

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD MARTIN, LORI LESSER,
LEIDIANA LLERENA, DAVID
GUTFELD, and all others similarly situated,

Plaintiffs,

–v–

TIAA BANK, FSB, f/k/a Everbank Financial
Corp.,

Defendant.

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CIVIL ACTION

1:19 Civ. 01707 (AJN) (BCM)

(JURY TRIAL DEMAND)

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is hereby entered into by and between Defendant TIAA, FSB, d/b/a TIAA Bank, formerly known as EverBank, a Federal Savings Bank (“TIAA Bank”), Richard Martin, Lori Lesser, Leidiana Llerena and David Gutfeld (“Named Plaintiffs”), and Nicholas Borruso, Donald Degli, Bryan Distefano, Christina Dove, Christine Fletcher, Cheryl Freeman, Christopher Gough, David Harding, Omar Hassan, Donna Hutchinson, Ashley Messenger, Mohamed Monem, Linda Munoz, Marc Nathan, Steve Orsak, Peter Schleider, Alan Schlossman, Julie Teitel, John Weekes, Lawrence Zezima, Steven Zias, Philip Howell, Jeffrey Krueger, Stephen Albeck, Stephen Barr, Robert Bachman, Michael Otto, Christopher Goodman, Paul Crowley, Lance Wycoff, Matthew Ramsey, Yolanda Liu, Nick Pourakis, Jayne Timlin, Jennifer Stanley, Kevin Dougherty, Elizabeth Hontz, Daniel Hayes, Anthony Alba, Andrew Riley, William Reese, Allen Lewis, Cynthia Barker, David Wolfe, Thomas Reber, Brandon Tuten, Robert True, Guillermo Cacho, Joseph Kufner and Benjamin Mitas (“Opt-In Plaintiffs”). Collectively, the Named Plaintiffs and Opt-Ins Plaintiffs are hereinafter referred to

as “Plaintiffs.” TIAA Bank and Plaintiffs collectively are referred to in this Agreement as the “Parties.”

RECITALS

WHEREAS, Named Plaintiffs filed a Complaint in the United States District Court for the Southern District of New York (the “Court”) against TIAA Bank on February 22, 2019, in a putative collective and class action titled *Martin, et al. v. TIAA Bank, FSB, f/k/a Everbank Financial Corp.* No. 19 Civ. 01707 (AJN) (BCM) (the “Lawsuit”), asserting the following claims under the Fair Labor Standards Act (“FLSA”), the New York Labor Law (“NYLL”) and the New Jersey Wage Law (“NJWL”) and their implementing regulations: unpaid minimum and overtime wages under the FLSA, NYLL and NJWL; spread of hours pay under the NYLL; liquidated damages and/or punitive damages; pre-and post-judgment interest; attorneys’ fees and costs (collectively, the “Claims”);

WHEREAS, subsequent to the filing of the Lawsuit, the Opt-In Plaintiffs each individually opted in to the Lawsuit by signing a Consent to Join Lawsuit form authorizing Frank, Weinberg and Black, P.L, Swartz Swidler, L.L.C., Robert D. Soloff, P.A. and Meredith Malatino Law, L.L.C. (“Plaintiffs’ Counsel”) to serve as Plaintiffs’ counsel and to “mak[e] decisions on my behalf in this litigation, including entering into settlement agreements pertaining to this matter” and agreeing “to be included as a party and to be bound by any judgment in the claims asserted against [TIAA Bank]”;

WHEREAS, Plaintiffs allege in the Lawsuit, among other things, that they were misclassified as “exempt” from the requirements of the FLSA and state law;

WHEREAS, TIAA Bank has denied from the outset, and continues to deny, any and all liability, culpability, negligence or wrongdoing of any kind. TIAA Bank specifically denies that

Plaintiffs were misclassified under the FLSA or state law;

WHEREAS, in the Lawsuit, TIAA Bank filed a Motion to Compel Arbitration and the Court subsequently issued its Opinion and Order [ECF Doc. 51] granting the Motion to Compel Arbitration as to Named Plaintiffs David Gutfeld and Lori Lesser, and denying the request to stay proceedings;

WHEREAS, the Parties desire to settle all pending claims, including for Named Plaintiffs David Gutfeld and Lori Lesser during the time period covered by the arbitration provisions in TIAA Bank's policies as to which the Court ordered arbitration in its Opinion and Order [ECF Doc. 51];;

