

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>NICHOLAS DeSIMONE, PATRICK GARDNER, MOHAMMAD HUSSAIN, PAUL MALSTROM, STEPHEN GALLAGHER, CRAIG PALADEAU, CORY BENNER, and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>TIAA BANK, FSB, f/k/a Everbank Financial Corp.,</p> <p style="text-align: center;">Defendant.</p>	<p>CIVIL ACTION NO: 1:20 Civ. 6492 (GHW-BCM)</p> <p>JOINT STIPULATION OF SETTLEMENT AND RELEASE</p>
--	---

This Joint Stipulation of Settlement and Release (the “Agreement”) is entered into by and between Nicholas DeSimone, Patrick Gardner, Mohammad Hussain, Paul Malstrom, Stephen Gallagher, Craig Paladeau and Cory Benner (collectively, “Representative Plaintiffs”), individually and on behalf of the classes of individuals they seek to represent, as well as the one hundred and sixty-six (166) additional individuals, listed in the spreadsheet attached as Exhibit A, who joined the above-styled Litigation (defined below) by filing Consent to Join Lawsuit forms between August 14, 2020, and February 2, 2022 (collectively, “Opt-in Plaintiffs”), on the one hand, and TIAA, FSB, d/b/a TIAA Bank (“Defendant”) on the other.

RECITALS

WHEREAS, on August 14, 2020, Nicholas DeSimone, Patrick Gardner, Mohammad Hussain and Paul Malstrom filed an Individual, Class, and Collective Action Complaint (“Complaint”) in the United States District Court for the Southern District of New York against Defendant, styled *Nicholas DeSimone, Patrick Gardner and Mohammad Hussain, et al. v. TIAA Bank, FSB, f/k/a Everbank Financial Corp.*, Case No. 20-6492 (the “Litigation”) asserting, among other things, individual and putative collective action claims for unpaid wages and/or overtime pay and liquidated damages under the Fair Labor Standards Act (“FLSA”), and class action claims under Federal Rule of Civil Procedure (“FRCP”) 23 for unpaid wages and/or overtime pay and/or other relief and penalties under the wage and hour laws of New York, New Jersey, California and Maryland;

WHEREAS, on October 20, 2020, an Amended Complaint was filed, adding Stephen Gallagher, Craig Paladeau and Cory Benner as Representative Plaintiffs and adding individual and

putative collective action claims for unpaid wages and/or overtime pay under the FLSA and class action claims for unpaid wages and/or overtime pay under the wage and hour laws of Pennsylvania, Washington and Oregon;

WHEREAS, the Representative Plaintiffs allege in the Litigation, among other things, they and others were misclassified as exempt from the requirements of the FLSA and the wage and hour laws of the aforementioned states;

WHEREAS, in the Litigation, Representative Plaintiffs moved for conditional certification of a collective action, which was granted, in part, as to former employees of Defendant who worked in the position of “Retail Loan Officer” (“RLO”) within three (3) years prior to joining the Litigation;

WHEREAS, notice of the conditionally-certified collective action was sent in October 2021 to former employees of the Defendant who worked in the position of RLO who were/are putative members of the collective class;

WHEREAS, after the Complaint was filed, the one hundred and sixty-six (166) Opt-in Plaintiffs listed in the attached as Exhibit “A” each joined the Litigation by filing a Consent to Join Lawsuit form;

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

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

WHEREAS, on June 6, 2022, the Parties participated in a day-long in-person mediation in Washington, D.C., which was conducted by experienced JAMS employment litigation attorney and mediator Linda Singer, which resulted in an impasse. Despite the impasse, the Parties continued to engage in subsequent extensive settlement discussions and communications which ultimately resulted in the Settlement set out in this Agreement;

WHEREAS, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settle the Litigation on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Litigation; and

WHEREAS, Plaintiffs’ Counsel analyzed and evaluated the merits of the claims made against Defendant in the Litigation, conducted interviews with Plaintiffs and Class Members (defined below), reviewed thousands of pages of documents reflecting Defendant’s compensation policies, payroll data, time records and personnel records, and based upon their analysis and evaluation of a number of factors, and recognizing the substantial expense and risk associated with protracted litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery or might result in a recovery less favorable, that any recovery may not occur for years, and that there was a risk of future FLSA collective decertification, denial of FRCP 23

certification, and FRCP 23 class decertification if class certification is granted, Plaintiffs' Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Plaintiffs and Class Members.

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 agree to a full and complete settlement of the Litigation on the following terms and conditions.

1. DEFINITIONS

In addition to any other terms defined throughout the Agreement, the defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1. Agreement.** "Agreement" means this Joint Stipulation of Settlement and Release.
- 1.2. Acceptance Period.** "Acceptance Period" means the ninety (90) days that a Participating Class Member has to sign and negotiate a Settlement Check.
- 1.3. Charity.** "Charity" means the Secure Futures program, a non-profit organization which provides financial literacy programs and resources that empower teenagers to make sound financial decisions.
- 1.4. Claims Administrator.** The "Claims Administrator" will be, subject to approval of the Court, Angeion Group International, Inc., which was selected by Class Counsel and approved by Defendant.
- 1.5. Class Counsel; Plaintiffs' Counsel.** "Class Counsel" or "Plaintiffs' Counsel" means Justin L. Swidler of Swartz Swidler, LLC, Robert D. Soloff of Robert D. Soloff, P.A., Marc A. Silverman of Frank, Weinberg & Black, P.L., and Carly Meredith of Meredith Malatino Law, LLC.
- 1.6. Class Members.** "Class Members" are individuals who are not Lesser Plaintiffs (as defined herein), were employed by Defendant for at least one (1) day in a Covered Position, and are included within the state law classes defined in subsections (A) through (G) below (the "State Law Classes").
 - (A) **New York:** individuals who were employed for at least one (1) day in a Covered Position in the State of New York from February 22, 2013, through April 30, 2019.
 - (B) **New Jersey:** individuals who were employed for at least one (1) day in a Covered Position in the State of New Jersey from February 22, 2017, through April 30, 2019.
 - (C) **California:** individuals who were employed for at least one (1) day in a Covered Position in the State of California from August 14, 2016, through April 30, 2019.
 - (D) **Maryland:** individuals who were employed for at least one (1) day in a Covered Position in the State of Maryland from August 14, 2017, through April 30, 2019.

- (E) **Pennsylvania:** individuals who were employed for at least one (1) day in a Covered Position in the State of Pennsylvania from October 20, 2017, through April 30, 2019.
 - (F) **Washington:** individuals who were employed for at least one (1) day in a Covered Position in the State of Washington from October 20, 2017, through April 30, 2019.
 - (G) **Oregon:** individuals who were employed for at least one (1) day in a Covered Position in the State of Oregon from October 20, 2014, through April 30, 2019.
- 1.7 Collective Action Members.** “Collective Action Members” means each Representative Plaintiff and Opt-in Plaintiff who was employed by Defendant in a Covered Position for at least one (1) day during the three years preceding the date such Plaintiff filed a Consent to Join Lawsuit form in the Litigation.
- 1.8 Court.** “Court” means the United States District Court for the Southern District of New York.
- 1.9 Covered Positions.** “Covered Positions” refers to all Retail Loan Officers, Retail Loan Originators, Retail Lending Loan Originator, Srs., Retail Sales Managers and Retail Branch Sales Managers who were employed by Defendant during the applicable limitations period (as set forth in this Agreement) and who were classified at some point during the applicable limitations period as exempt from overtime pay.
- 1.10 Days.** “Days” means business days if the specified number is less than ten (10), and calendar days if the specified number is ten (10) or greater.
- 1.11 Defendant.** “Defendant” means TIAA, FSB, d/b/a TIAA Bank.
- 1.12 Defendant’s Counsel.** “Defendant’s Counsel” means Leslie W. Ehret, Renee G. Culotta and Benjamin M. Castoriano of Frilot L.L.C. and Allan S. Bloom of Proskauer Rose LLP.
- 1.13 Discovery Opt-in Plaintiffs.** “Discovery Opt-in Plaintiffs” means Opt-in Plaintiffs who submitted responses to written discovery issued by Defendant, listed in Exhibit “B” attached to this Agreement.
- 1.14 Dual Members.** “Dual Members” means those Plaintiffs who are both Collective Action Members and Settlement Class Members.
- 1.15 Effective Date.** “Effective Date” shall be the last of the following dates:
- (A) If there is no appeal of the Court’s Order Granting Final Approval of the Settlement, the day after the deadline for taking an appeal has passed; or

