

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is entered into by and between Tompkins Community Bank (“Defendant” or “Tompkins,” as defined herein), and Stacy Mock (“Plaintiff,” as defined herein), subject to the Court’s preliminary and final approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, Tompkins, Class Counsel (as defined herein) and Plaintiff hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the court of a Final Order and Judgment, all claims of the Settlement Class against Tompkins in the action currently pending in the United States District Court for the Northern District of New York as *Mock v. Tompkins Community Bank*, Case No. 3:22-cv-00995 (the “Litigation”), shall be settled, compromised, and dismissed upon the terms and conditions contained herein.

### **I. RECITALS**

The following recitals and the exhibits to this Agreement (“Exhibits”) are material terms of this Settlement Agreement. Capitalized terms as used in these Recitals and the Exhibits hereto shall have the meaning ascribed to them herein and in the Definitions below. This Settlement Agreement is made with reference to, and in contemplation of, the following facts and circumstances:

1. Plaintiff in this Litigation challenges the methodology Tompkins uses to assess the Challenged Fees (defined below). On September 20, 2022, Plaintiff filed her original Class Action Complaint (“Complaint”) alleging that Tompkins improperly charged its checking account customers more than one fees in connection with checking transactions presented multiple times for payment.

2. Plaintiff asserts four claims on this basis: (i) Breach of Contract; (ii) Breach of the Covenant of Good Faith and Fair Dealing; (iii) Unjust Enrichment; and (iv) Violation of New York General Business Law § 349, et seq.

3. Plaintiff takes the position in this Litigation that the Challenged Fees (defined below) were improper.

4. Tompkins filed its answer on January 20, 2023. After holding a scheduling conference on February 11, 2023 and issuing a pretrial scheduling order, Judge Lovric referred the parties to mandatory mediation in an order dated February 21, 2023.

5. On April 21, 2023, the Parties participated in good faith in the scheduled mediation (the “Mediation”) before Judge Richard A. Stone (ret.) (the “Mediator”). At the conclusion of the Mediation, the Parties arrived at the settlement in principle.

6. This Settlement Agreement resulted from a good faith, arm’s-length settlement negotiations, including the Mediation.

7. Tompkins denies any liability or wrongdoing of any kind associated with the alleged claims in the Litigation. Tompkins has denied and continues to deny all claims asserted or that could have been asserted, against it in the Litigation. Nothing herein shall constitute an

admission of wrongdoing or liability, or of the truth of any allegations in the Litigation. Nothing herein shall constitute an admission by Tompkins that the Litigation has been properly brought on a class or representative basis, or that classes may be certified in the Litigation, other than for settlement purposes. To this end, the settlement of the Litigation, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the settlement: (i) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Tompkins or of the truth of any of the allegations in the Litigation; (ii) are not and shall not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Tompkins in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; and (iii) are not and shall not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims: (a) for class certification; or (b) for dispute resolution through any other mechanism.

8. Class Counsel have investigated the facts and the law regarding the Litigation. Class Counsel and their expert have reviewed account data provided by Tompkins.

9. Based on their investigation, Class Counsel have concluded that a settlement according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of Plaintiff and the Class Members (as defined herein) recognizing: (i) the existence of complex and contested issues of law and fact; (ii) the risks inherent in litigation; (iii) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (iv) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (v) Plaintiff's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Class Members.

10. The Parties shall use their best efforts to effectuate this Agreement, including, but not limited to, cooperating in promptly seeking the Court's approval of this Agreement, certification of the Settlement Class, and release by the Releasors of the Released Claims.

11. No Party shall be deemed the drafter of this Agreement or any provision thereof. No presumption shall be deemed to exist in favor of or against any Party as a result of the preparation or negotiation of this Agreement.

12. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the state of New York without regard to conflict of laws principles. If any dispute related to this Settlement Agreement arises, the Parties agree to attempt to resolve the dispute in the first instance via mediation before Judge Stone.

13. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Released Parties, and Settlement Class Members any right or remedy under or by reason of this Agreement. Each of the Released Parties is an intended third-party beneficiary of this Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her, or its favor against all Releasors.

14. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same Settlement Agreement.

15. This Agreement may not be modified or amended unless such modification or amendment is in writing executed by the Parties, except as specifically permitted by this Agreement.

16. Where this Agreement requires any Party to provide notice or any other communication or document to any other Party, such notice, communication, or document shall be provided by email or letter by overnight delivery to their Counsel in the Litigation using the mail and email addresses identified in this Agreement.

17. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to the Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided in this Agreement, subject to the approval of the Court, with respect to all Recitals in Section I of this Agreement and the following terms and conditions.

## **II. DEFINITIONS**

In addition to the terms defined at various points within this Agreement, the following defined terms (“Definitions”), as used in this Agreement and the attached Exhibits, apply and shall have the following meanings:

18. “Administrative Expenses” shall mean the expenses associated with the Settlement Administrator and the performance of the Settlement Administrator’s duties hereunder, including but not limited to, costs in providing notice, maintaining the Settlement Website, maintaining or disbursing the Settlement Fund, communicating with Class Members or Counsel for the Parties, and disbursing Cash Award payments to the proposed Settlement Class Members, or disbursing any other payments called for hereunder.

19. “Cash Award” means a cash payment to an eligible Settlement Class Member as described in Section VI of this Agreement.

20. “Challenged Fees” mean fees challenged by Plaintiff in this lawsuit including Overdraft Fees and non-sufficient fund (“NSF”) fees that may be assessed when an ACH or check transaction is presented multiple times for payment.

21. “Class” or “Class Members” mean all current and former holders of a Tompkins Community Bank personal or business checking account, regardless of the state of residence or citizenship of its account holder, who, during the Class Period, incurred more than one Overdraft Fee or NSF Fee as a result of a checking account transaction being represented for payment. “Class” excludes all judicial officers presiding over this Litigation and their staff, and any of their immediate family members, as well as Plaintiff’s counsel and Tompkins’ officers and employees.

22. “Class Counsel” refers individually and collectively to James J. Bilsborrow of Weitz & Luxenberg, PC; Tyler B. Ewigleben of Johnson Firm; and Sophia Gold of Kaliel Gold PLLC.

23. “Class List” means a confidential (unredacted) compilation of Settlement Class Members, identified by name and mail address, denoting each Settlement Class Member’s calculated Cash Award amount. The Class List shall be compiled by the Settlement Administrator, using information provided by Tompkins. The Class List shall be kept and maintained by Tompkins and Tompkins’ Counsel, and shall be disclosed only as described in Paragraph 80, *infra*. The Settlement Administrator shall prepare and provide to Class Counsel a redacted, anonymized version of the Class List (“Redacted Class List”) denoting Class Members by a unique identifier number.

24. “Class Period” is defined as September 20, 2016 to and including the date on which the Court enters a Preliminary Approval Order as to this Settlement Agreement.

25. “Class Release” shall have the meaning set forth in Section VII of this Agreement.

26. “Class Representative” or “Plaintiff” refers to Stacy Mock, the named plaintiff in the Litigation.

27. “Counsel” refers collectively to both Class Counsel and Tompkins’ Counsel, as defined herein.

28. “Court” shall mean the United States District Court for the Northern District of New York and the Honorable Judge Miroslav Lovric, and his successors, if any.

29. “De-Identified Notice Database” means a de-identified version of the Notice Database (as defined herein) with the names and mail addresses of Class Members removed such that Members are identifiable solely by reference to the randomly generated numbers associated with each Class Member.

30. “Effective Date” shall mean five (5) business days after all of the following events or conditions have occurred:

- a. the Court has entered a Final order with respect to any attorneys’ fees and expenses to be awarded to Class Counsel, and with respect to any Service Award to Plaintiff, and any such order(s) is/are final and non-appealable;
- b. the time for appeal has expired and no appeal has been timely filed; or the settlement is affirmed on appeal without material change; no other appeal or petition is pending, and the time period during which any petition for rehearing or certiorari could be filed has expired and relief from the failure to file such a petition is not available; and
- c. the Final Approval Order and judgment of dismissal are Final as defined herein.

