

SETTLEMENT AGREEMENT AND RELEASE

Holt v. The Cooperative Bank of Cape Cod

PREAMBLE

This Settlement Agreement and Release (“Agreement”) is entered into by and among plaintiff Donald Holt (“Named Plaintiff”) and all those on whose behalf he is prosecuting this action (each of them a “Plaintiff” and all of them “Plaintiffs”), on the one hand, and defendant The Cooperative Bank of Cape Cod (“Defendant”), on the other hand, as of the date executed below. All references in this Agreement to a “Party” or the “Parties” shall refer to a party or the parties to this Agreement.

RECITALS

- A. Plaintiff initiated this action by filing a Class Action Complaint with the caption of *Donald Holt v. The Cooperative Bank of Cape Cod*, Case No. SUCV2020-01178-BLS1, in the Massachusetts Superior Court for Suffolk County, Business Litigation Section on June 4, 2020, asserting a cause of action for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing (the “Complaint”).
- B. On July 10, 2020, Plaintiff sent a letter to Defendant asserting its intention to bring a claim for violation of Mass. Gen. Laws Chapter 93A, Section 9.
- C. The Parties thereafter engaged in informal discovery. During that process, Defendant provided Plaintiff with data and information that allowed Plaintiff to estimate class-wide damages.
- D. Over the next nine months, the Parties engaged in extensive discussions that ultimately resulted in this Agreement.
- E. Defendant filed a timely Answer to the Complaint on November 19, 2020.
- F. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Defendant nevertheless believes that this settlement is in its best interest and in the best interests of all of the Settlement Class Members (as that term is defined herein). Nothing contained in this Agreement shall be used or construed as an admission of liability or wrongdoing, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.
- F. Named Plaintiff has entered into this Agreement to liquidate and recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Named Plaintiff does not in any way concede the claims alleged in the Complaint lack merit or are subject to any defenses.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the parties agree as follows:

1. DEFINITIONS. In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply:

(a) “Complaint” shall have the meaning set forth in Recital A.

(b) “Bar Date to Object” will be the date set by the Court as the deadline for Settlement Class Members to file an Objection, which shall be sixty (60) days after the date the Notice must be delivered to the Potential Settlement Class Members.

(c) “Bar Date to Opt-Out” shall be the date set by the Court as the deadline for Potential Settlement Class Members to opt-out of the Settlement. The Bar Date shall be sixty (60) days after the date the Notice must be delivered to the Potential Settlement Class Members.

(d) “Class Counsel” shall mean the law firms of Kaliel PLLC, Kopelowitz Ostrow P.A., and Melick & Porter LLP.

(e) “Court” shall mean the Superior Court for the County of Suffolk, Massachusetts.

(f) “Defendant’s Counsel” shall mean Hinckley, Allen, & Snyder, LLP.

(g) “Effective Date” shall be thirty (30) days after the entry of the Final Approval Order, provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) sixty (60) days after entry of the Final Approval Order, if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after an appellate court ruling affirming the Final Approval Order; or (3) thirty (30) days after entry of a dismissal of the appeal.

(h) “Exclusion Letter” shall mean a letter by a Potential Settlement Class Member who elects to opt out of this Agreement.

(i) “Final Approval Hearing Date” shall be the date set by the Court for the hearing on any and all motions for final approval of this Agreement.

(j) “Final Approval Order” shall mean the Order and Judgment approving this Agreement issued by the Court at or after the Final Approval Hearing Date.

(k) “Motion for Final Approval” shall mean the motion or motions filed by Class Counsel, as referenced in Section 6, below.

(l) “Net Settlement Fund” shall mean the net amount of the Settlement Fund after payment of court approved attorneys’ fees and costs and any court approved service award.

(m) “Notice” shall mean the notice to the Potential Settlement Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order (defined below), in accordance with Mass. Rule of Civil Procedure 23(c)(2), and shall refer to the form of Notices attached hereto as Exhibits 1-3.

(n) “NSF Fee(s)” shall mean the fee that Defendant charges when a third party submits an item in an attempt to collect on a check (including an electronic check) or ACH payment item and the customer’s account has an insufficient balance to cover the cost of the check or item resulting in Defendant’s rejection of the attempt at collection and refusal to pay the check or item.

(o) “Overdraft Fee(s)” shall mean the fee that Defendant charges when a third party attempts to collect on a check (including an electronic check) or ACH payment item and the Defendant pays the check or item, despite the fact that the customer’s account had an insufficient balance to cover the cost of the check or item.

(p) “Preliminary Approval/Notice Order” shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to the Settlement Class Members, as provided in Sections 4 and 5, below.

(q) “Retry NSF/Overdraft Fee(s)” shall mean the NSF Fee or Overdraft Fee that Defendant charges on the second or third time (or subsequent times) a third party submits an item in an attempt to collect on a check (including an electronic check) or ACH payment item after the first or prior attempt at collection was rejected and the customer’s account was assessed an NSF Fee.

