

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between plaintiff Lisa Silveira, on behalf of herself and the Class Members (as defined below), and defendant Manufacturers and Traders Trust Company a/k/a M&T Bank (“M&T”).

RECITALS

WHEREAS, on August 9, 2019, Plaintiff filed a putative class action lawsuit in the Central District of California entitled *Lisa Silveira v. M&T Bank*, Case No. 2:19-cv-06958-ODW-KS.

WHEREAS, the Action asserts that M&T charged borrowers “Pay-to-Pay Fees” to make mortgage payments online or by phone. The Action asserts that M&T’s practice of charging such fees, among other things, violated the Fair Debt Collection Practices Act and the Rosenthal Fair Debt Practices Act, and breached the terms of the borrowers’ loan agreements.

WHEREAS, the Parties have conducted a thorough investigation into the facts and law and engaged in extensive, good-faith, and arm’s-length settlement negotiations relating to the Action, including two mediation sessions with the Honorable Edward A. Infante (Ret.);

WHEREAS, the Parties understand that, if litigated further, the Action would require the resolution of numerous issues of law, fact, and procedure, with the possibility of appeals; and

WHEREAS, M&T denies the allegations asserted in the Action, however, the Parties desire to settle the Action finally on the terms and conditions set forth herein and to avoid the burden, expense, and uncertainty of continued litigation;

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties, M&T and plaintiff Lisa Silveira, on behalf of herself and the putative class, agree to the settlement of the Action, subject to Court approval, under the following terms and conditions:

1. Definitions

As used in this Settlement Agreement, the terms set forth in this section in boldface type will have the following meanings:

1.1 **Action.** The lawsuit entitled *Silveira v. M&T Bank*, Case No. 2:19-cv-06958-ODW, pending in the Central District of California.

1.2 **Agreement or Settlement Agreement.** This document, including the text and any exhibits of this Settlement Agreement, which has been signed by Plaintiff, M&T, and her and its respective counsel.

1.3 **Attorneys’ Fees and Expenses.** Such funds as may be awarded to Class Counsel by the Court to compensate them for fees and expenses incurred by Plaintiff or Class Counsel in connection with the Action.

1.4 **Class Counsel.** Subject to Court approval, James Kauffman and Jonathan Marshall of Bailey & Glasser LLP and Hassan Zavareei of Tycko & Zavareei LLP.

1.5 **Class Member.** A borrower with a residential mortgage loan serviced by M&T from whom M&T collected a Pay-to-Pay Fee during the Class Period.

1.6 **Class Notice.** Subject to Court approval, notice to Class Members substantially in the form of Exhibit 1 hereto.

1.7 **Class Period.** August 9, 2015 through the date the Court enters the Preliminary Approval Order.

1.8 **Class Representative.** Subject to Court approval, Lisa Silveira.

1.9 **Counsel for M&T.** Alston & Bird LLP.

1.10 **Counsel for the Parties.** Collectively, Class Counsel and Counsel for M&T.

1.11 **Court.** The Honorable Otis Wright, United States District Court for the Central District of California, or such other judge of the United States District Court for the Central District of California to whom the Action may hereafter be assigned. The address of the Court is United States District Court, Central District of California, First Street Courthouse, 350 W. 1st Street, Los Angeles, CA. 90012 - Courtroom 5D, 5th Floor.

1.12 **Effective Date.** Five (5) business days after both of the following have occurred:

- (a) The Court enters a judgment finally approving the Settlement of the Action in a manner consistent with the terms and intent of this Agreement; and
- (b) Either: (a) Thirty-five (35) calendar days have passed after Final Approval, and within such time no appeal is taken nor any extension for such appeal is granted, or (b) if an appeal is taken with respect to the Court's judgment finally approving the Settlement of the Action, the appellate court has by final order affirmed the Court's judgment finally approving the Settlement of the Action, or has denied review, or the appellant otherwise has exhausted all appellate remedies.

1.13 **Fairness Hearing.** The hearing at which the Court considers (a) any motion for Final Approval of the Settlement; (b) Class Counsel's request for an award of Attorneys' Fees and Expenses; (c) a Service Award to Class Representative; and (d) any objections or opposition to the Settlement or such requests for awards of Attorneys' Fees and Expenses and Service Award to Class Representative. In connection with the Fairness Hearing, the Parties will request entry of the Final Judgment, in the form attached as Exhibit 2 hereto unless otherwise directed by the Court.

1.14 **Final Approval.** The entry of the Final Judgment finally approving the Settlement in accordance with the terms and conditions of this Settlement Agreement.

1.15 **Final Judgment.** The Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court consistent with this Agreement, which is substantially in the form of the proposed judgment attached as Exhibit 2 hereto.