WHEREAS, in the Lawsuit, Plaintiffs have not moved for certification, conditional or otherwise, of an FLSA collective action or Rule 23 class action;

WHEREAS, on September 6, 2018, prior to the filing of the Lawsuit, Opt-In Plaintiffs Robert True and Guillermo Cacho, through Plaintiffs' Counsel, filed a Demand for Arbitration against TIAA Bank with the American Arbitration Association, pursuant to an arbitration provision in TIAA Bank's policies, and the arbitration is styled *True, et al. v. TIAA Bank, f/k/a Everbank Financial Corp.*, AAA Case No 01-18-003-3453 (the "Arbitration");

WHEREAS, Opt-In Plaintiffs Omar Hassan, Joseph Kufner and Benjamin Mitas each individually opted into the Arbitration by signing Consent to Opt-In forms in the Arbitration authorizing Plaintiffs' Counsel to represent them in the Arbitration and to "mak[e] decisions on my behalf in this litigation, including entering into settlement agreements pertaining to this matter" and agreeing "to be included as a part and to be bound by any judgments in the claims asserted against [the Bank]";

WHEREAS, subsequently in the Arbitration, TIAA Bank and Opt-In Plaintiffs Robert True, Guillermo Cacho, Omar Hassan, Joseph Kufner and Benjamin Mitas (these five Opt-In Plaintiffs are referred to as the “*True* Opt-Ins” for purposes of referencing their role in the Arbitration, but, as set forth above, they are also included in the definitions of “Opt-In Plaintiffs” and “Plaintiffs” for all purposes in this Agreement) stipulated to the consolidation of the *True* Opt-Ins’ claims in Arbitration before mutually-selected Arbitrator D. Andrew Byrne, which resulted in the filing of an Amended Demand for Arbitration in July 2019, asserting the following claims under the Fair Labor Standards Act (“FLSA”), the New York Labor Law (“NYLL”) and their implementing regulations: unpaid minimum and overtime wages under the FLSA and NYLL, spread of hours pay under the NYLL; liquidated damages ; pre-and post-judgment interest; attorneys’ fees and costs;

WHEREAS, the *True* Opt-Ins allege in the Arbitration, among other things, that they were misclassified as “exempt” from the requirements of the FLSA and state law;

WHEREAS, TIAA Bank has denied from the outset in Arbitration, and continues to deny, any and all liability, culpability, negligence or wrongdoing of any kind. In the Arbitration, TIAA Bank specifically denies that Plaintiffs were misclassified under the FLSA or state law;

WHEREAS, throughout the Arbitration and in this Agreement, the *True* Opt-Ins have been represented by Plaintiffs’ Counsel and TIAA Bank has been and continues to be represented by Leslie W. Ehret and Renee G. Culotta of the Frilot L.L.C. law firm (“TIAA Bank’s Counsel);

WHEREAS, through discovery in the Lawsuit and the Arbitration, the Parties exchanged thousands of pages of information and data, including but not limited to, personnel and payroll data;

WHEREAS, the Parties and their respective counsel engaged in extensive arm's length settlement negotiations to attempt to amicably and comprehensively resolve both the Lawsuit and the Arbitration, including, without limitation, participating in two day-long mediation sessions, on November 22, 2019, and April 1, 2020, with a board certified and highly experienced employment litigation mediator Marlene Quintana, B.C.S., shareholder at the Gray Robinson law firm;

WHEREAS, the *TrueOpt*-Ins filed Consents to Opt-In to the Lawsuit to be within this Court's jurisdiction and to effectuate this Agreement;

WHEREAS, the purpose of this Agreement is to dismiss, with prejudice, the Lawsuit, the Arbitration, and Named Plaintiffs Lori Lesser and David Gutfeld's claims as to which the Court ordered arbitration in its Opinion and Order [ECF Rec.Doc 51] (hereafter agreed by the Parties to be included when referring to the Lawsuit and the Arbitration) and to settle fully and finally, and forever compromise and discharge all Released Claims (as defined below) that all Plaintiffs have or may have against TIAA Bank;

WHEREAS, the Parties expressly acknowledge that nothing in this Agreement, nor the fact of the Agreement itself, shall be construed or deemed an admission of liability, culpability, negligence or wrongdoing of any kind by TIAA Bank;