(r) “Settlement Class” shall mean those customers of Defendant who were charged Retry NSF/Overdraft Fees between June, 4 2014 and March 29, 2021.

(s) “Class Period” shall mean the time period from June, 4 2014 and March 29, 2021.

(t) “Settlement Administrator” shall mean the entity that will provide the notice and settlement administration. Defendant’s Counsel shall request bids from at least two separate potential Settlement Administrators.

(u) “Potential Settlement Class Member” shall mean any business or consumer customer of Defendant who is in the Settlement Class.

(v) “Settlement Class Member” shall mean all Potential Settlement Class Members who do not opt-out.

(w) “Settlement Fund” shall mean the one hundred and ten thousand dollars (\$110,000.00) to be paid by Defendant under the terms of this Agreement.

2. CHANGE IN PRACTICE. Defendant has implemented the following change in its practices:

As a result of the litigation, on March 29, 2021, Defendant updated its account agreement and disclosures to clarify when Retry NSF/Overdraft Fees can be assessed.

3. **CLASS ACTION SETTLEMENT.** Plaintiff shall propose and recommend to the Court that the Settlement Class be certified. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a class action. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

4. **PRELIMINARY SETTLEMENT APPROVAL.** On or before April 30, 2021 (or such other date set by the Court), Class Counsel shall use reasonable efforts to file a Motion seeking a Preliminary Approval/Notice Order. The Preliminary Approval/Notice Order shall provide for: Preliminary Approval of this Agreement, provisional certification of the class for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified class, and the requirement that the Notice be given to the Potential Settlement Class Members as provided in Section 5, below.

5. **NOTICE TO THE CLASSES.**

(a) The Settlement Administrator shall send the Notice to all Potential Settlement Class Members as specified by the Court in the Preliminary Approval/Notice Order.

(b) For all Potential Settlement Class Members, a Postcard Notice (Exhibit 1) shall be mailed by first class United States mail to the best mailing addresses available in Defendant's records. Defendant shall provide the Settlement Administrator with last known mailing addresses for Potential Settlement Class Members. The Settlement Administrator shall run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Notice is returned with forwarding address information, the Settlement Administrator shall re-mail the Notice to the forwarding address. For all mailed Notices that are returned as undeliverable, the Settlement Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Settlement Administrator shall re-mail the Notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail. The Postcard Notice shall inform Potential Settlement Class Members how they may request a copy of the Long Form Notice (Exhibit 2).

(c) The Settlement Administrator shall maintain a database showing addresses to which each Notice was sent and any Notices that were not delivered. A summary report of the Notice shall be provided to the Parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Settlement Administrator regarding the Notice shall be available to the Parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party without a court order.

(d) The Notices shall be in a form approved by the Court and, substantially similar to the notice forms attached hereto as Exhibits 1-3. The Parties may by mutual written consent make non-substantive changes to the Notices without Court approval.

(e) The Settlement Administrator shall also maintain a dedicated website for providing information to Potential Settlement Class Members, including access to the Long Form Notice.

(f) All costs associated with publishing, mailing, and administering the Notice as provided for in this section, and all costs of administration including, but not limited to, the Settlement Administrator's fees and costs shall be paid by Defendant, separate and apart from the Settlement Fund.

6. **MOTION FOR FINAL APPROVAL**. No later than 30 days after the deadline for submission of opt-outs and objections, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

7. **ENTRY OF JUDGMENT**. The Final Approval Order shall constitute the Court's final judgment in this action. The Court shall retain jurisdiction to enforce the terms of the Final Approval Order.

8. **THE SETTLEMENT FUND AND DISTRIBUTION**.

(a) **Payments to Settlement Class Members**. Within ten (10) days after the Effective Date, Defendant shall transfer the Settlement Fund to the Settlement Administrator to be deposited in an interest bearing account for the benefit of the Class (the "Settlement Administration Account"). The Settlement Administrator shall establish the Settlement Administration Account. Within ten (10) days after the entry of the Final Approval Order, the Settlement Administrator shall transfer Individual Payments from the Settlement Fund to Settlement Class Members, as provided in subsection 8(d)(iv)(2), below. The Settlement Fund shall be the total amount Defendant is obligated to pay under the terms of this Agreement and includes (a) Class Counsel's fees and costs awarded by the Court; and (b) any Service Award payment to the Named Plaintiff approved pursuant to Paragraph 8(d)(ii) below. Defendant shall not make any additional or further contributions to the Settlement Fund.

(b) All funds held by the Settlement Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

(c) All funds held by the Settlement Administrator at any time shall be deemed to be a Qualified Settlement Fund as described in Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1.

