

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among plaintiffs Michael Lee and Marnetta Broyld (“Named Plaintiffs”) and all those on whose behalf they are prosecuting this action (each of them a “Plaintiff” and all of them “Plaintiffs”), on the one hand, and defendant The Canandaigua National Bank and Trust Company, sued as Canandaigua National Bank & Trust (“Defendant” or “CNB”), on the other hand, as of the date executed below, in full and final settlement of the action currently pending in the New York State Supreme Court, Monroe County, entitled *Michael Lee v. Canandaigua National Bank & Trust*, Index No. E202105065 (the “State Court Action”), subject to Final Approval, as defined below, by the Court. All references in this Agreement to a “Party” or the “Parties” shall refer to a party or the parties to this Agreement.

RECITALS

A. On May 21, 2020, plaintiff Michael Lee filed a putative class action complaint in federal court entitled *Michael Lee v. Canandaigua National Bank & Trust*, in the United States District Court for the Western District of New York, Civ. Action No. 6:20-cv-06332-EAW. Plaintiff Lee filed an Amended Complaint on August 13, 2020, alleging common law claims for breach of contract, breach of the implied covenant of good faith and fair dealing and violations of section 349 of the New York General Business Law (“GBL”) based on Plaintiffs’ theory that CNB improperly assesses overdraft fees (“Overdraft Fees”) and insufficient funds fees (“NSF Fees”) (the “Federal Action”).

B. After the federal court *sua sponte* raised the issue of subject matter jurisdiction, Plaintiff Lee voluntarily dismissed the Federal Action on May 17, 2021, and re-filed this case as the State Court Action on June 7, 2021. Plaintiffs amended the Complaint on July 26, 2022, to add an additional Named Plaintiff, Marnetta Broyld, who asserted the same claims as Mr. Lee.

C. CNB moved to dismiss the complaint. On November 8, 2021, the Court denied the motion as to the breach of contract and GBL claims, holding that CNB's account documents were ambiguous, and granted the motion as to the implied covenant of good faith and fair dealing claim. That decision was affirmed by the Appellate Division, Fourth Department on February 3, 2023.

D. On April 20, 2023, the parties participated in a mediation before the Honorable Carol E. Heckman (Ret.). The mediation did not result in a settlement, but the Parties continued settlement discussions for several months and ultimately reached an agreement in principle. The settlement described below is the result of that agreement.

E. Defendant is entering into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the State Court Action, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in either the Federal Action or the State Court Action, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Federal Action or the State Court Action. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

F. Plaintiffs have entered into this Agreement to liquidate and recover on the claims that were or could have been asserted in the Federal Action or the State Court Action, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the Federal Action or the State Court Action lack merit or are subject to any

defenses.

G. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class Members.

AGREEMENT

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

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

(a) “Account” means a checking account maintained by Defendant during the Class Period.

(b) “Account Holder” means any person who has or had any interest, whether legal or equitable, in an Account.

(c) “Bar Date To Object” means the date set by the Court as the deadline for Class Members to file an Objection, and shall be approximately thirty (30) days after the date the Notice (defined below) must be delivered to the Class Members.

(d) “Bar Date To Opt Out” means the date set by the Court as the deadline for Class Members to opt out. The Bar Date shall be thirty (30) days after the date the Notice (defined below) must be delivered to the Class Members.

(e) “Class Period” means the dates from May 21, 2014, through September 5, 2022, both dates inclusive.

(f) “Class Counsel” means Patrick Lannon of Cherundolo Law Firm, PLLC, Jeffrey Kaliel and Sophia Gold of KalielGold PLLC, and Taras Kick of The Kick Law Firm.

(g) “Court” means the New York State Supreme Court, Commercial Division – 7th Judicial District, Monroe County.

(h) “Defendant’s Counsel” means Nixon Peabody LLP.

(i) “Effective Date” shall be thirty (30) days after service of the Notice of Entry of the Final Approval Order (defined below) provided no objections are made to this Agreement. If there are objections to this Agreement, then the Effective Date shall be the later of: (1) ninety (90) days after service of the Notice of Entry of the Final Approval Order, if no appeals are taken from the Final Approval Order; or (2) if a Notice of Appeal from the Final Approval Order is filed, then thirty (30) days after an Appellate Court ruling affirming the Final Approval Order; or (3) thirty (30) days after entry of a dismissal of the appeal.

(j) “Exclusion Letter” means a letter by a Class Member who elects to opt out of this Agreement.

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

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

(m) “Final Report” means the report prepared by the Settlement Administrator of all receipts and disbursements from the Settlement Fund, as described in Section 11, below.

(n) “Motion For Final Approval” means the motion or motions filed by Class Counsel, as referenced in Section 7 below.

(o) “Named Plaintiffs” means each of Michael Lee and Marnetta Broyld.

(p) “Net Settlement Fund” means the net amount of the Settlement Fund, as defined below, after payment of court approved attorneys’ fees and costs, any court approved service

award, the costs of Notice, and any fees paid to the Settlement Administrator.