- (B) If there is an appeal of the Court's Order Granting Final Approval of the Settlement, the day after all appeals are resolved in favor of final approval.
- 1.16 Employer Payroll Taxes.** "Employer Payroll Taxes" means all taxes and withholdings an employer is required to make arising out of or based upon the payment of compensation under the Agreement, including FICA, FUTA, and SUTA obligations.
- 1.17 Fairness Hearing.** "Fairness Hearing" means the hearing to be set before the Court relating to the Motion for Final Approval.
- 1.18 Final Approval Order.** "Final Approval Order" means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement, distribution of the Settlement Checks, and Dismissal of the Litigation.
- 1.19 FLSA Period.** "FLSA Period" means the period of time from three years prior to the date a Representative Plaintiff or Opt-in Plaintiff filed his or her Consent to Join Lawsuit form in the Litigation through the date that person filed his or her Consent to Join Lawsuit.
- 1.20 Gross Settlement Amount.** "Gross Settlement Amount" means the Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) that Defendant has agreed to pay to the Claims Administrator to settle the Litigation as set forth in this Agreement. Other than the employer payroll taxes described in Section 3.5(C), below, the Gross Settlement Amount represents Defendant's maximum financial commitment under this Agreement under any and all contingencies.
- 1.21 Lesser Plaintiffs.** "*Lesser Plaintiffs*" means the fifty-four (54) individuals whose names are identified in the attached Exhibit "C" and who previously fully settled their wage and hour claims against Defendant in the case styled *Lesser, et. al. vs. TIAA Bank, etc.* (SDNY Case No.: 1:19-cv-01707-AJN) and therefore, are not parties to, or participants in this Agreement and Settlement in any way.
- 1.22 Litigation.** "Litigation," means the above-styled action/litigation described in the first and second "WHEREAS" paragraphs above.
- 1.23 Net Settlement Fund.** "Net Settlement Fund" means the remainder of the Gross Settlement Amount after deductions for: (1) the Claims Administrator's fees and costs; (2) Court-approved attorneys' fees and costs for Class Counsel; (3) Court-approved Service Awards to Representative Plaintiffs and Discovery Opt-In Plaintiffs, as described in Section 3.3 below; and (4) a reserve fund to cover errors and omissions, as described in Section 3.1(d) below.
- 1.24 Notices.** "Notice" means the Court-approved Notices of Proposed Settlement of Class and Collective Action Lawsuit and Fairness Hearing.
- 1.25 Objector.** "Objector" means a Collective Action Member or Class Member who, after receiving a Notice, files a valid and timely written objection pursuant to the terms of this

Agreement and does not include any Class Member who has submitted an Opt-out Statement. Representative Plaintiffs have reviewed all terms in this Agreement with Class Counsel, assent to all terms contained in this Settlement Agreement and do not object to any provisions herein.

- 1.26 Opt-in Plaintiffs.** “Opt-in Plaintiffs,” means the one hundred and sixty-six (166) additional individuals listed in the attached Exhibit “A,” who joined the Litigation by filing Consent to Join Lawsuit forms between August 14, 2020, and February 2, 2022 excluding the Representative Plaintiffs.
- 1.27 Opt-out Period.** “Opt-out Period” means the period of time within which a Class Member may opt out of the Settlement, as set forth in Section 2.6(A), below.
- 1.28 Opt-out Statement.** “Opt-out Statement” is a written signed statement by an individual Class Member who, after receiving a Notice, has decided to opt out of, and therefore not participate in, the Settlement. An Opt-out Statement must state a Class Member is opting out of the Settlement and include his or her name, job title, address, and telephone number, and state. Representative Plaintiffs have reviewed all terms in this Agreement with Class Counsel, assent to all terms contained in this Settlement Agreement and do not object to any provisions herein.
- 1.29 Participating Class Members or Settlement Plaintiffs.** “Participating Class Members” or “Settlement Plaintiffs” means Class Members who do not timely submit an Opt-out Statement.
- 1.30 Parties.** “Parties” means the parties to this this Agreement, including Representative Plaintiffs, Opt-in Plaintiffs and Defendant.
- 1.31 Plaintiffs.** “Plaintiffs” means Representative Plaintiffs and Opt-in Plaintiffs.
- 1.32 Plaintiff and Class Member Information List.** “Plaintiff and Class Member Information List” means one or more lists and/or spreadsheets containing the following information for all Plaintiffs and Class Members: name, Social Security Number, last known addresses, telephone numbers, dates and locations of employment, job titles, with dates, workweeks, and compensation earned within the applicable liability periods set forth in Sections 1.6 and 1.7 above, as that information exists on file with Defendant.
- 1.33 Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court preliminarily approving the terms and conditions of this Agreement, and directing the manner and timing of providing Notices to the Collective Action Members and Class Members.
- 1.34 Qualified Settlement Fund or QSF.** “Qualified Settlement Fund” or “QSF” means the account established by the Claims Administrator for the Gross Settlement Amount paid by Defendant. The QSF will be controlled by the Claims Administrator subject to the terms of

this Agreement and the Court's Preliminary Approval Order and Final Approval Order. Interest, if any, earned on the QSF will become part of the Gross Settlement Amount.

- 1.35 Released Person(s).** "Released Person(s)" means TIAA Bank, FSB, including its related entities, corporate parents, corporate siblings, subsidiaries, predecessors, successors, affiliates, and otherwise related entities and their officers, directors, shareholders, employees, representatives, agents, insurers, and attorneys.
- 1.36 Representative Plaintiffs.** "Representative Plaintiffs" means the seven (7) Representative Plaintiffs identified in the introductory paragraph of this Agreement.
- 1.37 Service Awards.** "Service Awards" means the monetary awards Representative Plaintiffs and Discovery Opt-in Plaintiffs will apply to the Court to receive pursuant to Section 3.3, below.
- 1.38 Settlement.** The "Settlement" means the settlement contemplated by, and described in, this Agreement.
- 1.39 Settlement Allocation Points.** "Settlement Allocation Points" means the points allocated to each Plaintiff and Class Member under the formulas provided in Section 3.4, below, to determine the pro rata amount of the Net Settlement Fund the Plaintiff or Class Member is entitled to.
- 1.40 Settlement Award.** The "Settlement Award" is a portion of the Net Settlement Fund attributable to each Plaintiff or Class Member based on the allocation formula described in Section 3.4, below.
- 1.41 Settlement Checks.** "Settlement Checks" means the checks issued to Plaintiffs and Participating Class Members that include their Settlement Awards and any Service Awards to which they are entitled.
- 1.42 State Class Period.** "State Class Period" means the date ranges for the seven State Law Classes contained in Section 1.6, above.