1.16 **Initial Mailing of the Class Notice.** The date of the first mailing of Class Notice to a Class Member, as determined by the Settlement Administrator.

1.17 **Net Settlement Fund.** The Settlement Fund less Notice and Administrative Costs, Service Award, and Attorneys' Fees and Expenses.

1.18 **Notice and Administrative Costs.** The reasonable and authorized costs and expenses of disseminating the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including, but not limited to, any costs and expenses associated with performing the obligations imposed by the Settlement Agreement; assisting Class Members, and the Parties and Counsel for the Parties; administering the Settlement Fund; and issuing and mailing settlement payments.

1.19 **Parties.** The Class Representative, on behalf of herself and the Class Members, and M&T.

1.20 **Party.** One or more of the Parties.

1.21 **Pay-to-Pay Fees.** The fees charged by M&T to borrowers for making a residential loan payment by telephone, IVR or the internet.

1.22 **Preliminary Approval Order.** The order of the Court preliminarily approving the terms and conditions of this Agreement as contemplated by this Agreement which is substantially in the form as the proposed order attached as Exhibit 3 hereto.

1.23 **Released Parties.** M&T and its parents, subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, vendors, agents, successors, assignors, assignees, and/or assigns, and each of their respective present, former, or future officers, directors, shareholders, employees, representatives, consultants, accountants, and attorneys.

1.24 **Service Award.** Compensation to Plaintiff for her time and effort in the Action as awarded by the Court.

1.25 **Settlement.** The Settlement of this Action on behalf of the Class Members in accordance with the terms and conditions of this Settlement Agreement.

1.26 **Settlement Administrator.** Subject to Court approval, Epiq Class Action & Claims Solutions, Inc.

1.27 **Settlement Class List.** The list of Class Members, along with their loan number and last known mailing addresses, to be provided by M&T to the Settlement Administrator. The Parties estimate there are approximately 112,000 loans on which Pay-to-Pay Fees were paid by Class Members during the Class Period. The Settlement Class List shall be treated as confidential information by the Settlement Administrator.

1.28 **Settlement Class Member.** A Class Member who is not properly excluded under the terms of the Settlement, as approved by the Court

1.29 **Settlement Fund.** The relief with an aggregate value of three million three hundred twenty-five thousand dollars (\$3,325,000.00), from which all (a) payments to Settlement Class Members, (b) Notice and Administrative Costs, (c) any Service Award to Plaintiff, and (d) any award of Attorneys' Fees and Expenses shall be paid, pursuant to the terms of this Settlement and as approved by the Court.

2. Settlement Procedures

2.1 As soon as possible after the execution of this Agreement, but no later than May 27, 2020, the Parties shall move, either jointly or separately, the Court for an order substantially in the form of Exhibit 3 hereto: (a) preliminarily approving this Agreement as within the range of possible final approval as fair, adequate, and reasonable; (b) preliminarily certifying the class as defined in section 6.1 and appointing Class Counsel for settlement purposes only; (c) setting a Fairness Hearing date, at least 100 days after the filing of any motion for preliminary approval of this Settlement Agreement, as well as deadlines for opt-outs and objections; and (d) approving the manner and form of Class Notice described in section 6.3.

2.2 If the Court certifies any classes or enters any orders relating to Class Representative and Class Counsel, such actions shall not be an adjudication of any fact or issue for any purpose other than the effectuation of this Agreement, nor shall they be considered as law of the case or res judicata or have collateral estoppel effect in this or any other proceeding. In the event that Final Judgment is not achieved, the Court's orders contemplated by this section shall be null, void, and vacated. Each Party expressly agrees that it is a material condition of this Agreement that he, she, or it may not, in the event that the Settlement is not approved, cite or otherwise refer to any such order as having adjudicated any issue of fact, law, or procedure.

2.3 On a hearing date established in the Preliminary Approval Order, the Court shall conduct the Fairness Hearing. Prior to the Fairness Hearing, the Parties shall move the Court for Final Approval of the Settlement. As a part of any motion for Final Approval of the Settlement, the Parties shall request entry of a Final Judgment, substantially in the form of Exhibit 2 hereto.

2.4 At least 28 days before the Fairness Hearing, the Class Representative shall file a motion for approval of (a) a Service Award to Class Representative, and (b) an award of Attorneys' Fees and Expenses.

2.5 **CAFA Notice.** M&T shall assure that timely notice is provided to any state and federal officials of the pendency of the Settlement as required by the Class Action Fairness Act (28 U.S.C. § 1715).