(q) “Notice” means the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order (defined below) and shall refer to the forms of Notice attached hereto as **Exhibit 1** and **Exhibit 2**.

(r) “NSF Fee” means a fee assessed against an Account where a check, in-person withdrawal or ACH debit was refused when the available balance of the Account was not sufficient to pay the transaction.

(s) “Overdraft Fee” means any fee or fees assessed (and not refunded or credited) to an Account Holder for a Point of Sale (POS) transaction that Defendant paid when the available balance of the Account was not sufficient to pay the transaction.

(t) “Preliminary Approval/Notice Order” means the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to Class Members, as provided in Sections 3 and 4 below.

(u) “Retry Fee” means an NSF Fee that was assessed (and not refunded or credited) for an ACH or check transaction that was re-submitted by a merchant after being returned by Defendant.

(v) “Retry Fee Class” means all current or former customers of Defendant who were assessed a Retry Fee during the Class Period. Excluded from the Retry Fee Class are Defendant, its parents, subsidiaries, affiliates, officers and directors; all Retry Fee Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

(w) “Settlement Administrator” means the entity that will provide the Notice and other administrative handling in this Settlement Agreement.

(x) “Settlement Administration Costs” means all costs and fees of the Settlement Administrator regarding the Notice and Settlement administration.

(y) “Settlement Class Member” means any member of the Sufficient Funds Fee Class or Retry Fee Class who has not opted-out of the Settlement and who is entitled to the benefits of the Settlement, including a Settlement Class Member Payment and/or forgiveness of Uncollected Fees.

(z) “Settlement Class Member Payment” means the cash distribution that will be made from the Net Settlement Fund to each Settlement Class Member, pursuant to the allocation terms of the Settlement.

(aa) “Settlement Fund” means the sum of one million, two hundred thousand dollars and zero cents (\$1,200,000.00) Defendant agrees to pay under the terms of this Agreement, to be allocated between the Retry Fee Class and the Sufficient Funds Fee Class as provided herein. The Settlement Fund shall be paid into an account established by the Settlement Administrator within ten (10) days of the Court’s entry of the Final Approval Order, less the total amount that Defendant will credit to Settlement Class Members as provided in paragraph 9(c)(iv) below.

(bb) “Settlement Website” means the website that the Settlement Administrator will establish as a means for Sufficient Funds Class Members and Retry Fee Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, the Preliminary Approval Order, and such other documents as the Parties may agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website for at least six (6) months after Final Approval.

(cc) “Sufficient Funds Fees” means Overdraft Fees that Defendant charged and did not refund or credit during the Class Period when there was enough money in the Account Holder’s

Account to cover the transaction in question if holds placed on deposits and pending debit card transactions were not deducted from the amount in the Account.

(dd) “Sufficient Funds Fee Class” means those current or former members of Defendant who were assessed Sufficient Funds Fees. Excluded from the Sufficient Funds Fee Class are Defendant, its parents, subsidiaries, affiliates, officers and directors; all Sufficient Funds Fee Class Members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

(ee) “Uncollected Fees” shall mean any Sufficient Funds Fees or Retry Fees that were assessed during the Class Period but were not paid because they were charged-off, which Defendant estimates are in the total amount of at least one hundred eighty thousand dollars and zero cents (\$180,000.00).

(ff) “Value of the Settlement” shall mean the Settlement Fund plus the value of the prospective relief described in Section 8 below, including the value of the Uncollected Fees as defined in Section 1(ee).

2. **CLASS ACTION SETTLEMENT.** Plaintiffs shall withdraw their pending motion for class certification (NYSCEF Doc. No. 10), without prejudice, and will make a new application to the Court to propose and recommend that the Court certify the Sufficient Funds Fee Class and Retry Funds Fee Class, as defined above, for settlement purposes only. Defendant agrees solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this case shall proceed as a class action; provided, however, that if a Final Approval Order is not issued, then Defendant shall retain all rights to object to maintaining this case as a class action. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

3. **PROSPECTIVE RELIEF.** Defendant has agreed to suspend the assessment of Retry Fees, as defined above, and has implemented that suspension of assessment of Retry Fees as of July 25, 2023.

4. **SETTLEMENT CONSIDERATION.**

(a) Within ten (10) days after entry of the Final Approval Order, Defendant shall forward to the Class Administrator the Settlement Fund, in cash, less the total amount Defendant will credit to the Accounts of Settlement Class Members as provided in paragraph 9(c)(iv)(b)(1). The Settlement Fund will be allocated 61.7873% for the benefit of the Sufficient Funds Fee Class and 38.2127% for the benefit of the Retry Fee Class to create the Settlement Fund. The Settlement Fund shall be used to pay Settlement Class Members their respective Settlement Class Member Payments; any and all attorneys' fees and costs awarded to Class Counsel; any Service Award to the Class Representative; and all Settlement Administration Costs. Defendant shall not be responsible for any other payments under this Agreement.