(d) Payments shall be made from the Settlement Fund as follows:

(i) **Class Counsel's Fees and Costs**. Class Counsel's reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid by the Settlement Administrator from the Settlement Fund ten (10) days after entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees of up to one-third (33-1/3%) of the Settlement Fund, plus reimbursement of reasonable litigation costs, to be approved by the court. Defendant agrees not to oppose an application up to one-third (33-1/3%) of the Settlement Fund, but reserves the right to oppose an application for fees in excess of that amount. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay all fees and costs to Defendant; should the award of fees and costs be reduced on appeal, Class Counsel shall immediately repay into the Settlement Fund an amount

equal to the reduction ordered by the appellate court. This paragraph was negotiated and agreed to only after all material terms of the Settlement were agreed upon.

(ii) Service Award. Named Plaintiff may apply to the Court for a Service Award of up to two thousand dollars (\$2,000) without an objection from Defendant. Subject to the Court's approval, the Service Award shall be paid by the Settlement Administrator from the Settlement Fund ten (10) days after the Effective Date.

(iii) Payments to Settlement Class Members. The amount paid to each Settlement Class Member shall be calculated as follows:

(Net Settlement Fund/Total Retry NSF/Overdraft Fees)

X

Number of Retry NSF/Overdraft Fees per Settlement Class Member¹

(iv) Payments to individual Settlement Class Members ("Individual Payments") shall be made no later than ten (10) days after the Effective Date, as follows: The Settlement Administrator shall send Settlement Class Members a check to the address used to provide the Notice, or at such other address as designated by the Settlement Class Member. The Settlement Class Member shall have one hundred eighty (180) days to negotiate the check. Any checks uncashed after one hundred eighty (180) days shall be distributed pursuant to Section 10.

(e) In no event shall any portion of the Net Settlement Fund revert to Defendant.

9. THE SETTLEMENT ADMINISTRATOR.

(a) The Settlement Administrator shall execute a retainer agreement that shall provide, among other things, that the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement.

(b) The Settlement Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.

(c) The Settlement Administrator shall keep all information regarding Potential Settlement Class Members confidential, except as otherwise provided herein. All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be

¹ The Parties acknowledge that Settlement Class Members have been subject to two different levels of Retry NSF/Overdraft Fees. Some Settlement Class Members will have accounts subject to Retry NSF/Overdraft Fees in the amount of \$5, some Settlement Class Members will have accounts subject to Retry NSF/Overdraft Fees in the amount of \$30, and some Settlement Class Members will have multiple accounts subject to both levels of Retry NSF/Overdraft Fees. For purposes of the formula for determining the amount of Payments to Settlement Class Members, the value for both Total Retry NSF/Overdraft fees and Number of Retry NSF/Overdraft Fees per Customer shall be calculated as follows: (a) each \$30 Retry NSF/Overdraft Fee shall count as one (1) Retry NSF/Overdraft Fee, and (b) each \$5 Retry NSF/Overdraft Fees shall count as one-sixth (0.167) Retry NSF/Overdraft Fees.

destroyed twelve (12) months after the Effective Date, provided that Class Counsel and Defendant's Counsel, or either of them, at their own cost, shall receive a complete digital copy of the Settlement Administrator's records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies.

(d) The Settlement Administrator also shall be responsible for timely and properly filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Except as provided herein, Settlement Class Members shall be responsible for their own tax reporting of payments received under the terms of this Agreement.

(e) The Settlement Administrator shall provide the data in its claims administration database to Defendant's Counsel and/or Class Counsel in response to any written request, including an email request. The written request shall be copied to the other Party when made.

(f) Within one hundred ninety (190) days after the Effective Date or such other date as required by the Court, the Settlement Administrator shall prepare a final report, which, at a minimum, shall set forth the total payments issued to Settlement Class Members by the Settlement Administrator, the total amount of any checks uncashed and/or returned, and the total amount of money being held by the Settlement Administrator.

10. CY PRES PAYMENT. Within two hundred (200) days of the Effective Date, the total amount of uncashed checks shall be paid by the Settlement Administrator to *cy pres* recipients agreed upon by the Parties and approved by the Court.

11. OPT-OUTS.

(a) A Potential Settlement Class Member who wishes to exclude himself or herself from this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall submit an Exclusion Letter by mail to the Settlement Administrator. For an Exclusion Letter to be valid, it must be postmarked on or before the Bar Date to Opt-Out. Any Exclusion Letter shall identify the Potential Settlement Class Member, state that the Potential Settlement Class Member wishes to be excluded from the Agreement, and shall be signed and dated.

(b) The Settlement Administrator shall maintain a list of Potential Settlement Class Members who have excluded themselves and shall provide such list to Defendant's Counsel and Class Counsel at least five (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Settlement Administrator shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks). The Settlement Administrator shall make the original Exclusion Letters available to Class Counsel, Defendant's Counsel and/or the Court upon two (2) court days' written notice.

12. OBJECTIONS.

(a) Any Settlement Class Member may object to this Agreement.