WHEREAS, the Parties expressly acknowledge that, with the exception of Plaintiffs, no former employees of TIAA Bank will relinquish, waive or settle any rights by virtue of this Agreement;

WHEREAS, to the extent there may be monies owed to Plaintiffs under the FLSA, the NYLL, and/or the NJWL, the Parties acknowledge that there is a genuine good faith dispute over, among other things, whether the Plaintiffs were properly classified as exempt from the overtime pay requirements of the FLSA, NYLL and/ or NJWL, based on their performance of outside sales

work for TIAA Bank and the number of hours worked by Plaintiffs;

WHEREAS, the Parties have analyzed and evaluated the merits of the claims made against TIAA Bank and the defenses raised by TIAA Bank in the Lawsuit and the defenses raised by TIAA Bank in the Arbitration, and, based upon that analysis and evaluation, and recognizing the substantial risks of continued litigation, the Parties are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interest of all Parties;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Lawsuit and Arbitration and release of all claims in both the Lawsuit and the Arbitration on the following terms and conditions:

1. SETTLEMENT PAYMENT, DISTRIBUTION, AND PAYOUT

A. Negotiated Settlement Payment

TIAA Bank agrees to pay the total gross sum of Three and one-half Million Dollars and Zero Cents (\$3,500,000.00) (the “Negotiated Settlement Payment”) for the purpose of settling the Lawsuit and the Arbitration under the terms of this Agreement, including, but not limited to, for the releases set forth in Section 2(A) of this Agreement and the dismissal with prejudice of the Lawsuit and the Arbitration. Payment of the Negotiated Settlement Payment due under this Agreement is contingent upon the Court entering an Order approving this Agreement, as set forth in Section 3 of this Agreement.

B. Calculation of Settlement Amount

Each Plaintiff’s Individual Settlement Allocation (“Allocation”) is based upon the following allocation formula, which itself is based upon data produced by TIAA Bank in the

Lawsuit and Arbitration. Other than agreeing that it has provided accurate and complete pay records for each Plaintiff, TIAA Bank does not otherwise take a position regarding whether the Allocation is accurate.

Allocation under this Agreement shall be as follows. First, each Plaintiff shall receive a Base Payment of \$10,000. ~~In~~*addition* to that Base Payment amount, each Plaintiff shall be entitled to receive his/her Pro Rata Amount of the Net Fund, as detailed below.

The Net Fund is equal to the Negotiated Settlement Payment, reduced by service payments to Named Plaintiffs, Plaintiffs' attorneys fees, Lawsuit and Arbitration costs, and \$540,000 in Base Payments (\$10,000 per Plaintiff multiplied by 54 Plaintiffs).

Each Plaintiff's Pro Rata Amount share of the Net Fund, is calculated per the following formula:

- (1) First, Average Period Pay is computed per each Plaintiff, through the following calculation: The sum of all compensation provided to Plaintiff during the applicable statute of limitations period divided by the number of pay periods the Plaintiff worked during the statute of limitations period;
- (2) From there, Average Period Pay is multiplied by the number of pay periods worked for each Plaintiff. That amount is then divided by the sum of the aggregate of these calculations for all Plaintiffs, to arrive at the Pro Rata Percentage.
- (3) The Pro Rata Percentage is multiplied by the Net Fund to arrive at a dollar figure which represents the specific Pro Rata Amount for each Plaintiff, which is provided, (in addition to the \$10,000 Base Payment, to each Plaintiff).

The total to be provided under this calculation for each Plaintiff is set out in Table 1, is attached to this Agreement.

C. Service Award

Named Plaintiffs Richard Martin, Lori Lesser, Leidiana Llerena and David Gutfeld will each receive Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) to be assessed from the Negotiated Settlement Payment as a service award in consideration of the contributions they have made to advance the prosecution and resolution of the Lawsuit.

D. Attorneys’ Fees and Costs

Plaintiffs acknowledge that the attorneys’ fees and costs allocated in this Agreement are fair and reasonable and in accordance with the Representation Agreements executed by the Named Plaintiffs in this case, which provide Plaintiffs’ Counsel’s attorneys’ fees will be 33 1/3% of any settlement amount plus reasonable costs.