(b) Defendant shall forgive, waive, and agree not to collect Uncollected Fees from members of the Settlement Classes, which is an amount of at least one hundred eighty thousand dollars and zero cents (\$180,000), representing one hundred percent (100%) of the Uncollected Fees incurred by Settlement Class Members during the Class Period.

(c) For avoidance of doubt, it is agreed by the Parties that a Settlement Class Member may be a member of both the Sufficient Funds Fee Class and Retry Fee Class. In addition, a Settlement Class Member may qualify for a Settlement Class Member Payment, forgiveness of Uncollected Fees, or both. Eligibility for a Settlement Class Member Payment requires that the Settlement Class Member have paid one or more Retry Fees and/or Sufficient Funds Fees. Eligibility for forgiveness of an Uncollected Fee requires that the Settlement Class Member have

been assessed one or more Retry Fees and/or Sufficient Funds Fees that is an Uncollected Fee.

5. **PRELIMINARY SETTLEMENT APPROVAL.** Class Counsel shall use reasonable efforts to file promptly a motion seeking a Preliminary Approval/Notice Order as soon as practicable. The Preliminary Approval/Notice Order shall provide for: (a) preliminary approval of this Agreement; (b) provisional certification of the classes for settlement purposes, (c) appointment of Class Counsel as counsel to the provisionally certified classes; (d) the requirement that the Notice be given to the Class Members as provided in Section 6, below (or as otherwise determined by the Court); (e) a stay of the State Court Action pending Final Approval of the Settlement; and (f) a schedule for a Final Approval Hearing at a time and date mutually convenient for the Court, Class Counsel, and Defendant's Counsel, at which time the Court will determine whether to provide final approval to the Settlement, Class Counsel's application for attorneys' fees and costs, and for Service Awards to the Class Representatives.

6. **NOTICE TO THE CLASS.**

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

(b) For those Class Members who are current customers of Defendant and have agreed to receive notices regarding their accounts from Defendant by email, Defendant shall provide the Settlement Administrator with the most recent email addresses it has for the Class Members. The Settlement Administrator shall email an Email Notice (see Exhibit 1) to each such Class Member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Settlement Administrator shall use the best available databases to obtain current email address information, update its database with these emails, and resend the Notice by email.

The Email Notice shall inform Class Members how they may request a copy of the Long Form Notice (see Exhibits 1-2).

(c) For those Class Members who are not current customers of Defendant or who have not agreed to receive notices regarding their accounts from Defendant by email, the Settlement Administrator shall mail Notice to these Class Members by first class United States mail to the best available mailing address for each Class Member. Defendant shall provide the Settlement Administrator with last known mailing addresses for these Class Members. The Settlement Administrator will run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Notice is returned with forwarding address information, the Settlement Administrator shall re-mail the Notice to the forwarding address. For all mailed Notices that are returned as undeliverable, the Settlement Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Settlement Administrator shall re-mail the Notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail.

(d) The Notice shall also be posted on the Settlement Website.

(e) The Settlement Administrator shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. A summary report of the Notice shall be provided to the Parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by the Settlement Administrator regarding the Notice shall be available to the Parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party.

(f) The Notice and Email Notice shall be in a form approved by the Court and substantially similar to the notice form attached hereto as Exhibit 1 and Exhibit 2. The Parties may

by mutual written consent make non-substantive changes to the Notice without Court approval.

(g) All costs associated with publishing, mailing, and administering the Notice as provided for in this Section, and all costs of administration, including but not limited to the Settlement Administrator's fees and costs, shall be paid out of the Settlement Fund.

7. **MOTION FOR FINAL APPROVAL.** As provided in the Preliminary Approval/Notice Order, within a reasonable time after the Bar Date to Opt Out, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

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

9. **THE SETTLEMENT FUND AND DISTRIBUTION.**

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

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

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

(i) **Plaintiffs' Fees and Costs.** Plaintiffs' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund within ten (10) days of the entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees of up to one-third (33-1/3%) of the Value of the Settlement to the Class Members plus reimbursement of reasonable litigation

costs, to be approved by the Court. Defendant agrees not to oppose an application of up to one-third (33-1/3%) of the Value of the Settlement but reserves the right to oppose an application for fees in excess of that amount. Should the judgment approving the settlement be reversed on appeal, Class Counsel shall immediately repay all fees and costs to the Settlement Administrator; should the award of fees and costs be reduced on appeal, Class Counsel shall immediately repay into the Settlement Fund an amount equal to the reduction ordered by the appellate court.

(ii) Service Award. The Class Representatives may apply to the Court for a service award of up to \$5,000.00 each. Subject to the Court's approval, the service award shall be paid from the Settlement Fund within ten (10) days after the Effective Date.