(b) To be valid and considered by the Court, the objection must be in writing and sent by first class mail, postage pre-paid, to the Court, Settlement Administrator, Class Counsel, and

Defendant's Counsel. The objection must be postmarked on or before the Bar Date to Object, and must include the following information:

(i) A heading referring to the *Holt v. The Cooperative Bank of Cape Cod* Action;

(ii) The objector's name, address, telephone number, the last four digits of his or her account number (current or former) or Social Security Number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;

(iii) A statement of the factual and legal basis for each objection and any exhibits the objector wishes the Court to consider in connection with the objection; and

(iv) A statement as to whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying the counsel by name, address, and telephone number.

(c) Class Counsel and/or Defendant's Counsel shall file any responses to objections at least seven (7) days prior to the Final Approval Hearing Date.

(d) Any objector who retains counsel shall be solely responsible for paying his or her own attorney's fees and costs.

(e) Any objector who fails to comply with the provisions herein shall waive and forfeit any and all rights to appear and/or object separately and shall be bound by the terms of this Agreement and the orders and judgments of the Court.

13. RELEASE. Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiff, on behalf of himself and all of his respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, and each of the Settlement Class Members, including their respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, hereby fully releases and forever discharges Defendant, and all of its past, present and future predecessors, successors, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys, insurers, and agents (collectively, the "Defendant Releasees") from any and all charges, complaints, claims, demands, debts, obligations, attorneys' fees, expenses, costs, actions, damages and remedies, liabilities, and causes of action of every nature, character, and description, whether arising under federal, state, or local law or under a constitutional provision, statute, regulation, rule, contract, or common law, whether or not now known, asserted or unasserted, suspected or unsuspected, fixed or contingent, or claimed against the Defendant Releasees that may have accrued from the beginning of time until the Effective Date that relate to the conduct, omissions, duties or matters during the Class Period that were or could have been alleged in the Complaint ("Released Claims"), including resulting from, related to, or arising out of the following: (1) the assessment or charging of any NSF Fee and/or Overdraft Fee; (2) the sufficiency of Defendant's disclosures in its deposit account terms and conditions and Settlement Class Members' assent to the same; and (3) the assessment or charging of multiple NSF Fees and/or Overdraft Fees when there are multiple attempted presentments for

collection on individual Automated Clearing House (ACH) payments or check payments (collectively, the “Released Claims”). This Paragraph constitutes a waiver of any statutory provision, right or benefit of any state or territory of the United States or any jurisdiction, and any principle of common law, at law or in equity, that prohibits the waiver of unknown claims.

14. CONDITIONS TO SETTLEMENT.

(a) This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 4 above;

(ii) The Court has entered the Final Approval Order as required by Sections 6 and 7 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 14(a) are not met, and the Parties have no further recourse from the Court or an appellate court to complete these conditions, then this Agreement shall be cancelled and terminated.

(c) Defendant shall have the option to terminate this Agreement if five percent (5%) or more of the Potential Settlement Class Members opt-out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 14(c) within ten (10) business days after the Bar Date to Opt-Out, or the option to terminate shall be considered waived.

(d) In the event this Agreement is terminated pursuant to Section 14(c), or fails to become effective in accordance with Section 14(b), then the parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

(i) Neither the Agreement terms nor any publicly disseminated information regarding the Agreement including, without limitation, the Notice, court filings, orders, and public statements relating to the Agreement, may thereafter be used as evidence for any purpose whatsoever.

(ii) The fact of, and any documents, findings, decisions, or orders relating to any failure of a court to approve the Agreement or any modifications or amendments of the Agreement, as well as the fact and content of any objections which may have been filed to the Agreement, may not be used as evidence for any purposes whatsoever.

15. REPRESENTATIONS.

(a) The Parties to this Agreement represent that they have each read this Agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Agreement.

(b) The Parties have not relied on any representations, promises, or agreements other than those expressly set forth in this Agreement.

(c) The Named Plaintiff, on behalf of the Settlement Class members, represents that he has made such inquiry into the terms and conditions of this Agreement as he deems appropriate, and that by executing this Agreement, he, based on Class Counsel's advice, and their understanding of the case, believe the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Potential Settlement Class Members.

(d) The Named Plaintiff represents that he has no knowledge of conflicts or other personal interests that would in any way impact his representation of the Potential Settlement Class Members in connection with the execution of this Agreement.

(e) Defendant represents and warrants that it has obtained all corporate authority necessary to execute this Agreement.

16. FURTHER ASSURANCES. Each of the Parties hereto agrees to execute and deliver all such further documents consistent with this Agreement, and to take all such further actions consistent with this Agreement, as may be required in order to carry the provisions of this Agreement into effect, subject to Class Counsel's obligation to protect the interests of the Potential Settlement Class Members. Warranties, representations, agreements, and obligations contained in this Agreement shall survive the execution and delivery of this Agreement and shall survive any and all performances in accordance with this Agreement.