31. “Email Notice” means the notice of proposed class action settlement that will be provided to Tompkins accountholders who have provided an email address to Tompkins in accordance with Paragraph 107 of this Agreement, to be approved by the Court, and substantially in the form attached hereto as Exhibit 4.

32. “Escrow Account” means the escrow account established by the Settlement Administrator to hold the Settlement Fund following the Settlement Funding Deadline (defined in Paragraph 65 *infra*).

33. “Execution Date” shall mean the date on which this Agreement is fully executed by all Parties.

34. “Final” means the Final Approval Order and judgment of dismissal have been entered on the Court’s docket in the Litigation and: (a) the time to appeal from such order and judgment has expired and no appeal has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order and judgment; or (c) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

35. “Final Approval Hearing” means the hearing before the Court in which Plaintiff will request the Final Approval Order be entered by the Court approving the Settlement Agreement, approving Class Counsel’s request for an award of attorneys’ fees and costs, and approving a Service Award to the Class Representatives. The Parties will request that the Court schedule the Final Approval Hearing no fewer than one hundred twenty (120) days after entry of the Preliminary Approval Order.

36. “Final Approval Order” shall mean the final approval order and judgment of dismissal substantially in the form as shown in Exhibit 2, or as otherwise agreed to by the Parties, to be entered by the Court, granting final approval of the settlement. The Final Approval Order shall contain such provisions as set forth in Exhibit 2 and described in Section XIV. The form of the Final Approval Order and Judgment as attached hereto as Exhibit 2 is a material term of this Settlement Agreement.

37. “Long Form Notice” means the notice of proposed class action settlement that will be posted on the Settlement Website pursuant to Section X, *infra*, to be approved by the Court, and substantially in the form as Exhibit 5 to this Agreement.

38. “Net Settlement Fund” shall have the meaning set forth in Paragraph 72 of this Agreement.

39. “NSF Fees” are nonsufficient funds fees charged by Tompkins when it returns an item because the balance in the customer’s account was not sufficient to cover the transaction.

40. “Notice” or “Settlement Class Notice” means the notice of proposed class action settlement that will be provided: (i) via email for current Class Members who have provided their email address to Tompkins; (ii) via U.S. mail to Class Members who have not provided an email address or to whom the Email Notice is not successfully delivered; and/or (iii) via posting of the

Long Form Notice on the Settlement Website, all pursuant to Section X of this Settlement Agreement, which the Parties will ask the Court to approve in connection with the motion for preliminary approval of the settlement, substantially in the forms attached hereto as Exhibits 3 (Postcard Notice), 4 (Email Notice), and 5 (Long Form Notice).

41. “Notice Database” means a file containing data sufficient to identify, to the extent reasonably available in Tompkins’ records, each Class Member’s name, last known email address, and last known mail address.

42. “Notice Program” means the method provided for in this Settlement Agreement for giving Notice to Class Members, as provided in Section X, *infra*, of this Settlement Agreement.

43. “Opt-Out” shall mean a written request for exclusion from the Settlement Class as provided in Section XI of this Settlement Agreement.

44. “Opt-Out Period” shall have the meaning set forth in Section XI of this Settlement Agreement.

45. “Overdraft Fees” are paid item fees that Tompkins charged customers when the balance in the customer’s account was insufficient to fully cover the amount of the customer’s transaction but Tompkins paid the item.

46. “Party” or “Parties” shall mean Tompkins, Plaintiff, and the proposed Settlement Class Members.

47. “Postcard Notice” means the notice of proposed class action settlement that will be provided via U.S. Mail in accordance with the procedures set forth in Paragraph 107 of this Agreement, to be approved by the Court, substantially in the form attached hereto as Exhibit 3.

48. “Preliminary Approval Order” shall mean an order substantially in the form as shown in Exhibit 1 to be entered by the Court preliminarily approving the Settlement Agreement. The Preliminary Approval Order shall contain such provision as set forth in Exhibit 1 and described in Section VIII.

49. “Released Claims” shall mean the claims against the Released Parties described in Paragraph 91 of this Agreement.

50. “Released Parties” means Tompkins and each of its respective past, present, and future parents, subsidiaries, acquired and affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, agents, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, assigns, or related entities, and each of their respective executors, successors, and legal representatives.

51. “Releasors” shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Settlement Class Members, and each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.



52. “Residual Funds” shall refer to all proceeds remaining in the Net Settlement Fund following the initial Cash Award distributions provided for in Section VI(b), *infra*.

53. “Service Award” means the award that the Court may individually provide to Plaintiff in connection with her participation in this Litigation to be paid solely from the Settlement Fund.

54. “Settlement Administrator” means the entity (which will be mutually selected and retained by the Parties), to administer the settlement and perform all settlement, escrow, notice, fund distribution, and such other administration functions set forth in this Agreement. Tompkins will also execute a Non-Disclosure Agreement (“NDA”) with the Settlement Administrator to protect Class Members’ personally identifiable financial and other confidential information. Tompkins’ Counsel and Class Counsel may, by agreement, substitute a different organization to perform some or all of the functions of the Settlement Administrator, subject to approval by the Court if the Court has previously granted Preliminary Approval or Final Approval of the settlement.

55. “Settlement Class” or “Settlement Class Members” shall mean all persons who are members of the Class who do not timely and validly request exclusion from the Settlement Class. The persons comprising the Settlement Class shall be identified by name and mail address on the confidential Class List to be created by the Settlement Administrator.

56. “Settlement Amount” means the total sum of \$450,000 (Four Hundred and Fifty Thousand Dollars) that Tompkins will pay to settle the Litigation and obtain a release of all Released Claims.

57. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following the Preliminary Approval Order, and prior to issuance of the Email Notice and the Postcard Notice, as a means for Class Members to obtain notice and information about the settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, the Email Notice, the Postcard Notice, the Preliminary Approval Order, Class Counsel’s motion for attorneys’ fees, costs, and Service Award, and such other documents as Counsel together agree to post or that the Court orders posted on the Settlement Website. An additional description of the contemplated Settlement Website and its contents is provided in Section X, *infra*,

58. “Tompkins” or “Defendant” shall mean Tompkins Community Bank, its past and present parents, predecessors, successors, affiliated or acquired companies, holding companies (*i.e.*, Tompkins Financial), subsidiaries, partners, employees, agents, assigns, and board members.

59. “Tompkins’ Counsel” or “Defendant’s Counsel” refers collectively to Debra Bogoevich of Willkie Farr & Gallagher LLP.

60. “Mock Litigation” shall mean the matter titled *Mock v. Tompkins Community Bank* that is currently pending before the United States District Court for the Northern District of New York as Case No. 3:22-cv-00995 (BKS/ML).

### **III. SETTLEMENT CLASS CERTIFICATION**

61. Tompkins disputes that any litigation class could be certified on the claims asserted in the Litigation. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Tompkins does not oppose the certification of the Class for settlement purposes only. Preliminary certification of the Class for settlement purposes shall not be deemed a concession that certification of a litigation class is appropriate, nor would Tompkins be precluded from challenging class certification in further proceedings in the Litigation or in any other action if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, any certification of the Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted against Tompkins in any litigated certification proceedings in the Litigation. No agreements made by or entered into by Tompkins in connection with the Settlement Agreement may be used by Plaintiff, Class Members, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Litigation, any other judicial proceeding or any non-judicial proceeding.

62. Subject to Court approval, and for settlement purposes only, the following Settlement Class shall be certified: “All current and former holders of a Tompkins Community Bank personal or business checking account, regardless of the state of residence or citizenship of its account holder, who, during the Class Period, incurred more than one Overdraft Fee or NSF Fees as the result of a checking account transaction being represented for payment.”

63. If for any reason this settlement is not granted preliminary and final approval, or if this Agreement is terminated in accordance with its terms, the Parties, pleadings and proceedings will return to the status quo ante as if no settlement had been negotiated or entered into. Plaintiff shall file such motions and pleadings as are necessary to return this case to the Litigation posture that existed before this settlement was reached. Tompkins’ agreement herein to certification of the Settlement Class as described in the Complaint or otherwise shall not be used for any purpose, including in resolving Plaintiff’s motion for class certification in the Litigation or any request for certification in any other proceeding.