E. Allocation

The Negotiated Settlement Payment shall be allocated to Plaintiffs, as defined in Section 1(B) of this Agreement, and for service awards, attorneys’ fees and costs, as follows.

Table 1

PLAINTIFF	PAYMENT
	\$ 25,587.76
	\$ 44,601.65
	\$ 50,424.13
	\$ 20,434.49
	\$ 64,314.60
	\$ 26,235.87
	\$ 27,204.13
	\$ 116,305.97
	\$ 16,503.59
	\$ 13,953.85
	\$ 19,487.45
	\$ 24,775.53
	\$ 68,967.05
	\$ 53,104.08
	\$ 13,421.00

[Individual RLO names have been redacted.
The amounts listed show, for each RLO in the Lesser lawsuit, the amount to be paid per the Settlement to the RLO, after all fees and costs.]

	\$ 35,073.40
	\$ 21,117.73
	\$ 21,291.30
	\$ 14,939.38
	\$ 13,158.08
	\$ 70,099.64
	\$ 11,503.34
	\$ 60,153.05
	\$ 30,707.88
	\$ 17,404.03
	\$ 33,566.53
	\$ 18,382.24
	\$ 104,531.50
	\$ 33,645.78
	\$ 19,051.63
	\$ 37,066.87
	\$ 20,909.14
	\$ 44,593.68
	\$ 51,074.74
	\$ 18,218.21
	\$ 46,098.10
	\$ 25,379.12
	\$ 44,142.03
	\$ 20,316.53
	\$ 107,802.64
	\$ 65,632.37
	\$ 30,264.62
	\$ 35,569.42
	\$ 21,103.62
	\$ 14,691.19
	\$ 80,641.94
	\$ 21,108.01
	\$ 67,371.33
	\$ 64,460.65
	\$ 77,193.58
	\$ 14,233.36
	\$ 119,885.43
	\$ 51,652.60
	\$ 143,460.51
	\$ 10,000.00

Litigation Costs	\$ 10,517.00
Attorney's Fees	\$ 1,166,666.00

F. Timing of Payment

TIAA Bank shall pay the Negotiated Settlement Payment by delivering to Plaintiffs' Counsel, within thirty (30) days after the Court's entry of an order approving the Parties' Settlement as set out in this Agreement, separate checks, each of which shall be made payable to each one of the Plaintiffs and to Plaintiffs' Counsel, for the amounts set forth in Section 1(E) of this Agreement.

G. Taxes

For purposes of tax withholding, fifty percent (50%) of the payment to each Plaintiff set forth in Section 1(E) above shall be deemed wage income subject to withholding pursuant to IRS Tax Form W-2 and fifty percent (50%) of the payment to each Plaintiff set forth in Section 1(E) above shall be deemed non-wage income in the form of alleged liquidated damages and interest not subject to withholding pursuant to IRS Tax Form W-9. TIAA Bank shall deduct all appropriate and necessary taxes from the aforementioned wage payments and shall pay the applicable employer's portion of the taxes due. TIAA Bank shall provide each with all appropriate tax withholding statements, such as W-2 and 1099 Tax Forms, as required by law. TIAA Bank shall make the payment to Plaintiffs' Counsel without deductions or withholdings, subject to IRS Tax Form W-9. Plaintiffs and Plaintiffs' Counsel are solely responsible for complying with all tax obligations arising from the receipt of their respective portions of the Negotiated Settlement Payment.

Plaintiffs agree to hold TIAA Bank harmless against, defend against, and indemnify TIAA Bank for any and all claims by the Internal Revenue Service or any other taxing authority or other

governmental agency (whether federal, state or local), which may be made against TIAA Bank arising out of or relating to Plaintiffs' failure to pay any taxes they have been determined to owe on the payments made by TIAA Bank to Plaintiffs pursuant to this Agreement. Plaintiffs' Counsel agree to hold TIAA Bank harmless against, defend against, and indemnify TIAA Bank for any and all claims by the Internal Revenue Service or any other taxing authority or other governmental agency (whether federal, state or local), which may be made against TIAA Bank arising out of or relating to Plaintiffs' Counsel's failure to pay any taxes they have been determined to owe on the payment of attorney's fees and costs made by TIAA Bank to Plaintiffs' Counsel pursuant to this Agreement. Nothing herein shall be construed to render Plaintiffs or Plaintiffs' Counsel responsible for any taxes, insurance, or related payments subsequently determined to be the sole responsibility of TIAA Bank.