17. APPLICABLE LAW. This Agreement shall be governed by, interpreted, construed, and enforced pursuant to the laws of the Commonwealth of Massachusetts.

18. NO ORAL WAIVER OR MODIFICATION. No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of any other provision or breach, whether or not similar. Nor shall any actual waiver or modification constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the party making the waiver or modification.

19. ENTIRE AGREEMENT. This Agreement, including the exhibits attached hereto, constitutes the entire agreement made by and between the Parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the parties hereto or their representatives pertaining to the subject matter hereof. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement.

20. BINDING ON SUCCESSORS. This Agreement shall inure to the benefit of, and shall bind, each of the Parties hereto and their successors.

21. ARM'S-LENGTH AGREEMENT. The parties have negotiated all of the terms and conditions of this Agreement at arm's length. All terms and conditions are material and necessary to this Agreement and have been relied upon by the parties in entering into this Agreement.

22. SEVERABILITY. In the event any one or more of the provisions of this Agreement is determined to be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

Notwithstanding any other provision of this Agreement, any order of the Court regarding Class Counsel's request for attorneys' fees and expenses or Service Award to Named Plaintiff is neither material to, nor part of the Agreement, and shall not operate to terminate or cancel the Agreement, or affect or delay the judgment approving this Agreement from becoming final. Neither a modification nor reversal on appeal of any order of the Court regarding the Class Counsel's request for attorneys' fees and expenses, or Named Plaintiff's Service Award, shall constitute grounds for any Party to cancel, terminate, or withdraw from the Agreement.

23. COUNTERPARTS AND FACSIMILE SIGNATURES. This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement. Facsimile and pdf signature pages shall have the same force and effect as original signatures.

24. NOTIFICATION. Any notice to be given to Class Counsel and/or Named Plaintiff shall be sent by email as follows:

Jeffrey Kaliel
Sophia Gold
Kaliel PLLC
1875 Connecticut Avenue, NW, 10th Floor
Washington, DC 20009
Phone Number: (202) 350-4783
sgold@kalielllc.com

Jeff Ostrow
Kopelowitz Ostrow P.A.
1 West Las Olas Blvd., Ste. 500
Fort Lauderdale, FL 33301
Telephone: (954) 525-4100
ostrow@kolawyers.com

Any notice to be given to Defendant under the terms of this Agreement shall be sent by email as follows:

Adam M. Ramos, Esq.
Hinckley, Allen & Snyder, LLP.
100 Westminster Street, Suite 1500
Providence, RI 02903
(401) 457-5164
aramos@hinckleyallen.com

Katherine B. Savage, Esq.
Hinckley, Allen & Snyder, LLP.
100 Westminster Street, Suite 1500
Providence, RI 02903
(401) 457-5184
ksavage@hinckleyallen.com

Any notice to the Settlement Administrator shall be sent by email to the address of the Settlement Administrator.

IN WITNESS WHEREOF, the parties have entered this Agreement as of the dates set forth below.

Dated: April 26, 2021

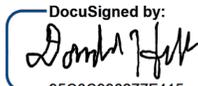
THE COOPERATIVE BANK OF CAPE COD

By: 
Scott Kwarta

Its: EVP & Chief Risk Officer

Dated: April 26, 2021

DONALD HOLT, an individual on behalf of himself and those he represents

By: 
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Donald Holt

APPROVED AS TO FORM:

Dated: April 26, 2021

HINCKLEY, ALLEN & SNYDER LLP

By: 
Adam M. Ramos

Attorneys for Defendant THE COOPERATIVE BANK OF CAPE COD

Dated: April 26, 2021

KALIEL PLLC

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Jeffrey Kaliel
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By: _____
Jeffrey Kaliel
For the Firm

KOPELOWITZ OSTROW P.A.

By: _____

Jeff Ostrow
For the Firm

MELICK & PORTER LLP

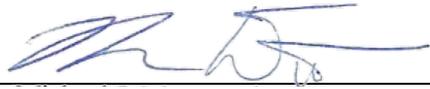
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For the Firm

EXHIBIT 1

LEGAL NOTICE

If you had an account with The Cooperative Bank of Cape Cod and you were charged a nonsufficient funds fee, you may be entitled to a payment from a class action settlement.

1-833-358-1843

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Postal Service: Please do not mark barcode

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<<CO>>

<<Addr2>>

<<Addr1>>

<<City>>, <<St>> <<Zip>>

<<Country>>

A settlement has been reached with the Cooperative Bank of Cape Cod (“Defendant”) in a class action lawsuit about overdraft and nonsufficient funds (“NSF”) fees charged on accounts from June 4, 2014 through March 29, 2021.

Who is included? Defendant’s records indicate that you are a “Potential Settlement Class Member” in this Settlement because you were charged an NSF fee. Specifically, Potential Settlement Class Members are: all customers of Defendant who were charged an NSF fee on their accounts for a single payment submitted to Defendant for collection from June 4, 2014 through March 29, 2021, which request for collection initially was rejected for insufficient funds, but subsequently was re-presented to Defendant for collection on one or more additional occasions resulting in additional NSF and/or Overdraft Fees.