### **IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST THE RELEASED PARTIES**

64. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of Plaintiff and the Settlement Class Members, the Litigation and the Released Claims.

### **V. ESTABLISHMENT OF SETTLEMENT FUND AND NET SETTLEMENT FUND**

In consideration of a full, complete, and final settlement and dismissal of the Litigation with prejudice as set forth herein and of the Release provided in Section VII below, and, subject to Court approval as provided herein, the Parties agree to the following relief.

#### **(a) ESTABLISHMENT OF SETTLEMENT FUND**

65. Within fourteen (14) business days after entry of the Preliminary Approval Order by the Court, the Settlement Amount of \$450,000 (Four Hundred and Fifty Thousand Dollars less



any amounts already advanced by Tompkins for Administrative Expenses as per Paragraph 103 of this Agreement, shall be held by Tompkins in a separate internal account at Tompkins (“Tompkins Holding Account”), as the settlement fund (“Settlement Fund”). Tompkins shall transfer the Settlement Fund, less the total amount that will be credited to Settlement Class Members by Tompkins as provided in Paragraph 82(a) below, to the Escrow Account no later than ten (10) business days after the Effective Date (“Settlement Funding Deadline”). Notwithstanding anything in this Agreement to the contrary, Tompkins shall not be required to pay more than a total of \$450,000 towards the Settlement Fund, inclusive of all attorneys’ fees, costs, expenses, notice expenses, any Service Award, any other amounts ordered by the Court, and any and all Administrative Expenses. For the avoidance of doubt, Tompkins shall not bear any other fees, costs, charges, or expenses incurred by Plaintiff or Class Counsel, including but not limited to, those of any experts retained by Plaintiff or by Class Counsel.

66. The Settlement Fund shall be used for the following purposes:

- a. payment and distribution of all Cash Awards (including, without limitation and for the avoidance of doubt, *de minimis* Cash Awards) to Settlement Class Members, pursuant to Section VI, *infra*;
- b. payment of the Court-ordered Service Award to the Class Representative, pursuant to Section XVII, *infra*;
- c. payment of any of Class Counsel’s attorneys’ fees, costs, and expenses, that are awarded by the Court, pursuant to Section XVII, *infra* (subject to Tompkins reserving its rights with respect to attorneys’ fees that exceed one-third of the Settlement Amount);
- d. payment of all costs, expenses, fees, and invoices associated with the Administrative Expenses, including but not limited to, all costs, expenses, and fees of the Settlement Administrator in performing any and all settlement administration, notice, or escrow related functions under this Agreement as well as Tompkins’ Expert Expenses;
- e. payment of all costs, expenses, fees, and taxes associated with establishing and maintaining the Settlement Fund as a Qualified Settlement Fund as set forth in Section XIX, or otherwise, including but not limited to any payments to any escrow agent providing services hereunder; and disposition of Residual Funds after the initial distribution of Cash Awards to Settlement Class Members pursuant to Section VI, Paragraphs 83 & 87 of this Agreement, including without limitation payment of the Administrative Expenses associated with such disposition of Residual Funds; and
- f. additional fees, costs, and expenses not specifically enumerated in subparagraphs (a) through (e) above, subject to agreement and approval of Class Counsel and Tompkins’ Counsel.

67. Notwithstanding the foregoing, any other award of attorneys' fees, Administrative Expenses, or any other fees, costs, expenses, or benefits otherwise awarded by the Court in connection with the Settlement Agreement shall be payable solely out of the Settlement Fund.

68. As more fully set forth below in Section XIX, after the Settlement Funding Deadline, the Settlement Fund payments provided by Tompkins to the Settlement Administrator will be maintained by the Settlement Administrator in an Escrow Account to be held as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 *et seq.* of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing escrow account.

69. Provided that this Agreement is finally approved by the Court without material modification or amendment, the Net Settlement Fund (defined in Paragraph 72 of this Agreement) will be used to satisfy the Cash Award for Settlement Class Members in exchange for a release and covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all the Released Parties from Released Claims, and dismissal of the Litigation with prejudice.

70. The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not materially altered, including but not limited to the scope of the Release, the Class Period, and the amount of the Settlement Fund.

71. Tompkins' contribution to the Settlement Fund shall be fixed under this Section and be final. Tompkins shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the settlement beyond establishing the Settlement Fund. If the Settlement Agreement is not finally approved, or is terminated in accordance with this Agreement, the Settlement Fund belongs to and shall be returned to Tompkins, less any Administrative Expenses paid to date.

**(b) NET SETTLEMENT FUND**

72. The net settlement fund ("Net Settlement Fund") is equal to the Settlement Fund plus any interest earned on that fund, less the following:

- a. the amount of the Court-ordered Service Award to the Class Representatives;
- b. the amount of any Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses;
- c. the amount of any other Court-ordered award of fees in connection with the settlement;
- d. the amount of all Administrative Expenses, including but not limited to, all costs, expenses, and fees of the Settlement Administrator in performing any and all settlement administration, notice, distribution, or escrow related functions hereunder as well as Tompkins' Expert Expenses;

- e. the amount of all costs, expenses, fees, and taxes associated with establishing or maintaining the Settlement Fund as a Qualified Settlement Fund as set forth in Section XIX, or otherwise, including but not limited to any payments to any Escrow Agent providing services hereunder;
- f. the amount of all Administrative Expenses associated with issuance of Cash Awards and/or disposition of Residual Funds after distribution of Cash Awards to Settlement Class Members;
- g. and additional fees, costs, and expenses not specifically enumerated in subparagraphs (a) through (f) above, subject to agreement and approval of Class Counsel and Tompkins' Counsel.

## **VI. PAYMENTS TO CLASS**

Cash Awards shall be determined and calculated as set forth herein.

### **(a) Cash Award Calculations**

73. Tompkins shall retain an expert, with such expenses up to \$25,000 to be paid from the Settlement Fund ("Tompkins' Expert Expenses"), to identify Class Members and implement the allocation of the Net Settlement Fund as provided in this Section of this Agreement (Section VI). The identification and allocation methodologies set forth in this Section VI shall be applied as consistently, sensibly, and conscientiously as reasonably practicable recognizing and taking into consideration the nature and completeness of the data and the purpose of the computation.

74. To identify Class Members, Tompkins' expert will examine Tompkins' data from the Class Period to identify Tompkins checking account customers who incurred Challenged Fees.

75. The following methodology shall be used by Tompkins' expert to calculate Cash Awards to Settlement Class Members who paid Challenged Fees: (i) to be credited to Settlement Class Members who are current accountholders; or (ii) paid by check to Settlement Class Members who are former accountholders ("Qualifying Settlement Class Members"):

- a. Identify all Challenged Fees charged to Settlement Class Members ("Gross Fees");
- b. Reduce the Gross Fees, on an individual Settlement Class Member basis, to account for any refunds or similar credits of Challenged Fees to those accountholders ("Net Fees");
- c. Quantify each Settlement Class Member's relative proportion of the total Net Fees charged to the Settlement Class;
- d. Determine whether: (i) a Cash Award is appropriate; and (ii) a *de minimis* Cash Award to a Settlement Class Member is necessary of \$5 if the calculated Cash Award is too small for distribution to a Settlement Class Member so they will not qualify for a Cash Award; and

- e. Determine Cash Award based on each Settlement Class Member's proportion of the Net Fees charged to the Settlement Class or determine if a *de minimis* Cash Award is appropriate, per Paragraph 75(d) *supra*.

76. After Tompkins' Cash Award calculations are complete, the Settlement Administrator shall update the Class List to reflect the corresponding Cash Award amounts for Settlement Class Members and provide the Redacted Class List to Class Counsel upon completion of the Cash Award calculations as described in Paragraph 75 above.

77. Plaintiff may retain an expert to review and approve Tompkins' expert's calculation of the Cash Awards. Plaintiff's expert will be paid from the Settlement Fund, subject to Court approval.