H. No Other Payment Due

Except as specifically provided in this Agreement, Plaintiffs agree that they are not entitled to any other payments for salary, benefits, wages, bonuses, allowances, compensatory time, severance pay, notice pay, vacations or holidays, accrued leave, paid leave, or any other form or kind of payment or compensation from TIAA Bank for any work they performed for TIAA Bank, including its officers, directors, trustees, agents, employees, attorneys, insurers, representatives, predecessors, successors, and assigns, both individually and in their official capacities, to the date the Parties execute this Agreement.

2. RELEASES

A. Releases by Plaintiffs

In consideration of the promises and actions of TIAA Bank set out in this Agreement, including, without limitation, the payment of the Negotiated Settlement Payment, Plaintiffs hereby

unconditionally release and forever discharge TIAA Bank, including its officers, directors, trustees, agents, employees, attorneys, insurers, representatives, predecessors, successors, and assigns, both individually and in their official capacities, of and from any and all claims and causes of action, in law or in equity, for damages, salaries, wages, compensation, commissions, draws, spread-of-hours pay, statutory damages, unlawful wage deductions, misappropriation of gratuities, overtime wages, uniform pay, monetary relief, and any other benefits of any kind, earnings, back pay, liquidated, statutory, and other damages, statutory penalties, interest, attorneys' fees, and costs, for the Claims and any other claim brought, and all such additional claims that could arise out of the same factual predicate as the claims raised in the Lawsuit and Arbitration, including the claims of Lori Lesser and David Gutfeld as to which the Court ordered arbitration in its Opinion and Order [ECF Rec. Doc. 51], in the Lawsuit and the Arbitration under the FLSA, the NYLL, the NJWL, the Wage Theft Prevention Act, and/ or any local, state, or federal wage statute, code, or ordinance including, but not limited to, N.Y. Lab. Law §§ 650 *et. seq* N.Y. Lab. Law §§ 190 *et. seq* N.Y. Lab. Law 160, *et. seq* N.Y. Lab. Law §§ 215 and 218, 12 N.Y.C.C.R. § 142-2.1, *et seq* N.J. Stat. Ann. 34:11-56, *et seq* N.J. Stat. Ann. 34:11-57, *et. seq* (collectively, the “Released Claims”).

B. Limits on Releases

Notwithstanding Section 2(A) above, the Parties acknowledge that this Agreement does not limit any Party’s right, where applicable, and only to the extent such right cannot be waived or released, to file or participate in an investigative proceeding of any federal, state, or local governmental agency.

3. COURT APPROVAL OF SETTLEMENT AGREEMENT

A. Court Approval

Upon the Parties' approval of the Agreement form, Plaintiffs' Counsel will file a joint letter with the Court, approved by TIAA Bank's Counsel, requesting the Court consider their joint request for the appointment of Arbitrator Byrne as a Special Master to: (a) issue a reasoned opinion as to the fairness and reasonableness of the Agreement as to the ~~the~~ *True* Opt-Ins under the law applicable in the United States Court of Appeals for the Second Circuit and the United States District Court for the Southern District of New York, and (b) issue a Report and Recommendation addressing the review and approval of the Agreement as to all Plaintiffs under the law applicable in the United States Court of Appeals for the Second Circuit and the United States District Court for the Southern District of New York.

Plaintiffs' Counsel and TIAA Bank's Counsel will file with the Court a joint motion or letter requesting the Court's approval of this Agreement ("Approval Motion") within 14 (fourteen) days of the full execution of the Agreement by all Plaintiffs and TIAA Bank. The Approval Motion may not be submitted until all Plaintiffs and TIAA Bank have fully executed the Agreement. Plaintiffs' Counsel will draft the Approval Motion, and TIAA Bank shall have an opportunity to review and comment on the Approval Motion prior to its filing with the Court.

If the Court appoints Arbitrator Byrne as a Special Master, the Parties will request that Arbitrator Byrne issue his Report and Recommendation within fourteen (14) days of his receipt of the Parties' Approval Motion.