2. APPROVAL AND NOTICES TO CLASS AND COLLECTIVE ACTION MEMBERS

- 2.1. Binding Agreement.** This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.
- 2.2. Retention of the Claims Administrator.** Class Counsel will be responsible for selecting and retaining the Claims Administrator. The Claims Administrator will be responsible for all aspects of the claims administration process, including: locating Collective Action Members and Class Members; calculating Settlement Plaintiffs' Settlement Awards based on Defendant's business records; responding to Collective Action Member and Class Member inquiries; resolving disputes relating to Settlement Plaintiffs' workweeks worked and Settlement Awards; promptly reporting to the Parties the substance and status of any

challenges or disputes raised by Collective Action Members and Class Members; mailing Notices to Collective Action Members and Class Members in accordance with the Court's Preliminary Approval Order; to obtain and designate an email address for Collective Action Members' and Class Members' use to communicate with the Claims Administrator; distributing Court-approved Service Awards to Representative Plaintiffs and Discovery Opt-in Plaintiffs; distributing Settlement Checks to Settlement Plaintiffs; withholding Settlement Plaintiffs' shares of taxes and remitting such taxes to the appropriate taxing authorities; providing copies of the original Settlement Checks signed by the Settlement Plaintiffs to Defendant's Counsel; providing copies of the Settlement Checks to Class Counsel and Defendant; preparing a declaration regarding its due diligence in the claims administration process; and performing such other duties as the Parties may jointly direct or as are specified herein.

2.3.

- (A) The Parties will have equal access to the Claims Administrator and all information related to the administration of the settlement. The Claims Administrator will provide weekly reports to the Parties regarding the status of the mailing of the Notices to Collective Action Members and Class Members; the claims administration process (including the number of Opt-out Statements received, as well as the percentage of the Net Settlement Fund that was apportioned to the Class Members who submitted Opt-out Statements); the substance and status of disputes raised by Settlement Plaintiffs regarding the calculation of Settlement Awards; and distribution of the Settlement Checks.
- (B) In the event of a dispute regarding a Settlement Plaintiff's Settlement Award, the Claims Administrator shall promptly report the nature of the dispute to Class Counsel and Defendant's Counsel, who will confer in good faith with the Claims Administrator in an effort to resolve the dispute. In the event Class Counsel and Defendant's Counsel are unable to reach agreement, the Claims Administrator shall decide the dispute, and its decision shall be final.
- (C) Defendant agrees to cooperate with the Claims Administrator and to provide such information as is necessary to allow the Claims Administrator to discharge its duties hereunder.

2.4. Preliminary Approval Motion and Notices.

- (A) Representative Plaintiffs will file a motion for preliminary approval of the Settlement (the "Preliminary Approval Motion") within a reasonable time after execution of this Agreement and/or by the deadline specified by the Court (whichever is earlier). In connection with the Preliminary Approval Motion, Representative Plaintiffs will submit to the Court proposed Notices in the forms attached hereto as Exhibit "D" and Exhibit "E" (approved by Defendant's Counsel); a proposed distribution method for the Settlement Awards and calculation of the Settlement Checks as described in Section 3.4, below; and a proposed Preliminary Approval Order.

- (B) Defendant shall have the right to review and comment on the proposed Preliminary Approval Motion and to approve the content of the proposed Notices and Preliminary Approval Order. Class Counsel will provide Defendant with copies of such documents and allow at least five (5) full business days for Defendant to review and approve them, as applicable. Class Counsel will consider Defendant's comments to the Preliminary Approval Motion in good faith.
- (C) The proposed Preliminary Approval Order will include the findings required by FRCP 23(a) and 23(b)(3). The Preliminary Approval Motion also will seek the setting of deadlines for individuals to opt out of the Settlement or provide objections to the Settlement, which deadlines will be thirty (30) days from the mailing of the Notices to Collective Action Members and Class Members but no later than sixty (60) days from the Preliminary Approval Order. The Preliminary Approval Motion will request a Fairness Hearing for final approval of the Settlement before the Court at the earliest practicable date consistent with any period for review by federal and state officials required by the Class Action Fairness Act ("CAFA"), as referenced in Section 6.15, below.
- (D) In the Preliminary Approval Motion, Class Counsel will inform the Court of the intended process to obtain a Final Approval Order and a "Judgment of Dismissal" that will, among other things: (1) approve the Settlement as fair, adequate and reasonable; (2) incorporate the terms of the releases described in Section 4.1, below, and otherwise described herein; (3) dismiss the Litigation with prejudice; (4) award Class Counsel fees and costs; and (5) award Service Awards to Representative Plaintiffs and Discovery Opt-in Plaintiffs as more fully set forth herein. Defendant will not oppose the Preliminary Approval Motion.
- (E) If the Court denies the Preliminary Approval Motion, the Parties will work together, diligently and in good faith, to remedy any issue(s) leading to such denial and to seek reconsideration of the ruling or order denying approval and/or Court approval of a renegotiated settlement (without any change to the Gross Settlement Amount). If, despite the Parties' efforts, the Court continues to deny the Preliminary Approval Motion, the Litigation will resume as if no settlement had been attempted. In that event, the class certified for purposes of settlement shall be decertified (either by the Court *sua sponte* or on a motion by Defendant, which Plaintiffs agree not to oppose), and Defendant retains all rights and defenses, including the right to contest whether the Litigation should be certified and maintained as a collective and/or class action and to contest the merits of the claims being asserted in the Litigation.
- (F) The Parties will work together, diligently and in good faith, to obtain expeditiously a Preliminary Approval Order, Final Approval Order, and final judgment and dismissal.

2.5. Plaintiff and Class Member Information List and Notices to Collective Action Members and Class Members.

- (A) Within ten (10) days of the Court's issuance of a Preliminary Approval Order, Defendant will provide to the Claims Administrator and Class Counsel, in readable electronic form, i.e., CSV or similar format, the Plaintiff and Class Member Information List.
- (B) The Parties share a mutual interest in maximizing participation in the Settlement. If, in the view of the Parties, participation in the Settlement is not robust and/or in event the Claims Administrator is not able to obtain current contact information for Collective Action Members and Class Members whose notices are returned as undeliverable, the Parties will cooperate in addressing the issue, including discussing whether to provide the Claims Administrator with supplemental information and to ask the claims administrator to engage in additional outreach efforts and additional mailings to Collective Action Members and Class Members. Nothing in this provision restricts Defendant's rights pursuant to Section 3.6, below.
- (C) Within twenty (20) days of the Court's issuance of the Preliminary Approval Order, the Claims Administrator will mail the Notices to all Collective Action Members and Class Members via First Class United States Mail, postage prepaid.
- (D) The Notices will inform Collective Action Members and Class Members of the Settlement, their ability to object to the Settlement, and Class Members' ability to opt out of the Settlement.
- (E) The Claims Administrator will take reasonable steps to obtain the correct address of any Collective Action Members and Class Members for whom a Notice is returned by the post office as undeliverable and shall attempt re-mailings as described in this Agreement. The Claims Administrator will notify Class Counsel and Defendant's Counsel of any Notice sent to a Collective Action Member or Class Member that is returned as undeliverable after the first mailing, as well as any such Notice returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement.

2.6. Class Member Opt-outs.

- (A) A Class Member who chooses to opt out of the Settlement must either mail via First Class United States Mail, postage prepaid, or email to the Claims Administrator (at an email address designated by the Claims Administrator) a written, signed Opt-out Statement. To be effective, an Opt-out Statement must be postmarked or sent via email within thirty (30) days from the mailing of the Notice to the Class Member and no later than sixty (60) days from the Preliminary Approval Order.
- (B) Class Members whose first mailing was returned to the Claims Administrator as undeliverable will be allowed to opt out or object up to thirty (30) days from the date of the second mailing but no later than sixty (60) days from the Preliminary

Approval Order. The Claims Administrator shall not attempt more than two (2) mailings of the Notice to any Class Member, and no mailing shall occur more than thirty (30) days after the first mailing to Class Members.