(iii) Settlement Administrator's Fees. The Settlement Administrator's fees and costs, including estimated fees and costs to fully implement the terms of this Agreement, as approved by the Court, shall be paid within ten (10) days after entry of the Final Approval Order. The Parties Settlement Administrator agree that any fees or costs incurred by the Settlement Administrator prior to funding of the Settlement Fund shall be deferred and not invoiced until the Settlement Fund has been funded. In the event the Final Approval Order is not entered or this Agreement is terminated pursuant to Section 18 below, Defendant agrees to cover any costs incurred or fees charged by the Settlement Administrator for costs incurred and services provided prior to the denial of Final Approval or the termination of this Agreement.

(iv) Payments to Settlement Class Members. The amount paid to each

Settlement Class Member shall be calculated as follows:

a. The Net Settlement Fund shall be allocated to members of the Settlement Classes on a *pro rata* basis, as follows: (1) 61.7873% of the Net Settlement Fund shall be allocated to the Sufficient Funds Fee Class; and (2) 38.2127% of the Net Settlement Fund shall be allocated to the Retry Fee Class.

b. Payments to those members of the Classes (“Individual Payments”) shall be made no later than sixty (60) days after the Effective Date, as follows:

1. For those Class Members who are customers of Defendant at the time of the distribution of the Net Settlement Fund, their individual checking or savings accounts shall be credited in the amount of the Individual Payment they are entitled to receive.
2. For those Class Members who are not customers of Defendant at the time of the distribution of the Net Settlement Fund, the Settlement Administrator shall send a check by mail to the address used to provide the Notice, or at such other address as designated by the Class Member. The Class Member shall have one hundred eighty (180) days to negotiate the check. Any checks uncashed after one hundred eighty (180) days shall be distributed to Class Members on a pro-rata basis if practical. Otherwise, any residual shall be distributed pursuant to Section 13.

3. Settlement Class Members of the Sufficient Funds Fee Class shall be paid per incurred Sufficient Funds Fee calculated as follows: $(0.617873 \text{ of the Net Settlement Fund/Total Sufficient Funds Fees}) \times \text{Total number of Sufficient Funds Fees charged to and paid by each Sufficient Funds Fee Class Member}$;
4. Settlement Class Members of the Retry Fee Class shall be paid per Retry Fee calculated as follows: $(0.382127 \text{ of the Net Settlement Fund/Total Retry Fees}) \times \text{Total number of Retry Fees charged to and paid by each Retry Fee Class Member}$;
5. In no event shall any portion of the Settlement Fund revert to Defendant.

10. **PROSPECTIVE RELIEF.**

Forgiveness of Uncollected Fees. Upon the occurrence of the Effective Date, Defendant shall forgive the Uncollected Fees as defined in Section 1(ee) which are the Uncollected Fees portion of any amounts owing to Defendant by Settlement Class Members to the extent, if any, Defendant is attempting to collect thereon. If any Uncollected Fees are inadvertently collected, then they shall be refunded by Defendant insofar as Defendant is aware of the Uncollected Fees. If a Settlement Class Member with Uncollected Fees attempts to open a new account or re-open a closed account, Defendant shall not require payment of the Uncollected Fees as a condition to account opening insofar as Defendant is aware of the outstanding Uncollected Fees; however, nothing contained herein shall obligate Defendant to accept an application from a Settlement Class Member to open a new account or re-open a closed account.

11. **FINAL REPORT TO THE COURT.** Within two hundred (200) days after the

Effective Date, Class Counsel shall submit to the Court a Final Report, setting forth: (a) the amounts paid to Settlement Class Members by the Settlement Administrator, (b) any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; (d) the total amount of money unpaid to Class Members; and (e) the total amount of credits issued to Settlement Class Members by Defendant pursuant to Section 9(iv)(b)(1). Defendant shall provide a declaration under penalty of perjury setting forth the amount of the credits issued to Settlement Class Members pursuant to Section 9(iv)(b)(1).

12. **THE SETTLEMENT ADMINISTRATOR.**

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

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

(c) The Settlement Administrator shall keep all information regarding Settlement Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Class Counsel and Defendant's Counsel, or either of them, at their own cost, shall receive a complete digital copy of the Settlement Administrator's records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies.

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

reporting of payments received under the terms of this Agreement.

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

(f) The duties of the Settlement Administrator shall also include:

(i) Providing Notice of this Settlement as provided herein or as the Court may require;

(ii) Establishing a post office box for requests for exclusions from the Sufficient Funds Class and/or Retry Fee Class;

(iii) Establishing and maintaining the Settlement Website;

(iv) Establishing and maintaining an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries;

(v) Processing all requests for exclusion from the Sufficient Funds Class and/or Retry Fee Class and providing reports to Class Counsel and Defendant's Counsel as provided in Section 14(b) below;

(vi) Providing to Defendant the amount of the Individual Payments to be credited to the Accounts of Class Members who are customers of Defendant at the time of the distribution of the Net Settlement Fund and instruct Defendant to initiate such Individual Payments;

(vii) Distributing Individual Payments by check to those Class Members who are not customers of Defendant at the time of the distribution of the Net Settlement

Fund; and

(viii) Any other Settlement administration function at the instruction of Class Counsel and Defendant's Counsel, including, but not limited to, verifying that the Net Settlement Funds have been distributed.