78. Tompkins and/or Tompkins' expert shall make available to Plaintiff's expert: (i) an anonymized list identifying Settlement Class Members and calculated Cash Awards ("Cash Award File"), and (ii) a file containing de-identified transactional data necessary for Plaintiff's expert to review and approve Tompkins' expert's calculations set forth in the Cash Award File ("Supporting Data File"). The Cash Award File and Supporting Data File shall be provided as soon as reasonably feasible after the deadline to opt out of the Settlement. For the avoidance of confusion, any Settlement Class Member for whom account data is provided under this Agreement shall be identified solely by reference to the random identifier number assigned to the Account. Plaintiff's expert shall then have twenty-one (21) days from receipt to review Tompkins' Cash Award File and Supporting Data File to assess whether the allocation methodology was performed and applied by Tompkins' expert in accordance with this Agreement ("Review Period"). In the event Plaintiff's expert raises any concerns, the Parties shall cooperate in good faith to resolve any concerns as expeditiously as possible. If the Parties cannot reach agreement, then the dispute shall be submitted to the Mediator for assisting the Parties with resolution. The Parties shall cooperate together to ensure that the Cash Awards are calculated in advance of final approval time and sufficiently in advance so as to permit payment in accordance with the time schedule set forth in Section VI(b), *infra*.

79. Upon expiration of the Review Period, and subject to resolution of any objections, the final allocation results shall be transmitted to the Settlement Administrator for purposes of effectuating payment of Cash Awards and for purposes of creating the confidential Class List. The Settlement Administrator shall prepare the Class List within five (5) business days of receipt of the final allocation results.

80. The confidential Class List shall be maintained by Tompkins and provided to the Settlement Administrator for the sole purpose of facilitating the notice and payments contemplated herein. The confidential Class List and identities of Settlement Class Members shall *not* be disclosed to anyone else, including Class Counsel, except that Tompkins shall disclose information about the identity of Settlement Class Members to the limited extent required for Class Counsel to provide necessary assistance in response to a question from a Settlement Class Member.

81. The Parties agree the foregoing methodologies are exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, Cash Awards. The fact that the

methodologies are used herein is not intended and shall not be used for any other purpose or objective whatsoever.

**(b) Distribution of Cash Awards & Residual Funds**

82. Within forty-five (45) days of the Effective Date and subject to applicable tax reporting or withholding requirements, every Settlement Class Member shall be paid as follows:

- a. For Settlement Class Members who are current accountholders, Tompkins shall credit the Cash Award payments to the Settlement Class Members' accounts, using funds within the Tompkins Holding Account defined in Paragraph 65 *supra*.
- b. For Settlement Class Members who are former accountholders, the Settlement Administrator shall cause a check from the Net Settlement Fund to be mailed to the former accountholder's last known mail address (as updated by the Settlement Administrator).
- c. Checks shall be made payable to the accountholder, and where applicable, jointly to the joint accountholders during the Class Period. Cash Award checks shall be mailed to the mail addresses of record used for Class Notice purposes, or such other mail addresses as the Settlement Administrator identifies as valid Settlement Class Member mail addresses through the Notice Program. The Settlement Administrator will make reasonable efforts to locate the proper mail address for any Settlement Class Member whose check is returned by the Postal Service as undeliverable, and will re-mail it once to the updated mail address.
- d. Checks shall be valid for one hundred and twenty (120) days from the date of the check and the check shall state that it is invalid after one hundred and twenty (120) days of issuance. If any Settlement Class Member fails to negotiate their check within that time period, such Settlement Class Member shall forever waive his/her claim for payment hereunder. In the event that checks sent to Settlement Class Members are not cashed within one hundred and twenty (120) days of their initial mailing date, whether because the checks were not received or otherwise, those checks will become null and void as provided for herein.

83. If it is administratively feasible to do so, unclaimed Residual Funds in the Settlement Fund held in the Escrow Account shall be used to make a second distribution, on a pro rata basis, to all Settlement Class Members who received an account credit or cashed a Settlement Award check ("Second Cash Award Distribution"). The Parties will confer as to whether a Second Cash Award Distribution is administratively feasible, with input from the Settlement Administrator. If the Parties dispute whether there should be a Second Cash Award Distribution, they will jointly ask the Mediator to assist with resolution of the issue. In the event that any redistributed checks are not cashed within one hundred and twenty (120) days of their mailing date, whether because the checks were not received or otherwise, those checks will become null and void.

84. Cash Awards shall be distributed and paid solely from the Net Settlement Fund. If this Settlement Agreement is not approved, or for any reason the Effective Date does not occur,

no Cash Award payments or distribution of any kind shall be made to Settlement Class Members under this Agreement.

85. The Parties make no representation regarding the tax treatment of Cash Awards received by Settlement Class Members. The Parties will defer to the Settlement Administrator's recommendation regarding when Settlement Class Members must provide a W-9 form and/or a Taxpayer Identification or Social Security Number, as may be required by applicable Internal Revenue Service reporting requirements. Class Counsel and Plaintiff shall timely furnish to the Settlement Administrator any required tax information or forms before any payments are made to them from the Settlement Fund.

86. The Parties agree that the Settlement Administrator has permission to seek reasonable documentation before distributing settlement funds to an estate.

**(c) *Cy Pres* Distribution**

87. Any funds in the Net Settlement Fund following a Second Cash Award Distribution, or any Residual Funds in the Net Settlement Fund held in the Escrow Account if a Second Cash Award Distribution is not feasible ("*Cy Pres* Funds"), shall be paid through *cy pres* to non-profit charities that assist low-income consumers and/or provide consumer financial education in the geographic area of the Settlement Class Members, subject to Court approval. The Parties shall confer in good faith about appropriate *cy pres* beneficiaries after the stale date on checks to Settlement Class Members passes, and shall each propose beneficiaries for Court approval. Plaintiff will propose a beneficiary for 50% of the *Cy Pres* Funds, subject to approval by Defendant. Defendant will propose a beneficiary for 50% of the *Cy Pres* Funds, subject to approval by Plaintiff.

88. The Court may revise this *cy pres* provision as necessary without terminating or otherwise impacting this settlement, provided the Court's revision does not increase the amount that Defendant would otherwise pay under this Agreement.

**VII. RELEASE**

89. In addition to the effect of any final judgment entered by the Court in accordance with this Agreement, upon the Effective Date, and for other valuable consideration as described herein, the Released Parties shall be completely released, acquitted, and forever discharged from any and all Released Claims ("Class Release").

90. As of the Effective Date, and with the approval of the Court, Plaintiff and each Settlement Class Member, as well as their respective, heirs, assigns, executors, administrators, beneficiaries, successors, and agents, hereby release, resolve, relinquish, and discharge each and all of the Released Parties from each of the Released Claims (as defined below). The Settlement Class Members further agree that they will not institute any action or cause of action (in law, in equity, or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal, or local government agency or with any administrative or advisory body, arising from the Released Claims. The release does not apply to members of the Class who timely opt-out of the settlement.



91. “Released Claims” means any and all claims, demands, damages, costs, attorneys’ fees, disputes, liabilities, actions, rights, suits or causes of action, losses or remedies of any kind or nature whatsoever, against Released Parties, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or any legal or equitable theory, right of action or otherwise, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of, or relate to, or are based upon or in any manner related or connected with: (i) any Challenged Fee charged by Tompkins in connection with a personal or business checking account, regardless of the state of residence or citizenship of the accountholder; (ii) a claim that Tompkins assessed a Challenged Fee on any Tompkins personal or business checking account transaction based on re-presentment of a checking account transaction; (iii) any claim related to the assessment of Challenged Fees that was, or could be, asserted in connection with the Litigation including, but not limited to, Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, unjust enrichment, and/or the New York General Business Law § 349 *et seq.*; and (iv) any alleged failure to adequately or clearly disclose Tompkins practices and policies related to assessment of the Challenged Fees. Such release applies regardless of how such claims are pled. This Agreement does not imply that any such claims exist or are valid.

92. Provided that the Plaintiff has been paid a Service Award, in such amount as the Court approves and consistent with the terms of this Agreement, and without in any way limiting the generality of the foregoing release, and in addition to the Release provided by Plaintiff in Paragraph 91 as to the Released Claims, Plaintiff, as well as her respective heirs, assigns, executors, administrators, beneficiaries, successors, and agents, hereby releases, resolves, relinquishes, and discharges each and all of the Released Parties from any and all claims, demands, damages, costs, attorneys’ fees, disputes, liabilities, actions, rights, suits or causes of action, and losses or remedies of any kind or nature whatsoever related to Mock’s checking account that Plaintiff may have, whether on her own behalf and on behalf of her heirs, assigns, executors, administrators, beneficiaries, successors and agents, and whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or any legal or equitable theory, right of action or otherwise, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the Execution Date, against the Released Parties.

93. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of this Section VII, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, and contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Section VII. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases

contained in this Section VII, and that all of their claims in the Litigation shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the settlement or never receives a distribution of Cash Award or other funds from the settlement.

94. Without limiting the foregoing, the Released Claims specifically extend to claims that Plaintiff and Settlement Class Members do not know or suspect to exist in their favor at the time that the settlement and the releases contained therein become effective. Each Releasor hereby further waives and releases California Civil Code Section 1542 and similar provisions in other states, to the extent applicable. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 (“Section 1542”):

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

95. The provisions of the Class Release shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction.

96. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.

97. The Parties and each member of the proposed Settlement Class agree that the amounts to be paid under this Settlement Agreement to each Settlement Class Member represent the satisfaction of that Settlement Class Member’s claims for the Released Claims. No portion of such settlement represents the payment of punitive or exemplary damages. In consideration for the satisfaction of each Settlement Class Member’s claim for compensatory damages, claims for punitive or exemplary damages arising from the Released Claims shall be released. Without limiting the foregoing, Plaintiff agrees and covenants, and each Settlement Class Member shall be deemed to have agreed and covenanted, not to sue any Released Party with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity or any other forum. In addition, Plaintiff and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a set-off or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

#### **VIII. PRELIMINARY APPROVAL AND SETTLEMENT CLASS CERTIFICATION**

98. This settlement shall be subject to approval of the Court. As set forth in this Agreement, Tompkins shall have the right to withdraw from the settlement and the Settlement

Agreement if the Court does not issue the Preliminary Approval Order or the Final Approval Order or if the Class is not certified for settlement purposes or as otherwise permitted under this Agreement.

99. Within no later than fourteen (14) days following execution of this Agreement by all Parties, Plaintiff through Class Counsel shall submit to the Court a motion (the “Preliminary Approval Motion”), consistent with the terms of this Agreement: (a) for certification of the Settlement Class; and (b) for preliminary approval of the Agreement, and authorization to disseminate notice of class certification and settlement contemplated by this Settlement Agreement to all potential Class Members. Consistent with the terms of this Agreement, the Preliminary Approval Motion shall apply for entry of the Preliminary Approval Order in the form attached hereto Exhibit 1. The Preliminary Approval Motion shall also request that Plaintiff be appointed as class representatives for the Class and that Class Counsel be appointed as counsel for the Class.

The Preliminary Approval Order shall contain such provisions as set forth in Exhibit 1 including provisions:

- a. preliminarily certifying the Class for settlement purposes only;
- b. preliminarily approving this settlement and finding this settlement sufficiently fair, reasonable, and adequate to allow Notice to be disseminated to the Class;
- c. approving the form, content and manner of Settlement Class Notice;
- d. appointing KCC Class Action Services LLC as the Settlement Administrator;
- e. setting a schedule for proceedings with respect to final approval of this settlement, including scheduling a Final Approval hearing for no earlier than 120 days from the date of the Preliminary Approval Order;
- f. providing that, pending entry of a Final Approval Order and Judgment, no member of the Settlement Class (either directly or in any representative or other capacity) shall commence or continue any action against Defendant or any of the Released Parties asserting any of the Released Claims;
- g. staying the Litigation, other than such proceedings as are related to this settlement; and
- h. providing that no admissions have been made by Tompkins.

## **IX. SETTLEMENT ADMINISTRATOR**

100. Class Counsel and Tompkins’ Counsel have jointly selected and retained KCC Class Action Services LLC to serve as the Settlement Administrator. The Settlement Administrator shall administer various aspects of the settlement as described in Paragraph 101 of this Agreement, and perform such other functions as are specified for the Settlement Administrator elsewhere in this Settlement Agreement including, but not limited to, establishing

the Settlement Fund, providing mailed notice or other required notices to Class Members, distributing settlement funds as provided herein, and returning the Settlement Fund to Tompkins in the event of termination of this Agreement, as set forth in Section XVI of this Agreement.

101. The duties of the Settlement Administrator, in addition to other responsibilities that are described elsewhere in this Agreement, include:

- a. obtaining from Tompkins' Counsel the names, last known email addresses, and last known mail addresses for the Class Members in the Notice Database; verifying and updating the mail addresses so received through the National Change of Address database; and completing Class Notice as provided in Section X of this Agreement;
- b. establishing and maintaining a Post Office box for Opt-Out requests as set forth in Section XI of this Agreement, as well as for correspondence from Class Members;
- c. establishing and maintaining a Settlement Website that will contain and make available to Class Members certain information regarding the Litigation and the settlement through that website;
- d. responding to any mailed Class Member inquiries;
- e. processing all requests for exclusion from Class Members;
- f. providing to Counsel written monthly reports, and a written final report no later than five (5) business days after the end of the Opt-Out Deadline, that lists all timely and valid Opt-Outs from the Settlement, and other pertinent information;
- g. interfacing with any escrow agents who may assist with the Qualified Settlement Fund (if different from the Settlement Administrator);
- h. preparing and providing to Tompkins' Counsel the confidential Class List and the Redacted Class List to Class Counsel;
- i. at Class Counsel and/or Tompkins' Counsel request in advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that identifies each Class Member who timely and properly requested exclusion from the Settlement Class and that confirms that the Notice Program as set forth in this Agreement was completed in a timely manner;
- j. processing and transmitting Cash Award checks from the Net Settlement Fund to the Settlement Class Members who are former accountholders in accordance with the terms of this Agreement;
- k. providing its recommendation concerning whether sufficient Residual Funds remain in the Net Settlement Fund for a Second Cash Award Distribution (defined *supra*) to Qualifying Settlement Class Members, as set forth in Paragraph 83 of

this Agreement, and providing a report and/or affidavit of such pertinent information to Counsel;

- l. if sufficient funds remain, processing and transmitting a Second Cash Award Distribution to Qualifying Settlement Class Members and providing a report and/or affidavit of such pertinent information to Counsel;
- m. qualifying under, and agreeing to comply with, all applicable confidentiality, privacy, and security protocols required by Tompkins;
- n. providing, at the direction and on behalf of Tompkins, such notice(s) of the settlement as may be required in accordance with the timing and notice requirements of the Class Action Fairness Act;
- o. establishing an escrow account and maintaining the Settlement Fund therein as a Qualified Settlement Fund and performing such duties and functions as associated therewith, including without limitation the duties and functions set forth in Section XIX *infra*, or elsewhere in this Agreement; and
- p. performing any other tasks reasonably required to effectuate the settlement.

102. In the event of termination as provided in Section XVI of this Agreement, the Settlement Administrator shall return the Settlement Fund to Tompkins within seven days of termination, less any money that the Settlement Fund has already paid, or incurred an obligation to pay, in accordance with the terms of this Agreement for Administrative Expenses. Plaintiff shall have no financial responsibility for any Administrative Expenses paid out of the Settlement Fund in the event that the Settlement Agreement is not finally approved or terminated.

## **X. NOTICE TO PROPOSED CLASS MEMBERS**

### **(a) Payment of Administrative Expenses Relating to Notice**

103. Tompkins shall pay the reasonable Administrative Expenses incurred prior to the creation of the Settlement Fund, and Tompkins will be given credit for all such payments which shall be deducted from the Settlement Fund as set forth below. The Settlement Administrator shall provide the Parties with an estimate of the initial Administrative Expenses, *e.g.*, costs of sending Postcard Notice, establishing the Settlement Website, etc. (“Initial Administrative Expenses”). Tompkins shall pay the estimated Initial Administrative Expenses to the Settlement Administrator within ten (10) business days after the entry of the Preliminary Approval Order. After that upfront payment of Initial Administration Expenses by Tompkins, the Settlement Administrator shall bill Tompkins monthly for any reasonable additional Administrative Expenses, until such time as the Settlement Fund is established. Any amounts paid by Tompkins for the estimated costs of administration which are not incurred by the Settlement Administrator shall be used for other Administrative Expenses, or shall be deducted from future billings by the Settlement Administrator. The Settlement Administrator estimates that Initial Administrative Expenses will be \$35,055, and Administrative Expenses overall shall be \$49,882.