- (C) The Claims Administrator shall keep accurate records of the dates on which it sends Notices to Class Members.
- (D) The Claims Administrator will stamp the postmark date or email receipt date on the original of each Opt-out Statement that it receives and shall serve copies of each Opt-out Statement on Class Counsel and Defendant's Counsel not later than three (3) days after receipt thereof. Within three (3) days of the end of the Opt-out Period, Class Counsel will promptly file with the Clerk of Court, a list of names of all Class Members who filed Opt-out Statements. The Claims Administrator will, within seventy-two (72) hours of the end of the Opt-out Period, send a final list of all Opt-out Statements to Class Counsel and Defendant's Counsel by both email and overnight delivery. The Claims Administrator will retain the stamped originals of all Opt-out Statements and originals of all envelopes accompanying Opt-out Statements as well as printouts of all emails and Opt-out Statements received by email in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Agreement.
- (E) Any Class Member who does not submit a timely and valid Opt-out Statement will be deemed to have accepted the Settlement and the terms of this Agreement and will be issued a Settlement Check. If an Opt-in Plaintiff timely submits an Opt-out Statement, he or she: (1) will opt out of the entire Settlement, (2) will not release any claims against Defendant (whether under federal or state law), and (3) will receive no Settlement Award.
- (F) Any Class Member (including Opt-in Plaintiffs) who opts out of the Settlement shall not participate in the Settlement.

2.7. Objections to Settlement.

- (A) Collective Action Members and Class Members who wish to object to the proposed Settlement must do so in writing or via email addressed to the Claims Administrator. To be considered, a written objection must be mailed to the Claims Administrator via First-Class United States Mail, postage prepaid, or email to the Claims Administrator (at an email address designated by the Claims Administrator), and be received by the Claims Administrator by a date certain thirty (30) days from the mailing of the Notice to the Collective Action Member or Class Member and no later than sixty (60) days from the Preliminary Approval Order. The written or emailed objection must include the words, "I object to the settlement in the TIAA Bank overtime case" as well as all reasons for the objection. Any reasons not included in the written objection will not be considered by the Court. The written objection must also include the name, job title, address, and telephone numbers for the Collective Action Member or Class Member making

the objection. The Claims Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and Defendant's Counsel by email and overnight delivery no later than three (3) days after receipt thereof. Class Counsel will promptly file with the Clerk of Court, a list of names of Collective Action Members and Class Members who submitted the date-stamped originals of any and all objections with the Court within three (3) days after the end of the Opt-out Period.

- (B) A Collective Action Member or Class Member who files valid and timely objections to the Settlement ("Objector") has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing on his or her written objections at the time he or she submits his or her written objections by including the words, "I intend to appear at the Fairness Hearing" in his or her written objection. An Objector may withdraw his or her objections at any time. No Collective Action Member or Class Member may appear at the Fairness Hearing unless he or she has filed a timely objection that complies with all procedures provided in this section and the previous section. No Collective Action Member or Class Member may present an objection at the Fairness Hearing based on a reason not stated in his or her written objections. A Class Member who has submitted an Opt-out Statement may not submit objections to the Settlement.
- (C) The Parties may file with the Court written responses to any filed objections no later than three (3) days before the Fairness Hearing.

2.8. Consolidated Submission of Opt-out Statements and Objections by Claims Administrator. In addition to providing Opt-out Statements and objections to Class Counsel and Defendant's Counsel as established above, the Claims Administrator shall also, 3 business days following the close of the Opt-out Period, send a zipped file, attached by email, to Defendant's Counsel and Class Counsel, containing all objections and Opt-out Statements it received. This zipped file shall include all objections and Opt-out Statements, regardless of whether such documents were previously provided.

2.9 Motion for Judgment and Final Approval.

- (A) Not later than fifteen (15) days before the Fairness Hearing, Representative Plaintiffs will submit a Motion for Judgment and Final Approval.
- (B) Defendant shall have the right to review and comment on the Motion for Judgment and Final Approval and to approve the content of the proposed Final Approval Order. Class Counsel will provide Defendant with copies of such documents and allow at least five (5) full business days for Defendant to review and approve them, as applicable. Class Counsel will consider Defendant's comments to the Motion for Judgment and Final Approval in good faith.

2.10 Entry of Judgment. At the Fairness Hearing, the Parties will request that the Court, among other things, (a) certify the State Law Classes for purposes of the Settlement, (b) enter Judgment in accordance with this Agreement, (c) approve the Settlement and Agreement as final, fair, reasonable, adequate, and binding on all Settlement Plaintiffs, (d) approve the FLSA Settlement, and (e) dismiss the Litigation with prejudice.

2.11 Effect of Failure to Grant Final Approval. If the Court denies Representative Plaintiffs' Motion for Judgment and Final Approval, the Parties will work together, diligently and in good faith, to remedy any issue(s) identified by the Court, leading to such denial and may seek appellate review of the ruling or order denying the motion and/or Court approval of a renegotiated settlement (without any change to the Gross Settlement Amount). If, despite the Parties' efforts, the Court continues to deny the motion for final approval (or otherwise to approve the Settlement), then the Settlement will become null and void.

(A) The Litigation will proceed as if no settlement had been attempted, no portion of the Gross Settlement Amount will be distributed, and the entire Gross Settlement Amount will revert to Defendant. In that event, the class certified for purposes of settlement shall be decertified (either by the Court *sua sponte* or on a motion by Defendant, which Plaintiffs agree not to oppose), and Defendant retains all rights and defenses, including the right to contest whether the Litigation should be certified and maintained as a collective and/or class action and to contest the merits of the claims being asserted in the Litigation.

(B) Class Counsel will provide notice to Class Members that the Agreement did not receive final approval and that, as a result, no payments will be made to Participating Class Members under the Agreement. Such notice shall be mailed by the Claims Administrator via First Class United States Mail, postage prepaid, to the addresses used by the Claims Administrator in mailing the Notice.

(C) The Parties agree to share jointly the costs of the Claims Administrator fees incurred through the date the Court denies final approval.

2.12 Releases and Distribution of Settlement Checks.

(A) Each Settlement Plaintiff will be issued a Settlement Check by the Claims Administrator from the QSF in accordance with the Final Approval Order.

(B) Settlement Checks will be mailed to all Settlement Plaintiffs, and Court-approved attorneys' fees and costs checks mailed to Class Counsel, by the Claims Administrator three (3) days after the Effective Date.

(C) All Settlement Checks issued to Settlement Plaintiffs shall contain, on the back of the check, the following limited endorsement.

"NOTICE OF SETTLEMENT AGREEMENT AND FINAL RELEASE OF CLAIMS:

This check is being provided to you pursuant to the Court's Final Approval Order in the Case entitled *Nicholas DeSimone, et al., v. TIAA BANK, FSB, f/k/a Everbank Financial Corp.*, No. 20 Civ. 06492 (GHW-BCM). Regardless of whether you negotiate this check, you are bound to the case settlement, judgment, and release of claims contained in the settlement agreement, as a participating class and/ or collective action member.

By: _____."

- (D) The Claims Administrator will send out a reminder Notice to any Participating Class Member that has not negotiated his or her Settlement Check within 60 days after the first mailing.
- (E) The Court will retain jurisdiction over the case following the entry of the Judgment for Dismissal until thirty (30) days after the end of the Acceptance Period. The Claims Administrator will notify Class Counsel to notify the Court of the expiration of the Acceptance Period.