(g) Within one hundred ninety (190) days after the Effective Date, the Settlement Administrator shall prepare a declaration setting forth the total payments issued to Settlement Class Members by the Settlement Administrator, the total amount of any checks uncashed and/or returned, and the total amount of money being held by the Settlement Administrator.

13. **CY PRES PAYMENT.** Subject to Court approval, thirty (30) days after the Final Report the total amount of uncashed checks, and amounts held by the Settlement Administrator at the time of the Final Report, shall be paid by the Settlement Administrator to one or more public interest organizations nominated by the Parties and subject to Court approval.

14. **OPT-OUTS.**

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

(b) The Settlement Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to Defendant's Counsel and Class Counsel on a weekly basis and at least five (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. The Settlement Administrator shall retain the originals of all Exclusion Letters

(including the envelopes with the postmarks). The Settlement Administrator shall make the original Exclusion Letters available to Class Counsel, Defendant's Counsel, and/or the Court upon two (2) court days' written notice.

15. **OBJECTIONS.**

(a) Any Settlement Class Member, other than a Settlement Class Member who timely submits an Exclusion Letter, may object to this Agreement.

(b) To be valid and considered by the Court, the objection must be in writing and sent by first class mail, postage pre-paid, to the Settlement Administrator. The objection must be postmarked on or before the Bar Date to Object and must include the following information:

(i) The objector's name, address, telephone number, and the contact information for any attorney retained by the objector in connection with the objection or otherwise in connection with this case;

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

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

(c) Class Counsel shall file any objections and responsive pleadings at least seven (7) days prior to the Final Approval Hearing Date.

16. **RELEASE.**

(a) Except as to the rights and obligations provided for under the terms of this Agreement, each of the Named Plaintiffs, on behalf of themselves and each of the Settlement Class

Members, hereby releases and forever discharges Defendant, and all of its past, present and future predecessors, successors, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys and agents (collectively, the “Releasees”) from any and all claims, charges, complaints, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, which the Named Plaintiffs and Settlement Class Members, who do not opt out, now have, own or hold against any of the Releasees that relate to the assessment of Sufficient Funds Fees and Retry Fees (“Released Claims”).

(b) Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against any Releasee in any forum, action, or proceeding of any kind.

(c) 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 herein, 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, contingent or non-contingent claims with respect to all of the matters described in or subsumed by herein.

(d) In addition to the releases made by Plaintiff and Settlement Class Members above, Named Plaintiffs, including each and every one of their agents, representatives, heirs, assigns, or any other person acting on behalf or for the benefit of either of them, and any person claiming through either of them, make the additional following general release of all claims, known or

unknown, in exchange and consideration of the Settlement set forth in this Agreement. The Named Plaintiffs agree to a general release of the Releasees from all claims, demands, rights, liabilities, grievances, demands for arbitration, and causes of action of every nature and description whatsoever, known or unknown, pending or threatened, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law.

(e) Nothing in this Agreement shall operate or be construed to release any claims or rights that Defendant has to recover any past, present, or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on his/her accounts, loans or any other debts with Defendant, pursuant to the terms and conditions of such accounts, loans, or any other debts, with the exception of the Uncollected Fees under this Agreement. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiffs or any Settlement Class Member has, other than with respect to the claims expressly released by this Agreement, in the event Defendant and/or its assigns seeks to recover any past, present, or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans, or any other debts with Defendant, pursuant to the terms and conditions of such accounts, loans, or any other debts.

17. **NO ADMISSION OF LIABILITY.**

(a) Defendant continues to dispute its liability for the claims alleged in the Federal Action and State Court Action and maintains that its overdraft practices and representations concerning those practices complied, at all times, with applicable laws and regulations and the terms of the account agreements with its members. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation,

and to be completely free of any further claims that were asserted or could possibly have been asserted in the Federal Action or State Court Action.

(b) Class Counsel believe that the claims asserted in the Federal Action and State Court Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the State Court Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Sufficient Funds Fee Class and Retry Fee Class Members.

(c) The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever.

(d) Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or members of the Sufficient Funds Fee Class and/or Retry Fee Class, or of any wrongdoing or liability of the Releasees; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Releasees, in the State Court Action or in any proceeding in any court, administrative

agency, or other tribunal.

(e) In addition to any other defenses the Parties may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

18. **CONDITIONS TO SETTLEMENT.**

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

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 5 above;

(ii) The Court has entered the Final Approval Order as required by Sections 7 and 8 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in the preceding paragraph are not met, then this Agreement shall be canceled and terminated.

(c) Defendant shall have the option to terminate this Agreement if five percent (5%) or more of the Settlement Class Members opt out. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 18 within fifteen (15) business days after the Bar Date To Opt Out, or the option to terminate shall be considered waived.