What does the Settlement provide? Defendant will create a \$110,000 Settlement Fund. After deducting attorneys’ fees and costs, service awards to the Named Plaintiff paid for that purpose by Defendant, the balance of the Settlement Fund will be divided proportionately among all Class Members. In addition, Defendant has implemented changes to its disclosures.

What are my options? If you do nothing and the Settlement is approved and becomes final, you will automatically receive a check and your rights will be affected. If you do not want to be legally bound by the Settlement or receive a check, you must exclude yourself from it by **[Date]**. Unless you exclude yourself, you will not be able to sue or continue to sue Defendant for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (do not exclude yourself), you may object to it by **[Date]**.

The Court’s Fairness Hearing. The Superior Court for the County of Suffolk, Massachusetts, located at 3 Pemberton Square, Boston, MA 02108 will hold a hearing in this case (*Holt v. The Cooperative Bank of Cape Cod*) on _____ at _____. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel’s request for attorneys’ fees (up to 33 1/3% of the Settlement Fund) and costs; and (3) a \$2,000 service award to the Named Plaintiff. You or your lawyer may appear at the hearing at your own expense, but you don’t have to.

More information, including the Long Form Notice and Settlement Agreement are available at http://secure-web.cisco.com/1cjoJ5-ZVNCJIQ98zXk74Ya5ERK9BClkIgEyd-hrfuWQ620Kp97QbptYXfFISWiQtR3q9XNqw8XDRjepKfAQCGqeA4jf957FUM-pUGcn2_JFZaegSq1wFK11HNSUju9VyuPIFzcCxKHQCWzL1km9N2Bu0etffGzAZPwwHbT80o01OiXWi9uFEvwwZH6irjrmD9eVpv3WxsclhcH6YLdXdVAEeTYRSvQ_hVxhz-fr5H5BKNkS_wCQBTGA3zYEViaLeHy3Q6OJDhZxkB-z4iQvMQ/http%3A%2F%2Fwww.RetryNSFOverdraftFeeSettlement.com or by calling 1-833-358-1843.

Exhibit 2

Donald Holt
v.
The Cooperative Bank of Cape Cod

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

**READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT
MAY AFFECT YOUR RIGHTS!**

**IF YOU HAD AN ACCOUNT WITH THE COOPERATIVE BANK OF CAPE
COD (“DEFENDANT”) AND YOU WERE CHARGED A NONSUFFICIENT
FUNDS (“NSF”) FEE AND/OR OVERDRAFT FEE BETWEEN JUNE 4, 2014,
AND MARCH 29, 2021, THEN YOU MAY BE ENTITLED TO A PAYMENT
FROM A CLASS ACTION SETTLEMENT**

The Superior Court for the County of Suffolk, Massachusetts has authorized this Notice; it is
not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
DO NOTHING	If you have been assessed the type of NSF fee and/or Overdraft Fee that is being challenged in this case, then you will receive a payment from the Settlement Fund so long as you do not exclude yourself (described in the next box).
EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS	You can choose to exclude yourself from the settlement or “opt out.” This means you choose not to participate in the settlement. You will keep your individual claims against Defendant, but you will not receive a payment. If you want to recover against Defendant, then you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT	You can file an objection with the Settlement Administrator explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, you <u>will</u> receive a payment and you <u>will not</u> be able to sue Defendant for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved.

These rights and options – *and the deadlines to exercise them* – along with the material terms of the settlement are explained in this Notice.

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Holt v. The Cooperative Bank of Cape Cod*. The case is a “class action.” That means that the “Named Plaintiff,” Donald Holt, is an individual who is acting on behalf of a group that includes all customers of Defendant who were charged an NSF fee on their accounts for a single payment submitted to Defendant for collection from June 4, 2014 through March 29, 2021, which request for collection initially was rejected for insufficient funds, but subsequently was re-presented to Defendant for collection on one or more additional occasions resulting in additional NSF and/or Overdraft Fees. The persons in this group are collectively called the “Class Members.”

The Named Plaintiff claims he was improperly charged NSF and/or Overdraft fees. Defendant does not deny that it assessed the Named Plaintiff NSF and/or Overdraft fees, but denies that its practices give rise to claims for damages by the Named Plaintiff or any Class Member. Defendant specifically maintains that it properly and lawfully assessed all fees in accordance with the terms of its agreements, disclosure, and applicable law.

2. Why did the parties settle?

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Named Plaintiff’s lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiff. The Named Plaintiff has the duty to act in the best interests of the class as a whole and, in this case, it is his belief, as well as Class Counsel’s opinion, that this settlement is in the best interest of all Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that Defendant breached its agreements with customers or otherwise acted improperly by assessing the NSF and/or Overdraft fees that are the subject of this case. There also is uncertainty about whether the Named Plaintiff’s claims are subject to other defenses that might result in no recovery or less recovery to Class Members. Even if the Named Plaintiff were to win at trial, there is no assurance that the Class Members would be awarded more than the current settlement amount, and it may take years of litigation before any payments would be made. By settling, the Class Members will avoid these and other risks and the delays associated with continued litigation.