3. SETTLEMENT TERMS

3.1. Settlement Terms.

- (A) Defendant agrees to pay a gross total Settlement Amount of Eight Million Five Hundred Thousand Dollars (\$8,500,000.00), which shall fully resolve and satisfy any claim for attorneys' fees and costs approved by the Court, any and all amounts to be paid to Plaintiffs and Participating Class Members, any Court-approved Service Awards to Representative Plaintiffs and Discovery Opt-in Plaintiffs, a reserve fund to cover errors and omissions, as more fully described below, and the Claims Administrator's fees and costs. Other than the employer payroll taxes described in Section 3.5(C), above, Defendant will not be required to pay more than the gross total of Eight Million Five Hundred Eighty-Two Thousand Dollars (\$8,500,000.00) under the terms of this Agreement.
- (B) By no later than ten (10) days after the date of Preliminary Approval, Defendant shall deposit the gross total Gross Settlement Amount into the QSF. The Claims Administrator will act as escrow agent and will have the authority to release the Gross Settlement Amount from escrow immediately for purposes of administering the Settlement reflected in this Agreement immediately following the Effective Date.
- (C) Participating Class Members must cash their Settlement Checks within the Acceptance Period. Class Members will be informed of the Acceptance Period in the Notices and on the Settlement Checks. The Claims Administrator shall notify the Parties in writing of the beginning of the Acceptance Period.

- (D) The Claims Administrator shall set aside \$50,000 of the QSF to cover any correctable errors or omissions, and satisfy any claim for relief allowed pursuant to FRCP 60(b)(1) or 60(d). If \$50,000 is not sufficient to cover any correctable errors or omissions, and satisfy any claim for relief allowed pursuant to FRCP 60(b)(1) or 60(d), any additional amounts shall come from the amount remaining due to QSF. Any amount remaining 180 days after the Final Approval Order and after any correctable errors or omissions are covered will be donated to the Charity under the *cy pres* doctrine.
- (E) If a Participating Class Member does not timely cash his or her check within the Acceptance Period, the Settlement Award attributable to that Participating Class Member shall be donated to the Charity under the *cy pres* doctrine.
- (F) The Settlement Award as calculated pursuant to Section 3.4 below otherwise attributable to any Class Member who timely opts out pursuant to this Agreement will revert to Defendant and will be deducted from the Net Settlement Fund and no other Class Member will have any claim to that Settlement Award.

3.2. Settlement Amounts Payable as Attorneys' Fees and Costs. At the Fairness Hearing and Motion for Final Approval, Class Counsel will petition the Court for an award of attorneys' fees of no more than one-third (1/3) of the Gross Settlement Amount, and, in addition, for reimbursement of their actual litigation costs and expenses to be paid from the QSF. After depositing the Gross Settlement Amount with the Claims Administrator for the QSF, Defendant shall have no additional liability for Class Counsel's attorneys' fees and costs.

3.3. Service Awards to Representative Plaintiffs and Discovery Opt-in Plaintiffs.

- (A) In return for services rendered to the Class Members, at the Fairness Hearing, Representative Plaintiffs will each apply to the Court to receive Ten Thousand Dollars and 00/100 cents (\$10,000.00) for an aggregate amount of Seventy Defendant will not oppose such application.
- (B) Discovery Opt-In Plaintiffs will each apply to the Court to receive Two Hundred and Fifty Dollars and 00/100 cents (\$250.00) as a Service Award for their services in the Litigation.
- (C) The Services Awards shall be payable from the Qualified Settlement Fund and shall be in addition to the share to which those Plaintiffs are otherwise entitled under Section 3.4 of this Agreement.
- (D) Representative Plaintiffs agree to execute a release of claims as provided in Section 4.1(C) below, in exchange for Defendant's mutual general release as provided in Section 4.1(E) below.

- (E) The application for Service Awards is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the application for Service Awards will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval or for Final Judgment and Dismissal.

3.4. Net Settlement Fund and Allocation to Plaintiffs.

- (A) The allocation to Plaintiffs and Class Members for Settlement Checks will be made from the Net Settlement Fund.
- (B) A Plaintiff's or Class Member's proportionate share of the Net Settlement Fund will be determined by the Claims Administrator as follows:

First, each Plaintiff or Class Member shall be entitled to receive a base payment of \$250.00. In addition to that base payment amount, each Plaintiff or Class Member shall be entitled to receive his or her pro rata amount of the Net Settlement Fund, as detailed below.

Each Plaintiff or Class Member's pro rata amount of the Net Settlement Fund is determined by the Settlement Allocation Points allocated to him or her under the formulas listed below. Collective Action Members who are not Class Members are only entitled to calculation under the FLSA. Class Members who are not Opt-In Plaintiffs are only entitled to calculations based on their specific state law claims as they either did not join the FLSA collective or did not work for Defendant within three years of the date they joined the FLSA collective. Dual Members shall receive the highest number of points as determined by whichever applicable formula below generates the highest number of points for that particular Plaintiff or Class Member for the time-period where the calculation periods for the FLSA Period and the State Class Period overlap.

- (i) **Collective Action Members:** Each Collective Action Member is provided two (2) Settlement Allocation Points for each dollar in total compensation, including commissions and draws, Defendant paid a Collective Action Member from three years prior to the date shown on the Collective Action Member's FLSA Consent Form on file with the Court through April 30, 2019. This represents one Settlement Allocation Point to compensate the Collective Action Member for allegedly unpaid overtime wages and one additional Settlement Allocation Point representing liquidated damages available under the FLSA.
- (ii) **California Plaintiffs:** Each Plaintiff or Class Member who was employed for at least one (1) day in a Covered Position in the State of California from August 14, 2016, through April 30, 2019, is provided two and one-half (2.5) Settlement Allocation Points for each dollar in total compensation,

including commissions and draws, Defendant paid to that individual from August 14, 2016, through April 30, 2019, for work performed as a California-based employee. This represents one Settlement Allocation Point to compensate that Plaintiff or Class Member for allegedly unpaid overtime wages, one Settlement Allocation Point representing liquidated damages, and one-half Settlement Allocation Point for premium and penalty wages allegedly due under California laws.

- (iii) **New Jersey Plaintiffs:** Each Plaintiff or Class Member who was employed for at least one (1) day in a Covered Position in the State of New Jersey from February 22, 2017, through April 30, 2019, is provided one (1) Settlement Allocation Point for each dollar in total compensation, including commissions and draws, Defendant paid to that individual from February 22, 2017 through April 30, 2019, for work performed as a New Jersey based employee.
- (iv) **New York Plaintiffs:** Each Plaintiff or Class Member who was employed for at least one (1) day in a Covered Position in the State of New York from February 22, 2013, through April 30, 2019, is provided two (2) Settlement Allocation Points for each dollar in total compensation, including commissions and draws, Defendant paid to that individual from February 22, 2013 through April 30, 2019, for work performed as a New York-based employee. This represents one Settlement Allocation Point to compensate that Plaintiff or Class Member for allegedly unpaid overtime wages and one additional Settlement Allocation Point representing liquidated damages available under New York law.
- (v) **Pennsylvania Plaintiffs:** Each Plaintiff or Class Member who was employed for at least one (1) day in a Covered Position in the State of Pennsylvania from October 20, 2017, through April 30, 2019, is provided one and one-quarter (1.25) Settlement Allocation Points for each dollar in total compensation, including commissions and draws, Defendant paid to that individual from October 20, 2017 through April 30, 2019, for worked performed as a Pennsylvania-based employee. This represents one Settlement Allocation Point to compensate that Plaintiff or Class Member for allegedly unpaid overtime wages and one-quarter additional Settlement Allocation Point representing liquidated damages available under Pennsylvania law.
- (vi) **Maryland Plaintiffs:** Each Plaintiff or Class Member who was employed for at least one (1) day in a Covered Position in the State of Maryland from August 14, 2017, through April 30, 2019, is provided two (2) Settlement Allocation Points for each dollar in total compensation, including commissions and draws, Defendant paid to that individual for work performed in Maryland from August 14, 2017 through April 30, 2019, for work performed as a Maryland-based employee. This represents one

Settlement Allocation Point to compensate that Plaintiff or Class Member for allegedly unpaid overtime wages and one additional Settlement Allocation Point representing liquidated damages available under Maryland law.