(d) In the event this Agreement is terminated, pursuant to Section 18(c) immediately above, or fails to become effective in accordance with Sections 18(a) and/or (b) immediately

above, then the parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

(e) The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of the Named Plaintiffs', Class Counsel's, and Defendant's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status quo ante in the State Court Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

(f) In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the State Court Action or any other action or proceeding for any purpose. In such event, all Parties to the State Court Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

19. **REPRESENTATIONS.**

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

review and execution of this Agreement.

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

(c) The Named Plaintiffs, on behalf of the Settlement Class Members, represent that they have made such inquiry into the terms and conditions of this Agreement as they deem appropriate, and that by executing this Agreement, they believe the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Settlement Class Members.

(d) The Named Plaintiffs represent that they have no conflicts or other personal interests that would in any way impact their representation of the Settlement Class Members in connection with the execution of this Agreement.

(e) Class Counsel (for the Named Plaintiffs and the Sufficient Funds Fee Class and Retry Fee Class) represents that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definition of plaintiff to the terms of this Agreement.

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

20. **INDEPENDENT INVESTIGATION AND DECISION TO SETTLE.** The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the State Court Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Both Parties recognize and acknowledge that they and their experts have reviewed and analyzed data for the Class Period

and have made whatever analyses or extrapolation they deemed necessary, in their own judgment and discretion, to make certain determinations, arguments, and settlement positions. The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data may later show. It is the Parties' intention to resolve their disputes in connection with the State Court Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

21. **CONFIDENTIALITY.** Neither Party shall issue any press release or shall otherwise initiate press coverage of the Settlement, nor shall either Party post about the Settlement on social media or any website other than the fact that the Settlement was reached and that it was a fair and reasonable result. If contacted, the Party may respond generally, either online or in person, by stating that they are happy that the Settlement was reached and that it was a fair and reasonable result.

22. **FURTHER ASSURANCES.** Each of the Parties hereto agrees to cooperate in good faith to prepare and execute and deliver all such further documents consistent with this Agreement, and to take all such further actions consistent with this Agreement, as may be required in order to carry the provisions of this Agreement into effect, subject to Class Counsel's obligation to protect the interests of the Settlement Class Members.

23. **APPLICABLE LAW.** This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of New York without regard to its conflict

of laws principals.

24. **JURISDICTION.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of their agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against any Releasee at any time, including during any appeal from the Final Approval Order.

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

26. **ENTIRE AGREEMENT.** This Agreement, including the exhibits attached hereto, constitutes the entire agreement made by and between the Parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the Parties hereto or their representatives pertaining to the

subject matter hereof. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement.

27. **NO CONFLICT INTENDED.** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

28. **NO WAIVER.** The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

29. **AGREEMENT MUTUALLY PREPARED.** Neither Defendant nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

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

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

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

33. **NOTIFICATION.** Any notice to be given to Class Counsel and/or Named Plaintiffs shall be sent by email, with a hard copy by overnight mail, as follows:

Jeffrey Kaliel, Esq.
KalielGold PLLC
1100 15th St NW, 4th Floor
Washington, D.C. 20005
(202) 350-4783
jkaliel@kalielpllc.com

Any notice to be given to Defendant under the terms of this Agreement shall be sent by email, with a hard copy by overnight mail, as follows:

Jennifer N. Weidner, Esq.
SVP, General Counsel
Canandaigua National Bank & Trust Company
72 South Main Street
Canandaigua, NY 14424
jweidner@cnbank.com

With a copy to:

Carolyn G. Nussbaum, Esq.
Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604
cnussbaum@nixonpeabody.com

Any notice to the Settlement Administrator shall be sent by email to the address of the Settlement Administrator, which will be determined by Class Counsel based on the lowest bid received for services of a class administrator by a candidate determined by Class Counsel to be appropriately qualified, experienced and competent as a Settlement Administrator.

[Signature block on next page]

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

below.

Dated: _____

THE CANANDAIGUA NATIONAL BANK AND TRUST COMPANY, sued as CANANDAIGUA NATIONAL BANK & TRUST

By: _____

Its: _____

Dated: 9/19/2023

MICHAEL LEE, an individual on behalf of himself and those he represents

By: Michael Allen Lee
Michael Lee

Dated: 9/19/2023

MARNETTA BROYLD, an individual on behalf of herself and those she represents

By: Marnetta Broyld
Marnetta Broyld

APPROVED AS TO FORM:

Dated: 9/27/23

NIXON PEABODY LLP
Carolyn G. Nussbaum

By: Carolyn G. Nussbaum
Carolyn Nussbaum

Attorneys for Canandaigua National Bank & Trust

Dated: 9/19/2023

KALIELGOLD PLLC
Jeffrey Kalief

By: JK
Jeffrey Kalief

Attorneys for Plaintiff Michael Lee & Marnetta Broyld

Dated: 9/25/2023

THE KICK LAW FIRM
Taras Kick

DocuSigned by:
By: Taras KICK

47AFC5BE30B464CD...