104. The Settlement Administrator shall maintain detailed records of the Administrative Expenses and shall provide those to Counsel monthly. At such time that Tompkins funds the Settlement Fund, all amounts previously paid to the Settlement Administrator by Tompkins shall be deducted from the total payment which it is required to pay to create the Settlement Fund under Section V. After Tompkins has created the Settlement Fund, Tompkins shall have no further obligation to pay any amount under this Settlement Agreement, and any additional Administrative Expenses shall be paid out of the Settlement Fund.

**(b) Form of Notice**

105. In the event the Court enters the Preliminary Approval Order, Notice shall be provided to Class Members via email, mail and/or website, as provided herein:

- a. For Class Members who have provided their email address to Tompkins, the Settlement Administrator will provide Email Notice substantially in the Form shown in Exhibit 4, subject to approval by the Court, to the most recent email address provided by the customer to Tompkins.
- b. For Class Members who have not provided an email address or, if the Email Notice is not successfully delivered (as shown by an undeliverable message back to the Settlement Administrator), the Settlement Administrator will provide Postcard Notice substantially in the form shown in Exhibit 3, subject to approval by the Court.
- c. Notice of the settlement (substantially in the form of Exhibit 5, the Long Form Notice) shall also be posted by the Settlement Administrator on the Settlement Website by the Notice Deadline. The Settlement Administrator shall establish and administer the Settlement Website, which website shall contain information about the settlement, including electronic copies of Exhibits 3 and 4 (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all court documents related to the settlement or otherwise agreed to by Counsel. The URL of the Settlement Website shall be [www.Mockfeesettlement.com](http://www.Mockfeesettlement.com) or such other URL as Counsel may subsequently agree upon in writing, provided the URL shall not include the name “Tompkins,” “Tompkins Financial,” “Tompkins Bank,” or “Tompkins Community Bank”. The Settlement Website shall not include any advertising and shall not bear or include the Tompkins Community Bank logo or Tompkins’ trademarks. Ownership of the Settlement Website URL shall be transferred to Tompkins within 10 days of the date on which operation of the Settlement Website ceases. The Settlement Website shall remain operational until sixty days past the stale date of any check mailed to Settlement Class Members. Other than the Settlement Website, there shall be no publication notice (except as Tompkins or its affiliates may be required or advised to make under applicable law), and there shall be no press release or other public communication by or on behalf of Plaintiff and/or Class Counsel.

106. The Notice shall be used for the purpose of informing proposed Class Members, prior to the Final Approval Hearing, that there is a pending settlement, and to further (i) inform



Class Members as to how they may obtain a copy of the Settlement Agreement; (ii) protect their rights regarding the settlement; (iii) request exclusion from the Settlement Class and the proposed settlement, if desired; (iv) object to any aspect of the proposed settlement, if desired; and (v) participate in the Final Approval Hearing, if desired. The Notice shall make clear the binding effect of the settlement on all Class Members who do not timely request exclusion from the Settlement Class.

107. **Email Notice & Postcard Notice.** Email Notice and Postcard Notice will be provided by the Settlement Administrator, as follows:

- a. To facilitate the provision of Email Notice and Postcard Notice, Tompkins will provide to the Settlement Administrator, within ten (10) business days of entry of the Preliminary Approval Order, in an electronically searchable and readable format, a Notice Database containing data sufficient to identify, to the extent reasonably available in Tompkins' records, each Class Member's name and last known email address and last known mail address. Tompkins is obligated to provide only such information as is contained and reasonably available in its computerized account records for the applicable Class Period. The Settlement Administrator will prepare and provide a De-Identified Notice Database to Class Counsel.
- b. Any personal information relating to members of the Class that is provided to the Settlement Administrator pursuant to this Settlement Agreement shall be provided solely for the purpose of providing Settlement Class Notice to members of the Class and allowing them to recover under this settlement. Such information shall be kept in strict confidence, shall be used only for purposes of this settlement, and shall not be disclosed to any third party.
- c. Prior to mailing the Postcard Notice, the Settlement Administrator shall run the last known mail addresses for Class Members (as contained in the Notice Database) through the United States Postal Services' National Change of Address Database, and shall update the mail addresses accordingly for mailing and other settlement administration purposes in the Notice Database. Once this process is complete, the Settlement Administrator shall cause individual Postcard Notice (substantially in the form of Exhibit 3) to be sent by the Notice Deadline (as defined in Paragraph 112 of this Agreement), through U.S. Mail to potential Class Members ("Initial Postcard Notices").
- d. The Settlement Administrator shall cause Email Notice (substantially in the form of Exhibit 4) to be sent to the last known email address in Tompkins' records by the Notice Deadline (as defined in Paragraph 112 of this Agreement).
- e. For all Initial Postcard Notices that are returned undeliverable and without a forwarding mail address and for Email Notices that are not successfully delivered, the Settlement Administrator shall perform reasonable address traces. No later than 15 days after the Notice Deadline in Paragraph 112 of this Agreement, the Settlement Administrator shall mail Postcard Notices to those Class Members: (i)

whose new mail addresses were identified as of that time through address traces; (ii) whose initial emails were not successfully delivered and the Settlement Administrator located a mail address; or (iii) for whom there was a forwarding mail address (“Notice Remailing Process”). Except as set forth herein, there shall be no further obligation or attempt to obtain a forwarding mail address for any such returned mail or to further re-mail any such Postcard Notices or returned mail after this Notice Remailing Process is complete.

- f. Within seven days after the Objection Deadline, the Settlement Administrator shall provide Class Counsel and Tompkins’ Counsel with an affidavit that confirms that the Notice Program as set forth in this Agreement was completed in a timely manner, reports the details of returned and undeliverable notices, and reports any objections or Opt Outs received by the Settlement Administrator.
- g. Within seven days after the date the Settlement Administrator completes the later of the Email Notice and the Notice Remailing Process, the Settlement Administrator shall provide Tompkins’ counsel with an updated Notice Database reflecting any new email address information.

108. Class Counsel shall file the affidavits of completion that it receives from the Settlement Administrator pursuant to Paragraph 107(e), *supra*, with the Court as exhibits to or in conjunction with Plaintiff’s motion for Final Approval of the Settlement.

109. CAFA Notice. At the request, expense, and direction of Tompkins, the Settlement Administrator shall be responsible for serving the Class Action Fairness Act (“CAFA”) notice required by 28 U.S.C. § 1715 within ten (10) days of the filing of the Preliminary Approval Motion. It is Tompkins’ obligation to ensure that notice required by 28 U.S.C. § 1715 is timely provided to the appropriate recipients.

110. Before Class Notice is commenced, Counsel for the Parties shall first be provided with proof copies of the final form of the Class Notices and shall have the right to inspect and approve the same for compliance with the Settlement Agreement and with the Court’s orders.

111. The Parties agree that compliance with the procedures described in this Section X is the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency the Litigation, certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and shall satisfy the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable rule or regulation.

(c) **Notice Deadline**

112. Both the Email Notice and the Initial Postcard Notices shall be sent directly to all identified potential Class Members as soon as reasonably practicable following transmission of the Notice Database to the Settlement Administrator and no later than forty-five (45) days after the date that the Court enters the Preliminary Approval Order, or such other date that the Court may set (“Notice Deadline”).