Although Defendant disputes Plaintiff’s claims, it has agreed to settle to avoid the costs, distractions and risks of litigation. Thus, even though Defendant denies that it did anything improper, it believes settlement is in its best interest and in the best interests of all of its customers.

WHO IS IN THE SETTLEMENT

3. How do I know if I am part of the Settlement?

If you received a notice, then Defendant’s records indicate that you are a Class Member who is entitled to receive a payment.

YOUR OPTIONS

4. What options do I have with respect to the Settlement?

You have three options: (1) do nothing and you will receive a payment according to the terms of this settlement; (2) exclude yourself from the settlement (“opt out” of it); or (3) participate in the settlement but object to it. Each of these options is described in a separate section below.

5. What are the critical deadlines?

If you do nothing, you will receive settlement funds via check mailed to your residence of record when the settlement is paid at the close of the claims period.

The deadline for sending a letter to exclude yourself from or opt out of the settlement is [REDACTED].

The deadline to file an objection with the Court is also [REDACTED].

6. How do I decide which option to choose?

If you do not like the settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this settlement, then you may want to consider opting out.

If you believe the settlement is unreasonable, unfair, or inadequate and the Court should reject the settlement, you can object to the settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the settlement will not be approved and no payments will be made to you or any other Class Member. If your objection (and any other objection) is overruled, and the settlement is approved, then you will still get a payment.

7. What has to happen for the Settlement to be approved?

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which authorized this Notice. The Court will make a final decision regarding the settlement at a “Fairness Hearing” or “Final Approval Hearing,” which is currently scheduled for [REDACTED].

THE SETTLEMENT PAYMENT

8. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$110,000.00. As discussed separately below, attorneys’ fees, litigation costs, and a service award to the Named Plaintiff, will be paid out of this amount. The balance of the Settlement Fund will be divided among all Class Members proportionally. Additionally, as a result of this lawsuit, Defendant has implemented changes to its disclosures that clarify Defendant’s NSF and Overdraft fee practices.

9. How much of the settlement fund will be used to pay for attorney fees and costs?

Class Counsel will request that the Court award up to one-third (33-1/3%) of the value of the settlement as attorneys’ fees plus reimbursement litigation costs incurred in prosecuting the case. The

Court will decide the amount of the attorneys' fees based on a number of factors, including the risk associated with bringing the case, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

10. How much of the settlement fund will be used to pay the Named Plaintiff a Service Award?

Class Counsel on behalf of the Named Plaintiff will request that the Court award him up to \$2,000 a piece for their role in securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

11. How much will my payment be?

The balance of the Settlement Fund will be divided among all Class Members proportionally. Class Members will receive a check for the amount they are entitled to receive from the Settlement Administrator.

12. Do I have to do anything if I want to participate in the Settlement?

No. Any amount you are entitled to under the terms of the settlement will be distributed to you unless you choose to exclude yourself from the settlement, or "opt out." Excluding yourself from the settlement means you choose not to participate in the settlement. You will keep your individual claims against Defendant, but you will not receive a payment. In that case, if you choose to seek recovery against Defendant, then you will have to file a separate lawsuit or claim.

13. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 22-24) on [redacted] to consider whether the settlement should be approved. If there are no objections and the Court approves the settlement, then the Settlement Administrator should begin paying claims within approximately forty days of the Court's approval. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

14. How do I exclude myself from the settlement?

If you do not want to receive a payment, or if you want to keep any right you may have to sue Defendant for the claims alleged in this lawsuit, then you must exclude yourself, or "opt out."

To opt out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say "I hereby elect to be excluded from the settlement in the *Holt v. The Cooperative Bank of Cape Cod* class action. Be sure to include your name, the last four digits of your account number (current or former) or Social Security Number, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by [redacted], and sent to:

Holt v. The Cooperative Bank of Cape Cod Settlement Administrator
JND Legal Administration
PO Box 91398
Seattle, WA 98111

15. What happens if I opt out of the settlement?

If you opt out of the settlement, you will preserve and not give up any of your rights to sue Defendant for the claims alleged in this case. However, you will not be entitled to receive a payment from this settlement.

16. If I exclude myself, can I obtain a payment?

No. If you exclude yourself, you will not be entitled to a payment.