Taras KICK
Attorneys for Plaintiff Michael Lee & Marnetta
Broyld

Exhibit 1 – Email and Postcard Notice

Lee v. Canandaigua National Bank & Trust

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

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH
CANANDAIGUA NATIONAL BANK AND YOU WERE CHARGED
CERTAIN OVERDRAFT OR NSF FEES BETWEEN MAY 21, 2014 AND
SEPTEMBER 5, 2022, THEN YOU MAY BE ENTITLED TO A PAYMENT
FROM A CLASS ACTION SETTLEMENT AND/OR FORGIVENESS OF
CERTAIN UNCOLLECTED FEES**

The New York Supreme Court, Monroe County has authorized this Notice; it is not a solicitation from a lawyer.

You may be a member of the settlement Class in *Lee v. Canandaigua National Bank & Trust*, in which the plaintiffs allege that defendant Canandaigua National Bank (“Defendant”) unlawfully assessed certain Overdraft and NSF fees (the “Relevant Fees”) between May 21, 2014 and September 5, 2022. If you are a member of the Settlement Class and if the Settlement is approved, you may be entitled to receive a cash payment from the \$1,200,000.00 Settlement Fund and/or the forgiveness of Uncollected Fees amounting to \$180,000, benefits established by the Settlement. If you are a member of one of both of the Settlement Classes, you will receive a payment from the Settlement Fund so long as you do not opt out of or exclude yourself from the Settlement. **You do not have to do anything to be entitled to a payment from the Settlement Fund.**

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on [INSERT DATE]. At that hearing, the Court will consider whether to grant Final Approval to the Settlement, and whether to approve payment from the Settlement Fund of up to \$5,000.00 in a Service Award to each Class Representative, up to 33.33% of the Value of the Settlement as attorneys’ fees, and reimbursement of costs to the attorneys and the Settlement Administrator. If the Court grants Final Approval of the Settlement and you do not request to be excluded from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your Account, a cash payment to you if you are no longer a customer, and/or to forgive certain Relevant Fees.

To obtain a Long Form Notice and other important documents please visit [INSERT WEBSITE ADDRESS]. Alternatively, you may call [INSERT PHONE #].

If you do not want to participate in this Settlement—you do not want to receive a cash payment and/or the forgiveness of Uncollected Fees and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than [PARTIES TO INSERT DATE]. If you want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than [PARTIES TO INSERT DATE]. You may learn more about the opt-out and objection procedures by visiting [PARTIES TO PROVIDE WEBSITE ADDRESS] or by calling [Insert Phone #].

Exhibit 2 – Long Form Notice

Lee
v.
Canandaigua National Bank & Trust

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH
CANANDAIGUA NATIONAL BANK (“DEFENDANT”) AND YOU WERE
CHARGED CERTAIN OVERDRAFT OR NSF FEES BETWEEN MAY 21,
2014 AND SEPTEMBER 5, 2022, THEN YOU MAY BE ENTITLED TO A
PAYMENT FROM A CLASS ACTION SETTLEMENT**

The New York State Supreme Court, Monroe County, has authorized this Notice; it is not
a solicitation from a lawyer.

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

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

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Lee v. Canandaigua National Bank & Trust*. It is pending in the New York State Supreme Court, Monroe County, Case No. E2021005065. The case is a “class action.” That means that the “Class Representatives,” Michael Lee and Marnetta Broyld, are individuals who are acting on behalf of current and former customers who were assessed certain assessed certain Overdraft and NSF fees (“Relevant Fees”) between May 21, 2014 and September 5, 2022. The Class Representatives have asserted a claim for breach of the Account agreement and violation of consumer protection laws.

Defendant does not deny it charged the fees the Class Representatives are complaining about, but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant therefore denies that its practices give rise to claims for damages by the Class Representatives or any Settlement Class Members.

2. Why did I receive this Notice of this lawsuit?

You received this Notice because Defendant’s records indicate that you were charged one or more Relevant Fees that are the subject of this action. The Court directed that this Notice be sent to all Settlement Class Members because each such member has a right to know about the proposed settlement and the options available to him or her before the Court decides whether to approve the settlement.

3. Why did the parties settle?

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

There is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess the fees at issue. And even if it was contractually wrong to assess these fees, there is uncertainty about whether the Class Representative’ claims are subject to other defenses that might result in no or less recovery to Settlement Class Members. Even if the Class Representative were to win at trial, there is no assurance that the Settlement Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, the Settlement Class Members will avoid these and other risks and the delays associated with continued litigation.

While Defendant disputes the allegations in the lawsuit and denies any liability or wrongdoing, it enters into the Settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation.

WHO IS IN THE SETTLEMENT

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

If you received this notice, then Defendant’s records indicate that you are a member of one or both of the Settlement Classes who is entitled to receive a payment or credit to your Account.