3. Classwide Settlement Relief

3.1 In consideration for the releases set forth in Section 7 of this Agreement, M&T shall provide the following relief to Settlement Class Members:

3.2 Settlement Monetary Consideration:

3.2.1 M&T shall pay the total amount of \$3,325,000 in relief, which shall comprise the Settlement Fund.

3.2.2 The Settlement Administrator will distribute the Settlement Fund as set forth in Section 5.

3.2.3 All costs, expenses, fees, relief, and/or any payments of any kind in connection with or associated with this Settlement shall be paid from the Settlement Fund, including, but not limited to, all (a) payments to Settlement Class Members (b) Notice and Administrative Costs, (c) any Service Award to Plaintiff, and (d) any award of Attorneys' Fees and Expenses.

3.2.4 The Settlement Fund is the maximum amount that M&T will have to pay under this Settlement. No portion of the Settlement Fund shall revert to M&T at any time.

4. Settlement Administration

4.1 The Settlement Administrator shall administer the Settlement in accordance with the Settlement Agreement and as approved by the Court and shall do so in a cost-effective and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records shall be made available to Counsel for the Parties upon request. Without limiting any of its other obligations as stated herein, the Settlement Administrator shall be responsible for the implementation and effectuation of Class Notice; maintaining a settlement website, as set forth in Section 6.4; receiving and maintaining on behalf of the Court any correspondence regarding requests for exclusion and/or objections to the Settlement; distributing the Settlement Fund to the Settlement Class Members, paying Court approved Attorneys' Fees and Expenses, and Service Award; and providing all other related support, reporting, and administration as further stated in this Agreement. The Parties may direct the Settlement Administrator to assist with various additional administrative tasks in implementing the Settlement as the Parties shall deem appropriate in their sole discretion.

4.2 The Parties will cooperate with the Settlement Administrator to provide Class Notice to Class Members, as provided in this Agreement. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and, without limiting the foregoing, shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity except as provided for in this Settlement Agreement, or as required to respond to inquiries from Class Members regarding their participation in the Settlement, or by court order.

4.3 The Settlement Administrator shall provide the Parties with timely notice of all Notice and Administrative Costs. M&T shall make all payments necessary to cover the Notice and Administrative Costs reasonably incurred by the Settlement Administrator in discharging its obligations under the terms of the Settlement Agreement and pursuant to the Court's orders. The Settlement Administrator shall keep an accurate accounting of all payments made by M&T to cover Notice and Administrative Costs and shall properly deduct all such Notice and Administrative Costs from the Settlement Fund in order to determine the Net Settlement Fund, pursuant to Section 5.2.

4.4 M&T is not and will not be obligated to compute, estimate, or pay any taxes on behalf of the Class Representative, any Class Member, Class Counsel, and/or the Settlement Administrator.

5. Payment and Distribution of Settlement Fund

5.1 At least 14 days before the Fairness Hearing, the Settlement Administrator shall prepare and disseminate to Counsel for the Parties an initial list that shall identify each Class Member, and whether each Class Member is a Settlement Class Member, or whether that Class Member has timely opted out of, or is excluded by virtue of a timely opt out by a co- or joint borrower from, the Settlement in accordance with this Agreement and the Preliminary Approval Order.

5.2 Within 14 days after the Effective Date, the Settlement Administrator shall calculate the Net Settlement Fund by deducting (a) the Notice and Administrative Costs incurred in connection with Class Notice and any other Notice and Administrative Costs approved by the Parties and funded by M&T in advance of the date on which the Settlement Administrator calculates the Net Settlement Fund; (b) any costs, fees or other expenses that the Settlement Administrator reasonably expects to incur through the conclusion of the Settlement (the "Projected Notice and Administrative Costs"); (c) the amount of any Court-approved Service Award to the Class Representative; and (d) the amount of any award of Attorneys' Fees and Expenses and provide Counsel for the Parties with a document demonstrating this calculation. The Parties must review and approve the Settlement Administrator's Projected Notice and Administrative Costs provided by the Settlement Administrator pursuant to subpart 5.2(b) above, which approval shall not be unreasonably withheld. If at the conclusion of the settlement administration not all of the Projected Notice and Administrative Costs are actually incurred, the remaining amounts shall be distributed pursuant to the *cy pres* provision in paragraph 5.9. In no event, however, shall the Settlement Administrator be paid an amount in excess of the Projected Notice and Administrative Costs for the completion of the settlement administration from the date of the Projected Notice and Administrative Costs forward.

5.3 Within 14 days after the Effective Date, the Settlement Administrator shall determine on a percentage basis and dollar basis the allocation to each Settlement Class Member to be made from the Net Settlement Fund and disseminate to Counsel for the Parties a final list that identifies each Settlement Class Member; the percentage of the Net Settlement Fund to be paid to each Settlement Class Member; and the amount of the payment to be made to each Settlement Class Member. For each loan on which a Class Member has paid Pay-to-Pay Fees, the Settlement Administrator shall allocate the amount of the Net Settlement Fund that represents the proportional amount of Pay-to-Pay Fees charged by M&T within the Class Period on that loan.