- (vii) **Oregon Plaintiffs:** Each Plaintiff or Class Member who was employed for at least one (1) day in a Covered Position in the State of Oregon from October 20, 2014, through April 30, 2019, is provided two (2) Settlement Allocation Points for each dollar in total compensation, including commissions and draws, Defendant paid to that individual during the Oregon Class Period from October 20, 2014 through April 30, 2019, for work performed as a Oregon-based employee. This represents one Settlement Allocation Point to compensate that Plaintiff or Class Member for allegedly unpaid overtime wages and one additional Settlement Allocation Point representing liquidated damages available under Oregon law.
- (viii) **Washington Plaintiffs:** Each Plaintiff or Class Member who was employed for at least one (1) day in a Covered Position in the State of Washington from October 20, 2017, through April 30, 2019, is provided two (2) Settlement Allocation Points for each dollar in total compensation, including commissions and draws, Defendant paid to that individual from October 20, 2017 through April 30, 2019, for work performed as a Washington-based employee. This represents one Settlement Allocation Point to compensate that Plaintiff or Class Member for allegedly unpaid overtime wages and one additional Settlement Allocation Point representing liquidated damages available under Washington law.

- (C) The Claims Administrator shall perform all calculations for each Plaintiff or Class Member to determine the total number of Settlement Allocation Points to be awarded to all Plaintiffs and Class Members. The Claims Administrator shall then divide the Net Settlement Fund by the total number of Settlement Allocation Points to determine the dollar value to be provided to each Plaintiff or Class Member for each Settlement Allocation Point provided. The total Settlement Award available to each Plaintiff and Class Member shall be: $\$250 + (\text{Settlement Allocation Points} \times \text{Dollar Value of Settlement Allocation Point})$. The Claims Administrator shall provide its calculations and Settlement Allocation Points to Class Counsel and Defendant's Counsel for their review prior to issuing the Settlement Checks.

3.5. Tax Characterization.

- (A) For tax purposes, 50% of payments to Settlement Plaintiffs pursuant to Section 3.4 shall be treated as back wages and 50% of such payments shall be treated as interest and/or liquidated damages.

- (B) Payments treated as back wages pursuant to Section 3.5(A), above, shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service (“IRS”) and the payee under the payee’s name and social security number on an IRS Form W-2. Payments treated as interest and/or liquidated damages pursuant to Section 3.5(A), above, shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee’s name and social security number on an IRS Form 1099, and identified as “other income”. Payments of attorneys’ fees and costs pursuant to Section 3.2, above, shall be made without withholding and reported to the IRS and the payee under the payee’s name and taxpayer identification number, which each such payee shall provide for this purpose, on an IRS Form 1099. Any Service Award pursuant to Section 3.3, above, shall be made without withholding and reported to the IRS and the payee under the payee’s name and social security number on an IRS Form 1099.
- (C) Within ten (10) days after the Final Approval Order, the Claims Administrator shall inform the Parties of an estimate of all state and federal payroll taxes imposed by applicable law, including the employer’s share of the FICA tax and any federal and state unemployment tax due, with respect to the amounts treated as wages pursuant to Section 3.5(A), above. Defendant shall pay this amount within 10 days from the date the Claims Administrator so informs the Parties, and the Claims Administrator shall remit all such taxes withheld to the IRS and/or other appropriate taxing agencies.
- (D) The employee portion of all applicable income taxes and payroll taxes, together with any additional penalties with respect to Settlement Checks, will be the responsibility of the individual Settlement Plaintiff receiving a Settlement Check.
- (E) Neither Class Counsel nor Defendant’s Counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor will it be relied upon as such.

3.6. Right of Defendant to Rescind Settlement.

If three percent (3%) or more of the Class Members, or a number of Class Members whose Settlement Awards in the aggregate total 3% or more of the total Net Settlement Fund, file timely and valid Opt-out Statements, then Defendant will have the right to rescind the Settlement, and the Settlement and all actions taken in its furtherance will be null and void.

If any Representative Plaintiff files a timely and valid Opt-out Statement or objects to the Settlement, Defendant will have the right to rescind the Settlement, and the Settlement and all actions taken in its furtherance will be null and void.

Defendant must exercise its right to rescind the Settlement pursuant to this Section 3.6 within fourteen (14) days after the Claims Administrator provides Defendant with copies of Opt-out Statements and notice of objections to the Settlement sufficient for it to

determine that its right to rescind the Settlement has been triggered. If Defendant exercises its right to rescind the Settlement, Defendant will be responsible for the Claims Administrator fees incurred through the date of rescission or thereafter.

4. RELEASE

4.1. Release of Claims.

By operation of the entry of the Judgment and Final Approval Order, in exchange for Defendant's payment pursuant to this Agreement, and except as to such rights or claims as may be created by this Agreement,

- (A) Each Representative Plaintiff and Opt-in Plaintiff fully and finally irrevocably and unconditionally waives, releases, and forever discharges any claim against Released Parties for any and all wage-and-hour claims, rights, and causes of action, whether known or unknown, under any federal, state, or local wage and hour law, including but not limited to the Fair Labor Standards Act, the California Labor Code, the California Business & Professions Code, California Wage Order 4-2001, the Maryland Wage and Hour Law, the Maryland Wage Payment and Collection Law, the New York Labor Law, the New York Minimum Wage Act, the New Jersey Wage and Hour Law, the New Jersey Wage Collection Law, the Washington Wage and Hour law, the Washington Minimum Wage Act, the Oregon Wage and Hour Laws, the Pennsylvania Minimum Wage Act, the Pennsylvania Wage Payment and Collection Law, and all applicable state and local wage-and-hour laws, and including without limitation statutory, constitutional, contractual, and common law claims for wages and any damages, costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, restitution, or equitable relief to the extent relating to or deriving from a wage-and-hour claim (including claims for overtime wages, based on deductions from wages, or any other claims for wages) relating to his or her employment with Defendant as a Retail Loan Officer, Retail Loan Originator, Retail Lending Loan Originator, Sr., Retail Sales Manager or Retail Branch Sales Manager prior to April 30, 2019 ("Released Claims").
- (B) Each Participating Class Member irrevocably and unconditionally waives, releases, and forever discharges any claim against the Released Parties from any and all wage-and-hour claims, rights, and causes of action, whether known or unknown, under the California Labor Code, the California Business & Professions Code, California Wage Order 4-2001, the Maryland Wage and Hour Law, the Maryland Wage Payment and Collection Law, the New York Labor Law, the New York Minimum Wage Act, the New Jersey Wage and Hour Law, the New Jersey Wage Collection Law, the Washington Wage and Hour law, the Washington Minimum Wage Act, the Oregon Wage and Hour Laws, the Pennsylvania Minimum Wage Act and the Pennsylvania Wage Payment and Collection Law, including without limitation statutory, constitutional, contractual, and common law claims for wages and any damages, costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, restitution, or equitable relief to the extent relating to or deriving

from a wage-and-hour claim (including claims for overtime wages, based on deductions from wages, or any other claims for wages) relating to his or her employment with Defendant as a Retail Loan Officer, Retail Loan Originator, Retail Lending Loan Originator, Sr., Retail Sales Manager or Retail Branch Sales Manager prior to April 30, 2019 (the “Released FRCP 23 Claims”).