**XI. OPT-OUTS**

113. **Opt-Out Period.** Class Members will have up to and including approximately forty-five (45) days following the Notice Deadline to opt out of the settlement in accordance with this Section (the “**Opt-Out Deadline**”). If the settlement is finally approved by the Court, all Settlement Class Members who have not opted out by the Opt-Out Deadline will be bound by the Settlement Agreement and the Class Release, and the relief provided by the settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

114. **Opt-Out Process**

- a. Any Class Member who wishes to be excluded from the Settlement Class must provide a written request for exclusion to the Settlement Administrator, known as an “Opt-Out.” The Opt-Out must be mailed, by first class mail, postage prepaid, and postmarked and addressed to the address of the Settlement Administrator indicated in the Notice on or before the Opt-Out Deadline. The Settlement Administrator will provide Counsel for the Parties copies of each request for exclusion it receives.
- b. In order to be valid, the Opt-Out must be in writing and include: (i) the Class Member’s name, address, telephone number, and the last four digits of the account number; (ii) the name and/or number of this Litigation; and (iii) a statement that the Class Member wishes to be excluded from the Settlement Class. An Opt-Out must be signed by the Class Member. An Opt-Out request that does not contain the required information, is not signed, or is not postmarked by the Opt-Out Deadline, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound by the settlement, if approved.
- c. Except as provided in this Section XI, no Class Member may purport to exercise any exclusion rights of any other person, or purport to exclude other persons as a group, aggregate, or class involving more than one person, or as an agent or representative. Any such purported exclusion shall be invalid and any Class Member that does not submit an opt-out request on his or her own behalf shall be a Settlement Class Member and be bound as a Settlement Class Member for all purposes. If an accountholder for any joint account submits a valid-opt out request, the request will be effective for all accountholders or signatories to such account.
- d. A list reflecting all timely and valid Opt-Outs shall also be filed with the Court at the time of the motion for final approval of the settlement.

## **XII. OBJECTIONS**

115. Class Members who have not validly opted-out of the settlement in accordance with its terms may object to this Agreement up to and including the date set by the Court in the Preliminary Approval Order, which shall be approximately forty-five (45) days following the Notice Deadline (“Objection Deadline”).

116. The Parties will request that the Court order that any Class Member who has any objection to certification of the Settlement Class, to approval of this Settlement Agreement or any of its terms, or to the approval process must send his, her or its objection to the Settlement Administrator providing the following elements (“Required Objection Elements”):

- a. the case name and case number(s) of this Litigation;
- b. the objector’s full name, current address, and the last four digits of the account number of any Tompkins account the objector claims was charged Challenged Fees in this Litigation;
- c. a statement that the Settlement Class Member objects to the Settlement, in whole or in part;
- d. the reasons why the objector objects to the settlement along with any supporting materials;
- e. the identity of any lawyer who assisted, provided advice, or represents the objecting Class Member as to this case or such objection, if any;
- f. the objector’s signature; and
- g. a statement indicating whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing either *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

117. The Parties will request that the Court set the Objection Deadline approximately forty-five (45) days after the Notice Deadline. The Parties will request that the Court order that failure to comply timely and fully with these procedures shall result in the invalidity and rejection of an objection. The Parties will request that the Court order that no Class Member shall be entitled to object to certification of the Class or to the Settlement Agreement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Final Approval Hearing, unless the Class Member provides written notice with the Required Objection Elements no later than the Objection Deadline.

118. The Parties will request that the Court order that no Class Member shall be entitled to appear at the Final Approval Hearing unless the Class Member states in his or her objection that he or she intends to appear at the Final Approval Hearing either personally or through counsel.

119. The Parties will request that the Court order that Class Members who fail to file and serve timely written objections in accordance with this Section shall be deemed to have waived any objections and shall be foreclosed from making any objection to the certification of the Settlement Class or to the Settlement Agreement.

### **XIII. FINAL APPROVAL HEARING**

120. The Parties will request that the Court hold a Final Approval Hearing. The date for the Final Approval Hearing shall be set for approximately one hundred twenty (120) days after entry of the Preliminary Approval Order, or at such other later time as complies with all applicable timing requirements under CAFA and as the Court determines.

121. At the Final Approval Hearing, the Parties will request that the Court consider whether the Class should be certified pursuant to Federal Rule of Civil Procedure 23 for settlement, and, if so: (i) consider and rule on any properly filed objections to the Settlement Agreement; (ii) determine whether the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connection therewith; and (iii) enter the Final Approval Order and Judgment, including final approval of the Settlement Class and the Settlement Agreement and any award of attorneys' fees and expenses and Service Awards.

### **XIV. FINAL APPROVAL ORDER AND JUDGMENT**

122. If the settlement is approved preliminarily by the Court, and all other conditions precedent to the settlement have been satisfied, no later than fourteen (14) calendar days prior to Final Approval Hearing, the Parties shall jointly seek entry of a Final Approval Order. Class Counsel shall file a memorandum of points and authorities in support of the motion for Final Approval of the Class Settlement. Class Counsel and/or Tompkins may file a memorandum addressing any Objections submitted to the settlement. The dismissal orders, motions, or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waive any rights of appeal. The motion for entry of a Final Approval Order will include a declaration from the Settlement Administrator stating that the Notice required by the Agreement has been completed in accordance with the terms of the Court's Preliminary Approval Order.

123. The Parties shall jointly submit to the Court a proposed Final Approval Order and Judgment, in the form attached hereto as Exhibit 2, that, without limitation, approves the settlement and certifies the Settlement Class pursuant to Federal Rule Civil Procedure 23 and:

- a. finds that this Agreement is fair, reasonable, and adequate and was entered into in good faith and without collusion, and approves and directs consummation of this Agreement according to its terms;
- b. finds that the Class Notice provided satisfied the requirements of due process and of Federal Rules of Civil Procedure Rule 23(e)(1);

- c. approves the Class Release provided in Section VII and finds that, as of the Effective Date, the Settlement Class Members will each be bound by this Agreement, including the Release and Covenant not to sue set forth in Section VII;
- d. dismisses, on the merits and with prejudice, all Released Claims of Plaintiff and of the Settlement Class Members against Tompkins in the Litigation, without costs and fees except as ordered by the Court;
- e. permanently enjoins each and every Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claim, or from asserting as a defense, including as a set-off or for any other purpose, any argument that if raised as an independent claim would be a Released Claim, against Tompkins or any of the Released Parties;
- f. reserves continuing and exclusive jurisdiction over the settlement and this Agreement, including but not limited to the Litigation, the settlement, the Settlement Class Members, and Tompkins, for the purposes of administering, consummating, supervising, construing, and enforcing the Settlement Agreement and the Settlement Fund; and
- g. finds that, pursuant to Federal Rule Civil Procedure 54(b), there is no just reason for delay of entry of Final Judgment with respect to the foregoing.

124. This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order that grants final approval of this Agreement and enters a Final Judgment as set forth in this Agreement. Class Counsel shall use their best efforts to assist Tompkins in obtaining dismissal with prejudice of the Litigation accordingly and take all steps necessary and appropriate to otherwise effectuate all aspects of this Agreement.

#### **XV. FINAL ORDER**

125. As part of the Final Approval Order and Judgment, the Court's order shall operate to permanently enjoin any and all pending or future claims by Settlement Class Members against the Released Parties raising or arising out of any Released Claim.

126. The Court's Final Approval Order and Judgment shall enjoin and forever bar any and all Settlement Class Members from commencing and/or maintaining any action, legal or otherwise, against the Released Parties raising or arising out of any Released Claim.

127. This provision is not intended to prevent or impede the entitlement to Cash Awards under this Settlement Agreement.

#### **XVI. TERMINATION OF THE SETTLEMENT**

128. Plaintiff and Tompkins shall have the right to unilaterally terminate this Agreement by providing written notice of its election to do so ("Termination Notice") to each other hereto within ten (10) calendar days of any of the following occurrences:



- a. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;
- b. an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;
- c. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order and Judgment, or the Settlement Agreement in a way that is material, unless such modification or amendment is accepted in writing by all Parties;
- d. notification from the Settlement Administrator that more than one percent (1%) or 500 of the Class Members Opt-Out, whichever is less;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement occurs.

129. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Litigation. In such event, the Parties' rights and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement will be vacated.

130. In the event of a termination as provided for herein or elsewhere in this Agreement, the Settlement Administrator shall return the Settlement Fund to Tompkins within seven days of termination, less any money that the Settlement Fund has already paid or incurred an obligation to pay in accordance with the terms of this Agreement for Administrative Expenses.