OBJECTING TO THE SETTLEMENT

17. How do I notify the Court that I do not like the settlement?

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt out, from the settlement. (Class Members who exclude themselves from the settlement have no right to object to how other Class Members are treated.) To object, you **must** send a written document to the Settlement Administrator, the Court, Class Counsel, and Defendant's counsel, at the addresses below. Your objection must include the following:

- A heading referring to the *Donald Holt v. The Cooperative Bank of Cape Cod* Class Action;
- Your name, address, telephone number, the last four digits of your account number (current or former) or Social Security Number, and the contact information for any attorney you have retained in connection with this case;
- A statement of the factual and legal basis for each objection and any exhibits you wish the Court to consider in connection with the objection;
- A statement as to whether you intend to appear at the Final Approval Hearing, either in person or through an attorney, and, if through an attorney, identifying the attorney by name, address, and telephone number; and
- Your signature.

Class Counsel and/or Defendant's Counsel will file any objections and responsive pleadings at least seven days before the Final Approval Hearing Date.

Be advised that if you object to the settlement and retain an attorney for purposes of objecting, you are solely responsible for paying that attorney's fees and costs.

If you fail to comply with the provisions herein, you will waive and forfeit any and all rights to appear and/or object separately, and will be bound by the terms of this Agreement and the orders and judgments of the Court.

All objections must be post-marked no later than [REDACTED], and must be mailed to the above-identified recipients as follows:

CLAIMS ADMINISTRATOR
Holt v. The Cooperative Bank of Cape Cod Settlement Administrator JND Legal Administration PO Box 91398 Seattle, WA 98111
MASSACHUSETTS SUPERIOR COURT SUFFOLK COUNTY
Attn: Clerk 3 Pemberton Square Boston, MA 02108
CLASS COUNSEL
Jeffrey D. Kaliel, Esq. and Sophia Gold, Esq. Kaliel, PLLC 1875 Connecticut Ave. NW, 10 th Floor Washington, D.C. 20009 Jeff Ostrow Kopelowitz Ostrow P.A. 1 West Las Olas Blvd., Ste. 500 Fort Lauderdale, FL 33301 Brian C. Davis, Esq. Melick & Porter, LLP One Liberty Square, 7 th Floor Boston, MA 02109
DEFENDANT'S COUNSEL
Adam Ramos, Esq. and Katherine Savage, Esq. Hinckley, Allen, & Snyder, LLP 100 Westminster Street, #1500 Providence, RI 02903

18. What is the difference between objecting and requesting exclusion from the settlement?

Objecting is telling the Court that you do not believe the settlement is fair, reasonable, and adequate for the class, and asking the Court to reject it. You can object only if you do not opt out of the settlement. If you object to the settlement and do not opt out, then you are entitled to a payment if the settlement is approved, but you will release claims you might have against Defendant. Excluding yourself or opting out is telling the Court that you do not want to be part of the settlement, and do not want to receive a payment or release claims you might have against Defendant for the claims alleged in this lawsuit.

19. What happens if I object to the settlement?

If the Court sustains your objection, or the objection of any other Class Member, then there is no settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the settlement.

THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval or Fairness Hearing at [date/time] at _____. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and expenses and how much the Named Plaintiff should get as a "Service Award" for acting as the class representatives.

21. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have submitted an objection, then you may want to attend.

22. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 18, above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing."

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you do nothing at all, and if the settlement is approved, then you may receive a payment that represents your share of the Settlement Fund. You will be considered a part of the class, and you will give up claims against Defendant for the conduct identified in the settlement. You will not give up any other claims you might have against Defendant that are not released in this settlement.

THE LAWYERS REPRESENTING YOU

24. Do I have a lawyer in this case?

The Court ordered that the lawyers and their law firms referred to in this notice as “Class Counsel” will represent you and the other Class Members.

25. Do I have to pay the lawyer for accomplishing this result?

No. Class Counsel will be paid directly from the Settlement Fund.

26. Who determines what the attorneys’ fees will be?

The Court will be asked to approve the amount of attorneys’ fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application at the website established by the Settlement Administrator, at http://secure-web.cisco.com/1cjoJ5-ZVNCJlQ98zXk74Ya5ERK9BClkIgEyd-hrfuWQ620Kp97QbptYXfFISWiQtR3q9XNqw8XDRjepKfAQCGqeA4jf957FUM-pUGcn2_JFZaegSq1wFK11HNSUju9VyuPIFzcCxKHQCWzL1km9N2Bu0etffGzAZPwwHbT80o01OiXWi9uFEvwwZH6irjrmD9eVpv3WxsclhcH6YLdXdVAEeTYRSvQ_hVxhz-fr5H5BKNkS_wCQBTGA3zYEViaLeHy3Q6OJDhZxkB-z4iQvMQ/http%3A%2F%2Fwww.RetryNSFOverdraftFeeSettlement.com

For additional information about the settlement and/or to obtain copies of the settlement agreement, the pleadings in this case or to change your address for purposes of receiving a payment, you should contact the Settlement Administrator as follows:

Holt v. The Cooperative Bank of Cape Cod Bank Settlement Administrator
JND Legal Administration
PO Box 91398
Seattle, WA 98111

PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.