- (C) In addition to the Released Claims, all Representative Plaintiffs irrevocably and unconditionally waive, release, and forever discharge any and all common law contract, tort, or other claims, including but not limited to claims for discrimination, harassment, retaliation, wrongful termination, failure to prevent retaliation or discrimination or harassment, any wage-and-hour claims under both federal and state law, any breach of contract, breach of implied covenant of good faith and fair dealing, fraud, intentional misrepresentation, constructive fraud, intentional infliction of emotional distress, as well as all claims under the Worker Adjustment & Retraining Notification Act, Title VII of the Civil Rights Act of 1964, Sections 1981 and 1983 of the Civil Rights Act of 1866, the Americans with Disabilities Act Amendments Act, the Employee Retirement Income Security Act of 1974, the Family and Medical Leave Act, and any other domestic or foreign laws, regulations or ordinances from the beginning of time through the date of execution of this Agreement by the Parties. Representative Plaintiffs who lived or worked in California in Covered Positions during the California Class Period expressly agree to waive all rights and benefits afforded by section 1542 of the Civil Code of the State of California, and do so understanding the significance of that waiver. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

- (D) Except as provided in this Agreement, Class Counsel, Opt-in Plaintiffs and Representative Plaintiffs, on behalf of themselves and the other Class Members individually and collectively, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she or they may have against Defendant for attorneys’ fees or costs associated with Class Counsel’s representation of the Class Members. Class Counsel further understands and agrees that any fee payments approved by the Court will be the full, final and complete payment of all attorneys’ fees and costs associated with Class Counsel’s representation in the Litigation.
- (E) Defendant TIAA Bank irrevocably and unconditionally waives, releases, and forever discharges any and all common law contract, tort, or other claims, against all Representative Plaintiffs, as well as any other claims under domestic or foreign laws, regulations or ordinances, from the beginning of time through the date of final approval of this Agreement.

- 4.2. Effect of Failure to Negotiate a Settlement Check.** Upon the Effective Date of the Settlement, each Participating Class Member shall have released all claims as defined in Section 4.1(B), above, irrespective of whether or not he or she negotiated his or her Settlement Check.
- 4.3. Non-Admission of Liability.** Defendant has agreed to the terms of Settlement herein without in any way acknowledging any fault or liability, and with the understanding that terms have been reached because this Settlement will (i) provide substantial benefits to Defendant's shareholders, (ii) avoid the further expense and disruption of Defendant's business due to the pendency and expense of litigation, and (iii) put the claims in the Litigation finally to rest. Nothing in this agreement shall be deemed or used as an admission of liability by Defendant, or as an admission that a collective or class action should be (or remain) certified for any purpose other than settlement purposes.

5. WAIVER OF ARBITRATION

Solely for purposes of this Agreement, the Parties waive any rights they have to arbitration of Plaintiffs' and Class Members' claims. This limited waiver will be deemed null and void in the event this Agreement is terminated or the Court does not approve the Settlement or this Agreement. Furthermore, this limited waiver of the right to arbitration does not apply to Class Members who submit a timely and valid Opt-out Statement.

6. INTERPRETATION AND ENFORCEMENT

- 6.1. Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Each party, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 6.2. No Assignment.** Class Counsel, Representative Plaintiffs, individually and on behalf of the individual Class Members, and Opt-in Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action.
- 6.3. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- 6.4. Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to the Representative Plaintiffs, the Opt-in Plaintiffs, and all Participating Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.

- 6.5. Waiver of Unknown Claims.** It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all Released Claims which were or which could have been asserted in this Action against the Released Parties, whether known or unknown, liquidated or unliquidated, to the extent relating to or deriving from a wage-and-hour claim (including claims for overtime wages or any other wages) relating to Plaintiffs' employment in Covered Positions up to and including January 31, 2014. Plaintiffs may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the entry of the Judgment, Plaintiffs shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.
- 6.6 Settlement Negotiations:** The Parties agree they will not disclose to any person any information (including, but not limited to, settlement offers) that (1) was communicated during the settlement negotiations that led to this Agreement, and (2) is or would be covered by Fed. R. Evid. 408. This limitation does not apply to disclosure of the terms of the Settlement Agreement, and it does not apply in the event this information must be disclosed pursuant to a court order, governmental order, or lawfully served subpoena.
- 6.7. Non-Disparagement.** Representative 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 Defendant. Nothing herein shall preclude the Representative Plaintiffs from making truthful references either verbally or in writing to the character, quality, or propriety of the person, personnel, or business operations of Defendant, or shall preclude the Representative Plaintiffs from making truthful statements about their experience in litigating this action. If this non-disparagement provision 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.
- 6.8. Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 6.9. Captions.** The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 6.10. Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this

Agreement, and 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.

- 6.11. Severability.** If any non-material provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.
- 6.12. Governing Law.** 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 principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- 6.13. Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby.
- 6.14. Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 6.15. CAFA Notice.** To the extent required by CAFA, Defendant shall timely provide notice as required by CAFA and provide copies of such to Class Counsel.
- 6.16. When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its execution. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 6.17. Signatures of Representative Plaintiffs.** This Agreement is valid and binding upon the signatures of Defendant's authorized representative and at least one Representative Plaintiff. Class Counsel shall deliver this Agreement to all Representative Plaintiffs and Opt-in Plaintiffs for their signatures and shall deliver copies of their signature pages to Defendant's Counsel within five (5) business days of this Agreement becoming valid and binding pursuant to this Section, or as soon thereafter as practicable.
- 6.18. Facsimile and Email Signatures.** Any party may execute this Agreement by causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile, electronic mail, EchoSign or DocuSign, to counsel for the other party.

Any signature made and transmitted by facsimile, electronic mail, EchoSign 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 or DocuSign.

WE AGREE TO THESE TERMS,

DATED: _____, 2022

TIAA Bank, FSB, d/b/a TIAA Bank.

By: 

Its: President & CEO

Representative Plaintiffs:

Nicholas DeSimone

Date: _____

Patrick Gardner

Date: _____

Mohammad Hussain

Date: _____

Paul Malstrom

Date: _____

Stephen Gallagher

Date: _____

Craig Paladeau

Date: _____

Cory Benner

Date: _____

Opt-In Plaintiffs

Pursuant to the FLSA Consent Forms signed by Opt-in Plaintiffs and filed with the Court in this Litigation, Plaintiffs' counsel certify that they have been duly authorized by each of the 166 Opt-in Plaintiffs listed in Exhibit "A" attached to this Agreement to settle the Litigation on their

Any signature made and transmitted by facsimile, electronic mail, EchoSign 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 or DocuSign.

WE AGREE TO THESE TERMS,


DATED: _____, 2022

TIAA Bank, FSB, d/b/a TIAA Bank.

By: _____

Its: _____

Representative Plaintiffs:


Nicholas De Simone (Nov 29, 2022 18:31 EST)

Nicholas DeSimone

Date: Nov 29, 2022

Patrick Gardner

Date: _____

Mohammad Hussain

Date: _____

Paul Malstrom

Date: _____

Stephen Gallagher

Date: _____

Craig Paladeau

Date: _____

Cory Benner

Date: _____

Opt-In Plaintiffs

Pursuant to the FLSA Consent Forms signed by Opt-in Plaintiffs and filed with the Court in this Litigation, Plaintiffs' counsel certify that they have been duly authorized by each of the 166 Opt-in Plaintiffs listed in Exhibit "A" attached to this Agreement to settle the Litigation on their

Any signature made and transmitted by facsimile, electronic mail, EchoSign 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 or DocuSign.