YOUR OPTIONS

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

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

6. What are the critical deadlines?

There is no deadline to receive a payment. If you do nothing, then you will get a payment or forgiveness of Uncollected Fees.

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

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

7. How do I decide which option to choose?

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

If you believe the Settlement is unreasonable, unfair, or inadequate and the Court should reject the Settlement, you can object to the Settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the Settlement may not be approved and no payments will be made to you or any other member of the Classes. If your objection (and any other objection) is overruled, and the Settlement is approved, then you may still get a payment and/or forgiveness of Uncollected Fees, and will be bound by the Settlement.

If you want to participate in the Settlement, then you don’t have to do anything; you will receive a payment if the Settlement is approved by the Court.

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

The Court has to decide that the Settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide Preliminary Approval of the Settlement, which is why you received a Notice. The Court will make a final decision regarding the Settlement at a “Fairness Hearing” or “Final Approval Hearing,” which is currently scheduled for .

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

Defendant has agreed to create a Settlement Fund of \$1,200,000.00. It will also forgive Uncollected Fees totaling at least \$180,000, as defined in the Settlement Agreement, and change its practices regarding certain Relevant Fees going forward.

As discussed separately below, attorneys' fees, litigation costs, and the costs paid to a third-party Settlement Administrator to administer the Settlement (including mailing and emailing notice) will be paid out of the Settlement Fund. The Net Settlement Fund will be divided among all Settlement Class Members entitled to Settlement Class Member Payments based on formulas described in the Settlement Agreement.

10. How much of the Settlement Fund will be used to pay for attorney fees and costs?

Class Counsel will request the Court to approve attorneys' fees of not more than 33.33% of the Value of the Settlement, and will request that it be reimbursed for litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

11. How much of the Settlement Fund will be used to pay the Class Representative a Service Award?

Class Counsel will request that the Class Representative be paid a service award in the amount of \$5,000.00 each for their work in connection with this case. The Service Awards must be approved by the Court.

12. How much will my payment be?

The balance of the Settlement Fund after attorneys' fees and costs, the service award and the Settlement Administrator's fees, also known as the Net Settlement Fund, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments in accordance with the formulas outlined in the Settlement Agreement. Current customers of Defendant will receive a credit to their Accounts for the amount they are entitled to receive. Former customers of Defendant shall receive a check from the Settlement Administrator. Settlement Class Members entitled to forgiveness of Uncollected Fees shall receive this benefit automatically.

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

No. If you received this Notice, then you may be entitled to receive a payment for a Relevant Fee and/or forgiveness of Uncollected Fees without having to make a claim, unless you choose to exclude yourself from the settlement, or "opt out."

14. When will I receive my payment?

The Court will hold a Final Approval Hearing on [REDACTED], at [REDACTED] to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made or credits should be issued approximately 90 days later. However, if someone objects to the

Settlement, and the objection is sustained, then there is no Settlement. Even if all objections are overruled and the Court approves the Settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I exclude myself from the settlement?

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

To opt-out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Lee v. Canandaigua National Bank* class action. Be sure to include your name, the last four digits of your account number(s) or former account number(s), address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by [redacted], and sent to:

Lee v. Canandaigua National Bank & Trust
Attn:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

16. What happens if I opt-out of the Settlement?

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

OBJECTING TO THE SETTLEMENT

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

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

- a. the name of the Action;
- b. the objector’s full name, address and telephone number;
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;
- d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s

prior objections that were issued by the trial and appellate courts in each listed case;

e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;

f. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector's signature (an attorney's signature is not sufficient).

All objections must be post-marked no later than [redacted], and must be mailed to the Settlement Administrator as follows:

ADDRESS OF THE SETTLEMENT ADMINISTRATOR

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

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

19. What happens if I object to the Settlement?

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

THE COURT’S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval or Fairness Hearing at [redacted] on [redacted], 2024 at the New York State Supreme Court, Monroe County, which is located at 99 Exchange Blvd., Rochester, New York, 14614. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys’ fees and litigation costs and the amount of the Service Awards to the Class Representative. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at [www.\[redacted\]](http://www.[redacted]).

21. Do I have to come to the hearing?

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

22. May I speak at the hearing?

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

THE LAWYERS REPRESENTING YOU

23. Do I have a lawyer in this case?

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

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

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

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

The Court will be asked to approve the amount of attorneys’ fees at the Fairness Hearing. Class Counsel will file an application for attorneys’ fees and costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee application at the website established by the Settlement Administrator.

GETTING MORE INFORMATION

This Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [**WEBSITE**].

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

Michael Lee v. Canandaigua National Bank
Settlement Administrator
Attn:

For more information, you also can contact the Class Counsel as follows:

Jeffrey Kalief
KaliefGold PLLC
1100 15th St. NW
4th Floor
Washington, DC 20005
202-350-4783
jkaliel@kalielpllc.com

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