## **XVII. ATTORNEYS' FEES AND SERVICE AWARD**

131. Class Counsel shall file any petition to the Court for an award of attorneys' fees and costs from the Settlement Fund at least fifteen (15) days prior to the Objection Deadline. Tompkins will take no position on a request for attorneys' fees that is one-third or less of the Settlement Amount, but Tompkins reserves the right to object to any request for attorneys' fees that exceeds one-third of the Settlement Amount. Tompkins also agrees to take no position on a request for reimbursement of Counsel's reasonably incurred expenses.

132. In no event will Tompkins have any financial responsibility or liability whatsoever for attorneys' fees, expenses, or costs beyond its obligation to establish the Settlement Fund, as set forth in this Agreement. In particular and without limiting the foregoing, Tompkins shall have no financial responsibility or liability for attorneys' fees and costs sought by any member of the Class or by any counsel representing or working on behalf of one or more Class Members or the Settlement Class, and no obligation for allocation of fees and costs among Class Counsel or attorneys representing or working on behalf of Class Members.

133. At the same time Class Counsel seeks approval of their attorneys' fees and costs, Class Counsel shall petition the Court for a Service Award for the Class Representatives in an amount not to exceed \$5,000. The Service Award shall be paid solely from the Settlement Fund and no interest shall accrue or otherwise be due or payable in connection with any such award. The Service Award shall be paid to Plaintiff in addition to any Cash Award, and Plaintiff shall be entitled to any Cash Award. The Parties warrant that they commenced negotiations on the proposed Service Award only after they reached agreement on all other material terms of this Settlement Agreement.

134. The payments of attorneys' fees, costs, and a Service Award set forth in Paragraphs 131 and 133 above are subject to and dependent upon the Court's approval of the settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class. However, this settlement is not dependent or conditioned upon the Court approving Plaintiff's and/or Class Counsel's request for such payments or awarding the particular amounts sought by Plaintiff and/or Class Counsel. In the event the Court declines Plaintiff's and/or Class Counsel's requests or awards less than the amounts sought, this settlement, including but not limited to the Releases provided herein, shall continue to be effective and enforceable by the Parties.

#### **XVIII. REPRESENTATIONS**

135. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

136. The Parties shall use their best efforts to conclude the settlement and obtain the Final Approval Order and Judgment, including affirmatively supporting the settlement in the event of an appeal or an objection.

137. The Parties specifically acknowledge, agree, and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of Federal Rules of Evidence Rule 408, and any other equivalent or similar rule of evidence of any state, and shall not: (a) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party; or (b) be used to establish a waiver by Tompkins of any defense or right, or to establish or contest jurisdiction or venue in other litigation. Notwithstanding the foregoing, any Party shall be entitled to use this Settlement Agreement and its Exhibits in connection with enforcement of the obligations and waivers set forth herein and for all other purposes set forth below at Paragraph 140.

138. In consideration of the agreements made herein, Class Counsel hereby warrant and represent to Tompkins that as of the execution date of this Agreement: (a) Class Counsel are not aware that any current clients have claims against Tompkins similar to the claims alleged in the Litigation; and (b) Class Counsel are not actively soliciting clients to bring cases specifically against Tompkins for violations similar to those alleged in the Litigation.

139. The Parties also agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement are not intended to establish grounds for certification of any class involving any Class Member other than for certification of the Class for settlement purposes.

140. The provisions of this Settlement Agreement, and any orders, pleadings, or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely: (i) to enforce the terms and provisions hereof or thereof; (ii) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto; (iii) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case; (iv) in connection with any motion to enjoin, stay or dismiss any other action; or (v) to obtain Court approval of the Settlement Agreement.

141. Subject to settlement notice process set forth in Section X, the Parties agree that they will not initiate any publicity of the settlement and will not respond to requests by any media (whether print, online, or any traditional or non-traditional form), except to say “no comment” and direct any inquiries to the information on the settlement website about the settlement. Notice of the settlement will be delivered exclusively through the notice process set forth in Section X above. Nothing in this provision shall be interpreted to limit representations that the Parties or their attorneys may make to the Court to assist it in its evaluation of the proposed settlement, nor shall this provision prohibit Class Counsel from having communications about the settlement directly with the Settlement Administrator or with Class Members.

142. This Agreement shall be deemed executed as of the date that the last Party signatory signs the Agreement. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties and shall fully supersede any previous agreement entered into by the Parties and represent the full and final agreement between the Parties.

143. The Parties agree to request that the Court approve the forms of the Preliminary Approval Order attached hereto as Exhibit 1, the Final Approval Order and Judgment attached as Exhibit 2, the Postcard Notice attached as Exhibit 3, the Email Notice attached as Exhibit 4, and the Long Form Notice attached as Exhibit 5. The fact that the Court may require non-substantive changes to any of these documents does not invalidate this Settlement Agreement.

## **XIX. TAXES**

144. **Qualified Settlement Fund.** The Parties agree that the escrow account into which the Settlement Fund is deposited, following the Settlement Funding Deadline, is intended to be and will at all times constitute a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1 (“Qualified Settlement Fund”). The Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of Section VI. It shall be the responsibility of the Settlement Administrator to cause the timely and proper preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

145. **The Settlement Administrator is "Administrator."** For the purpose of §1.468B of the Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the "administrator" of the Settlement Fund. The Settlement Administrator shall cause to be timely and properly filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B 2(k)). Such returns shall reflect that all Taxes (including any estimated taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

146. **Taxes Paid by Administrator.** All taxes arising in connection with income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendant or any of the other Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a Qualified Settlement Fund for federal or state income tax purposes shall be paid by the Settlement Administrator from the Settlement Fund.

147. **Expenses Paid from Fund.** Any Administrative Expenses reasonably incurred by the Settlement Administrator in carrying out its duties, including fees of tax attorneys and/or accountants, shall be paid by the Settlement Administrator from the Settlement Fund.

148. **Responsibility for Taxes on Distribution.** Any person or entity that receives a distribution from the Settlement Fund shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

149. **Tompkins Is Not Responsible.** In no event shall Tompkins or any of the other Released Parties have any responsibility or liability to Plaintiff, Settlement Class Members, or to Class Counsel for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Fund to Plaintiff, Settlement Class Members, or Class Counsel. The Settlement Fund shall indemnify and hold Tompkins and the other Released Parties harmless for all such taxes and tax-related expenses (including, without limitation, taxes, and tax-related expenses payable by reason of any such indemnification).

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, dated as of July 24, 2023.

DATED: 7/21/2023

Plaintiff Stacy Mock

DocuSigned by:

STACY MOCK

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DATED: 7/24/2023

Defendant Tompkins Community Bank

By: Francis M. Fetsko

Name: Francis M. Fetsko

Title: Executive Vice President

APPROVED AS TO FORM AND  
CONTENT

DATED: \_\_\_\_\_

WEITZ & LUXENBERG, PC

By: \_\_\_\_\_  
James J. Bilsborrow

JOHNSON FIRM

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Tyler B. Ewigleben

DATED: \_\_\_\_\_

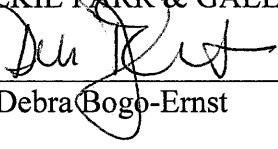
KALIEL GOLD PLLC

By: \_\_\_\_\_  
Sophia Gold

*Counsel for Plaintiff and Class Counsel*

DATED: 7/24/23

WILLKIE FARR & GALLAGHER LLP

By:  \_\_\_\_\_  
Debra Bogó-Ernst

*Attorneys for Defendant Tompkins Community  
Bank.*

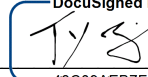
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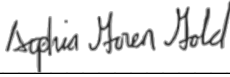
WEITZ & LUXENBERG, PC

By: \_\_\_\_\_  
James J. Bilsborrow

DATED: 7/22/2023

JOHNSON FIRM  
DocuSigned by:  
By:  \_\_\_\_\_  
Tyler B. Ewigleben  
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DATED: 7/21/2023

KALIEL GOLD PLLC  
By:  \_\_\_\_\_  
Sophia Gold

*Counsel for Plaintiff and Class Counsel*

DATED: \_\_\_\_\_

WILLKIE FARR & GALLAGHER LLP

By: \_\_\_\_\_  
Debra Bogo-Ernst

*Attorneys for Defendant Tompkins Community  
Bank.*