WE AGREE TO THESE TERMS,

DATED: _____, 2022

TIAA Bank, FSB, d/b/a TIAA Bank.


By: _____

Its: _____

Representative Plaintiffs:

Nicholas DeSimone

Date: _____


Patrick Gardner (Nov 29, 2022 15:34 PST)

Patrick Gardner

Date: Nov 29, 2022

Mohammad Hussain

Date: _____

Paul Malstrom

Date: _____

Stephen Gallagher

Date: _____

Craig Paladeau

Date: _____

Cory Benner

Date: _____

Opt-In Plaintiffs

Pursuant to the FLSA Consent Forms signed by Opt-in Plaintiffs and filed with the Court in this Litigation, Plaintiffs' counsel certify that they have been duly authorized by each of the 166 Opt-in Plaintiffs listed in Exhibit "A" attached to this Agreement to settle the Litigation on their

Any signature made and transmitted by facsimile, electronic mail, EchoSign 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 or DocuSign.

WE AGREE TO THESE TERMS,

DATED: _____, 2022

TIAA Bank, FSB, d/b/a TIAA Bank.

By: _____

Its: _____


Representative Plaintiffs:

Nicholas DeSimone

Date: _____

Patrick Gardner

Date: _____


Mohammad Hussain (Nov 29, 2022 19:33 EST)

Mohammad Hussain

Date: Nov 29, 2022

Paul Malstrom

Date: _____

Stephen Gallagher

Date: _____

Craig Paladeau

Date: _____

Cory Benner

Date: _____

Opt-In Plaintiffs

Pursuant to the FLSA Consent Forms signed by Opt-in Plaintiffs and filed with the Court in this Litigation, Plaintiffs' counsel certify that they have been duly authorized by each of the 166 Opt-in Plaintiffs listed in Exhibit "A" attached to this Agreement to settle the Litigation on their

Any signature made and transmitted by facsimile, electronic mail, EchoSign 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 or DocuSign.

WE AGREE TO THESE TERMS,

DATED: _____, 2022

TIAA Bank, FSB, d/b/a TIAA Bank.

By: _____

Its: _____

Representative Plaintiffs:

Nicholas DeSimone

Date: _____

Patrick Gardner

Date: _____

Mohammad Hussain

Date: _____

Paul Malstrom

Paul Malstrom (Nov 29, 2022 19:23 EST)

Paul Malstrom

Date: Nov 29, 2022

Stephen Gallagher

Date: _____

Craig Paladeau

Date: _____

Cory Benner

Date: _____

Opt-In Plaintiffs

Pursuant to the FLSA Consent Forms signed by Opt-in Plaintiffs and filed with the Court in this Litigation, Plaintiffs' counsel certify that they have been duly authorized by each of the 166 Opt-in Plaintiffs listed in Exhibit "A" attached to this Agreement to settle the Litigation on their

Any signature made and transmitted by facsimile, electronic mail, EchoSign 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 or DocuSign.

WE AGREE TO THESE TERMS,

DATED: _____, 2022

TIAA Bank, FSB, d/b/a TIAA Bank.

By: _____

Its: _____

Representative Plaintiffs:

Nicholas DeSimone

Date: _____

Patrick Gardner


Date: _____

Mohammad Hussain

Date: _____

Paul Malstrom

Date: _____


[Stephen Gallagher \(Nov 29, 2022 19:38 EST\)](#)
Stephen Gallagher

Date: Nov 29, 2022

Craig Paladeau

Date: _____

Cory Benner

Date: _____

Opt-In Plaintiffs

Pursuant to the FLSA Consent Forms signed by Opt-in Plaintiffs and filed with the Court in this Litigation, Plaintiffs' counsel certify that they have been duly authorized by each of the 166 Opt-in Plaintiffs listed in Exhibit "A" attached to this Agreement to settle the Litigation on their

Any signature made and transmitted by facsimile, electronic mail, EchoSign 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 or DocuSign.

WE AGREE TO THESE TERMS,

DATED: _____, 2022

TIAA Bank, FSB, d/b/a TIAA Bank.

By: _____

Its: _____

Representative Plaintiffs:

Nicholas DeSimone

Date: _____

Patrick Gardner

Date: _____

Mohammad Hussain

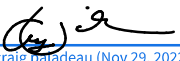
Date: _____

Paul Malstrom

Date: _____

Stephen Gallagher

Date: _____


craig.paladeau (Nov 29, 2022 15:43 PST)

Craig Paladeau

Date: Nov 29, 2022

Cory Benner

Date: _____

Opt-In Plaintiffs

Pursuant to the FLSA Consent Forms signed by Opt-in Plaintiffs and filed with the Court in this Litigation, Plaintiffs' counsel certify that they have been duly authorized by each of the 166 Opt-in Plaintiffs listed in Exhibit "A" attached to this Agreement to settle the Litigation on their

Any signature made and transmitted by facsimile, electronic mail, EchoSign 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 or DocuSign.

WE AGREE TO THESE TERMS,

DATED: _____, 2022

TIAA Bank, FSB, d/b/a TIAA Bank.

By: _____

Its: _____

Representative Plaintiffs:

Nicholas DeSimone

Date: _____

Patrick Gardner

Date: _____

Mohammad Hussain

Date: _____

Paul Malstrom


Date: _____

Stephen Gallagher

Date: _____

Craig Paladeau

Date: _____


Cory Benner (Nov 29, 2022 15:30 PST)

Cory Benner

Date: Nov 29, 2022

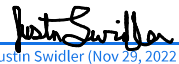
Opt-In Plaintiffs

Pursuant to the FLSA Consent Forms signed by Opt-in Plaintiffs and filed with the Court in this Litigation, Plaintiffs' counsel certify that they have been duly authorized by each of the 166 Opt-in Plaintiffs listed in Exhibit "A" attached to this Agreement to settle the Litigation on their

behalfes. As set forth in each of the Consent Forms, the Opt-in Plaintiffs have agreed “to be included as a party and to be bound by any judgment in the claims being asserted [in this Litigation] by former and current employees of [TIAA Bank], ... consent to Frank, Weinberg & Black, PL, Robert D. Soloff, P.A., Swartz Swidler, LLC, and Meredith Malatino Law, LLC (the “Attorneys”) to bring suit against [TIAA Bank, FSB, f/k/a Everbank Financial Corp.. (“Everbank”)] on [their] behalf under the Fair Labor Standards Act,... agree to legal representation in this action by the Attorneys and understand and agree that [they] will receive one-third (1/3) of Plaintiffs’ recovery as payment for their services... [and] further designate the Attorneys and the [Representative] Plaintiffs as [their] agents in making decisions on [their] behal[ves] in this litigation, including entering into settlement agreements pertaining to this matter.”


Date: Nov 29, 2022

SWARTZ SWIDLER, LLC.

By: 
Justin L. Swidler, Esquire


Date: Nov 29, 2022

FRANK, WEINBERG & BLACK, P.L.

By: 
Marc A. Silverman, Esquire

Date: Nov 29, 2022

ROBERT D. SOLOFF, P.A.

By: 
Robert D. Soloff, Esquire

Date: Nov 29, 2022

MEREDITH MALATINO LAW, LLC.

By: 
Carly J. Skarbnik, Esquire

**SIGNED ON BEHALF OF THE 166 OPT-IN PLAINTIFFS
LISTED IN EXHIBIT “A” ATTACHED TO THIS AGREEMENT**