement shall not be construed more strictly against one party than another merely because it may have been prepared by counsel for



one of the Settling Parties, it being recognized that, because of the arm's length negotiations resulting in the Settlement, all Settling Parties hereto have contributed substantially and materially to the preparation of the Settlement. This Settlement supersedes all prior negotiations and agreements and may not be modified or amended except by a writing signed by the Settling Parties, Proposed Settlement Class Counsel, and Defendant's Counsel.

33. Each Settling Party to the Settlement warrants that they are acting on their independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person, other than the warranties and representations expressly made in the Settlement. All captions used in the Settlement are for reference and convenience only and shall not be used in interpreting the Settlement.

34. The Settling Parties, Proposed Settlement Class Counsel, and Defendant's Counsel shall not engage in any conduct or make any statements, directly or indirectly, (a) to encourage, promote, or solicit Settlement Class Members or their counsel to request exclusion from the Settlement Class or to object to the Settlement, or (b) to facilitate, induce or cause the non-fulfillment of a condition or the occurrence of an event giving rise to a Party's right to terminate this Settlement.

35. The Settling Parties agree to oppose, including on appeal, any objection to Final Approval of this Settlement filed by any Settlement Class Member (other than Plaintiff), objector, intervener, or proposed intervener, or any separate counsel hired by any of the foregoing.

36. The Settlement shall be binding upon, and shall inure to the benefit of, the Settling Parties, the Settlement Class Members, the Releasees, and the respective heirs,

administrators, successors, and assigns of each of them. Except as provided in the foregoing sentence, nothing in this Settlement is intended to create any legally enforceable rights in any other person or to make any other person, including, but without limitation, an agreed-upon recipient of *cy pres* funds pursuant to Paragraphs 17-19 of this Settlement, a beneficiary of this Settlement.

37. The Settling Parties, Proposed Settlement Class Counsel, and Defendant's Counsel: (i) acknowledge that it is their intent to consummate this agreement; (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement; and (iii) shall execute all documents and perform any additional acts necessary and proper to effectuate the terms of the Settlement.

38. No Settling Party, Proposed Settling Class Counsel, or Defendant's Counsel, or anyone else acting on behalf of any of them shall make any public statement disparaging any Settling Party, Proposed Settlement Class Counsel, Defendant's Counsel, or this Settlement Agreement. Neither Proposed Settlement Class Counsel nor Defendant's Counsel shall issue any separate independent press release without approval of all Settling Parties and their counsel. Nothing in this Settlement Agreement bars any Settling Party from posting the jointly issued press release (or other independent press coverage) on their own website.

39. This Settlement shall be construed, enforced and administered in accordance with the laws of the State of Connecticut without reference to its conflict of laws principles.

40. All Settling Parties and Settlement Class Members submit to the continuing jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

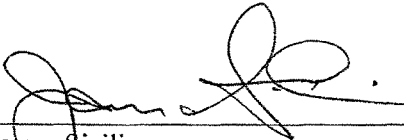
41. This Settlement may be executed in counterparts, each of which shall be deemed

to be an original, but all of which together constitute one and the same instrument.

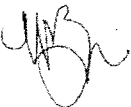
IN WITNESS WHEREOF, the Settling Parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

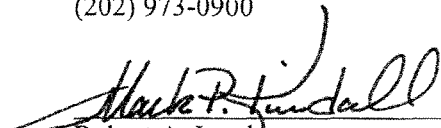
Dated: February 27, 2016

*Counsel for Webster Bank, N.A.  
and Duly Authorized Signatory*

  
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## PLAN OF ALLOCATION

1. Each Settlement Class Member will receive a share of the Net Settlement Fund that is proportionate, as near as may be determined based on Webster's internal records, to the total amount of unrefunded overdraft fees on debit card transactions that the Class Member actually paid during the Settlement Class Period and that Plaintiff claims were inappropriately charged.

2. Using Webster's internal records and reports, Plaintiff's expert has isolated, as best as possible: (1) all debit card transactions that incurred an overdraft fee; (2) that were authorized in real time when the customer had a positive available balance in his or her account; where (3) Webster placed a "hold" on the account at the time that the debit card transaction was authorized; and (4) where the transaction was later presented to Webster for payment at a time when there were insufficient available funds to pay the full amount of the transaction as a result of other items having been presented and paid; and where (5) "an overdraft fee was assessed on the transaction. Plaintiff's expert next excluded all such transactions which did not *increase* the number of overdraft fees Webster would otherwise have charged for that day (for example, because the number of overdrafts exceeded a cap on the number of overdraft fees that Webster would assess in a day). Next, Plaintiff's expert excluded transactions for which Webster refunded a dollar amount equal to the overdraft fee within 30 days of the fee being charged. As a result of these calculations, Plaintiff's expert was able to calculate a net damages amount for each affected account. Finally, for any account which had been closed with a net negative balance, and Webster had charged off the balance, Plaintiff's expert reduced the net damages for that account by the amount of the charge-off (but not below 0).

3. As a result of these calculations, Plaintiff's expert has calculated a compensable damages amount for each account that had transactions matching the profile in the Complaint.

The Net Settlement Fund will be distributed to each account that was calculated to have a compensable damages amount greater than zero dollars in proportion to each account's compensable damages calculation.

4. At distribution, Webster will credit each affected account which is still open with its calculated share of the Net Settlement Fund. Settlement Class Members who have closed the accounts in which the affected transactions occurred will receive a check for their calculated share of the Net Settlement Fund at their last known address.

5. All funds resulting from returned or un-cashed checks shall remain in an account maintained by the Settlement Administrator for six months, at which time the money will be distributed through the *cy pres* distribution to a nonprofit financial literacy educational organization agreed upon by Webster and Settlement Class Counsel, and approved by the Court.