B. Final Order and Judgment from the Court

The joint motion or letter to approve settlement to be prepared by Plaintiffs' Counsel will seek to obtain from the Court, as a condition of settlement, a Final Order and Judgment. The

proposed Final Order and Judgment will, among other things: (a) enter Judgment in accordance with this Agreement, (b) approve the settlement as fair and reasonable, (c) dismiss the Lawsuit against TIAA Bank with prejudice upon TIAA Bank's compliance with the terms of payment of the Negotiated Settlement Payment as set forth in in this Agreement, (d) incorporate the terms of this Agreement, and (e) set forth that TIAA Bank has agreed to settle the Lawsuit without admitting or conceding any liability or damages whatsoever. TIAA Bank shall have an opportunity to review and comment on the proposed Final Order and Judgment prior to its filing with the Court. Within seven (7) days of receipt of the Final Order and Judgment issued by the Court, Plaintiffs' Counsel will advise the Arbitrator in writing of the settlement approval and file with the American Arbitration Association a Stipulation of Dismissal of the Arbitration with Prejudice.

C. Denial of Court Approval

If the Court denies the Approval Motion and fails to issue a Final Order and Judgment, then the Parties jointly agree to confer to determine whether Plaintiffs and TIAA Bank will seek reconsideration of the ruling. Should reconsideration be filed and be denied, this Agreement shall become null and void, both the Lawsuit and Arbitration will proceed as if no settlement had been attempted with all pending issues and motions remaining, the Parties will stipulate in the Lawsuit that the *TrueOpt-Ins* shall return to Arbitration in accordance with the Federal Arbitration Act and pursuant to the applicable arbitration provision in TIAA Bank's policies, and the Arbitration shall continue to be heard by Arbitrator D. Andrew Byrne, and the claims of Plaintiffs David Gutfeld and Lori Lesser which the Court held were subject to arbitration shall be subject to arbitration in accordance with the Court's Opinion and Order [ECF Rec. Doc. 51].

4. NO ADMISSION OF LIABILITY

The Parties acknowledge and agree that this Agreement and the Negotiated Settlement

Payment is made and received solely on a basis of a compromise of disputed claims, and that this Agreement is not, and should not be construed to be an admission by TIAA Bank of any violation of law, liability to Plaintiffs or to anyone else, or any wrongdoing whatsoever, nor is it, nor shall it be construed as, an admission of any act or fact whatsoever, including, without limitation, to any violation of federal, state, local or common law, statute, ordinance, directive, regulation or order, as a result of or arising out of the matters set forth in the Complaint in the Lawsuit, the Amended Demand in the Arbitration or that could have been raised in the Lawsuit or Arbitration, Plaintiffs' employment relationship with TIAA Bank, Plaintiffs' separation of employment with TIAA Bank, and/ or otherwise.

5. ACCORD AND SATISFACTION

Should any action or proceeding be instituted by any of the Plaintiffs with respect to matters herein settled, released or waived pursuant to this Agreement, other than an action or proceeding to enforce the terms of this Agreement, this Agreement shall be deemed a full accord, satisfaction and settlement of any such claim(s) and sufficient basis for immediate dismissal.

6. NON-DISPARAGEMENT

The Plaintiffs agree that they will not disparage either verbally or in writing the character, quality, or propriety of the person, personnel, or business operations of TIAA Bank. Nothing herein shall preclude the Plaintiffs from making truthful references either verbally or in writing to the character, quality, or propriety of the person, personnel, or business operations of TIAA Bank, or shall preclude the Plaintiffs from making truthful statements about their experience in litigating this action.

If the Non-Disparagement provision contained in this Paragraph 6 is held to be invalid, illegal, or incapable of being enforced, such term shall be deemed null and void and all other terms

of the Agreement shall remain in full force and effect.

7. NO ASSIGNMENT

Plaintiffs represent and warrant that they have not assigned, transferred, or purported to assign or transfer, to any person or entity, any Released Claim or any portion thereof or interest therein, including, but not limited to, any interest in the Lawsuit, the Arbitration, or any related action and no lien exists therein.

8. ENTIRE AGREEMENT

This Agreement and all attachments, constitutes the entire Agreement between the Parties. All prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into and superseded by this Agreement. There are no representations, warranties, understandings, or agreements other than those expressly set forth in this Agreement.

9. WAIVER

Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any time or all times.

10. MODIFICATION

This Agreement may not be modified, altered or otherwise changed except by a written agreement signed by the Parties affected by the modification, alteration, or change.

11. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties, and the Parties' heirs, trustees, executors, administrators, successors, and assigns of the respective Parties.

12. ARM'S LENGTH TRANSACTION

The Parties have negotiated the terms and conditions of this Agreement at arm's length, through authorized and experienced counsel.

13. CONSTRUCTION

The terms and conditions of this Agreement have been negotiated by mutual agreement of the Parties. Therefore, the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

14. GOVERNING LAW AND INTERPRETATION

This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of New York, without regard to choice of law or conflict of laws principles, to create a full and complete settlement and waiver of claims. To the extent that the law of the United States governs any matter set forth herein, such federal law shall govern and shall create a full and complete settlement and waiver of claims, as set forth herein (as well as the recitals hereto, which have been incorporated fully herein). Venue for any dispute between the Parties related to this Agreement shall lie in the United States District Court for the Southern District of New York and in any other court of competent jurisdiction in New York County.

15. COUNTERPARTS

The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if Plaintiffs and TIAA Bank have signed the same instrument.

16. SEVERABILITY

If any term or provision in this Agreement, or the application thereof to any person or circumstance, shall to any extent be determined by a court of competent jurisdiction to be invalid,

illegal, or unenforceable and cannot be modified to be enforceable, such provision shall immediately become null and void, except for the release provisions. If any provision of this Agreement is held to be unenforceable, such provision shall be considered to be distinct and severable from the other provisions of this Agreement, and such unenforceability shall not affect the validity and enforceability of the remaining provisions. To the extent that a court of competent jurisdiction or governmental agency determines that any provision is invalid, illegal, or unenforceable, the Parties shall execute a replacement provision that is valid, legal, and enforceable.

17. FACSIMILE/ELECTRONIC SIGNATURES

Any Party may execute this Agreement by signing on the designated signature block below and transmitting that signature page via facsimile, electronic mail, Echosign, and/ or DocuSign to counsel for the other Party. Any signature made and transmitted by facsimile, electronic mail, Echosign, and/ or DocuSign for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile, electronic mail, Echosign, and/ or DocuSign.

18. ATTORNEYS' FEES AND COSTS

Except as explicitly provided elsewhere in this Agreement, each Party shall be solely responsible for its or their own attorneys' fees and costs in connection with the Lawsuit and the Arbitration. However, the prevailing Party shall be entitled to recover all reasonable attorneys' fees and costs incurred in the prosecution of any action to enforce the terms of this Agreement.

19. FAIR AND REASONABLE SETTLEMENT

The Parties agree that this Agreement and the payments called for by this Agreement are fair and reasonable to all Parties, and that those payments and the other terms of this Agreement

constitute a fair and reasonable settlement of the claims made in the Lawsuit and the Arbitration. The Parties also agree that there was no undue influence, duress, overreaching, collusion, or intimidation in reaching this Agreement, and that both Parties have sought and received the advice of competent counsel as to the meaning and effect of each of the terms of this Agreement before agreeing to sign it.

20. NOTICES

Unless otherwise provided for in this Agreement, written notices must be sent by e-mail and overnight mail. Notices to TIAA Bank shall be sent to TIAA Bank's Counsel: Leslie W. Ehret (lehret@frilot.com) of Frilot L.L.C., 1100 Poydras Street, Suite 3700, New Orleans, LA 70163. Notices to Plaintiffs shall be sent to Plaintiffs' Counsel: Marc A. Silverman (msilverman@fwblaw.net) of Frank, Weinberg and Black, P.L., 7805 SW 6th Court, Plantation, Florida 33324, Justin L. Swidler (jswidler@swartz-legal.com) of Swartz Swidler, L.L.C., 1101 Kings Highway N, Ste. 402 Cherry Hill, NJ 08034, Robert D. Soloff (robert@solofflaw.com) of Robert D. Soloff, P.A., 7805 SW 6th Court, Plantation, Florida 33324, and Carley Jane Skarbnik, Esquire (cmeredith@meredithmalatinolaw.com) of Meredith Malatino, 411 Hackensack Ave., Suite 407, Hackensack, NJ 07601.

21. FREE AND VOLUNTARY EXECUTION

This Agreement has been executed freely, knowingly, and voluntarily by both Parties without duress, coercion, or undue influence, with a full free understanding of its terms, and after consultation with their respective attorneys, and other professional persons.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused their duly authorized officer to execute, this Agreement.