5.4 Payments to Settlement Class Members under this Settlement shall be made per loan, such that the settlement payment on any loan with more than one Class Member borrower shall be made payable jointly to all Class Member borrowers on that loan. Thus, for each loan for which more

than one borrower on that loan is a Settlement Class Member, the Settlement Administrator shall make a single allocation to that loan payable to all co-borrower or joint borrower Settlement Class Members on that loan.

5.5 Notice and Administrative Costs shall be paid from the Settlement Fund as incurred before the Effective Date, provided that Counsel for the Parties approve of such disbursements, which approval shall not be unreasonably withheld.

5.6 Within 30 days after the Effective Date, M&T shall provide the Settlement Administrator with all remaining funds necessary to cover (a) the payments to Settlement Class Members (b) any Court-approved Service Award to Plaintiff, (c) any Attorneys' Fees and Expenses to Class Counsel in the amount approved by the Court; and (d) the Projected Notice and Administrative Costs. In the event, however, that there is an appeal taken with respect to the Court's judgment finally approving the Settlement of the Action, M&T shall provide the Settlement Administrator with all remaining funds necessary to cover the payments identified in this subparagraph within 60 days of the filing of the notice of such an appeal, provided that appeal has not been resolved within those 60 days. The Settlement Administrator shall maintain those funds in an appropriate escrow account (the "Settlement Escrow Account"), subject to the provisions and obligations of this Settlement Agreement and any orders from the Court. If the appellate process at any point results in a decision not to affirm the Court's judgment finally approving the Settlement of the Action in its entirety, the Settlement Administrator shall return the funds in the Settlement Escrow Account to M&T, less any Notice and Administrative Costs then due, within 15 days of such decision.

5.7 The Settlement Administrator shall pay all Settlement Class Members by check. The Settlement Administrator shall mail payments to Settlement Class Members no later than 60 days following the Effective Date. In the event that there is more than one borrower indebted on a loan serviced by M&T and either one of those borrowers is a Settlement Class Member, the check shall be made payable jointly to all borrowers. Prior to mailing checks under the Settlement, the Settlement Administrator shall attempt to update the last known addresses of the Settlement Class Members through the National Change of Address database. Class Members' checks returned with a forwarding address shall be re-mailed to the new address within twenty-one (21) calendar days. If a Class Member's check is returned as undeliverable without a forwarding address, the Settlement Administrator shall perform a skip trace search and shall make one attempt to re-mail the check within twenty-one (21) calendar days. Any checks which are not cashed within 90 days shall be voided and the money returned to the Settlement Fund. For good cause shown by the Settlement Class Member involved, the Settlement Administrator may reissue a check for up to an additional 90-day period following the original 90-day period. The Parties will confer in good faith to determine whether good cause has been shown.

5.8 No later than 60 days after the Effective Date, the Settlement Administrator shall pay from the Settlement Fund (a) any Court-approved Service Award to the Class Representative, and (b) any award of Attorneys' Fees and Expenses to Class Counsel approved by the Court, in accordance with instructions from Class Counsel.

5.9 If there is any amount in the Settlement Fund that remains following the distribution of checks to Settlement Class Members as a result of checks which are returned as undeliverable or which are not cashed within 90 days, that amount will be distributed on a *pro rata* basis to Settlement Class

Members who cashed their checks according to the distribution plan set forth in Section 5.3. If there is any amount in the Settlement Fund that remains following the secondary distribution, or there are not enough funds to make a secondary distribution economically feasible, then upon approval by the Court, pursuant to the *cypres* doctrine, the remaining amount shall be paid to a 501(c)(3) charitable organization, which will be jointly proposed by the Parties in advance of final approval, within 60 days after the last void date of the checks and upon certification by the Settlement Administrator that the administration of the settlement is complete.

6. Certification of Class for Settlement and Class Notice

6.1 Certification of Class for Settlement. For settlement purposes only, the Parties agree that the Court may certify a class, defined as:

All borrowers with a residential mortgage loan serviced by M&T from whom M&T collected a Pay-to-Pay Fee during the Class Period.

6.2 Decertification of the Class if Settlement Not Approved. If the Court does not grant Final Approval of the Settlement, certification of the class will be vacated, and the Parties will be returned to their positions *quo ante* with respect to the Action as if the Settlement had not been entered into. In the event that Final Judgment is not achieved, (a) any Court orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity, and (b) the fact of this Settlement, the fact that M&T sought the certification of any class under the Settlement, or that the Court preliminarily approved the certification of a settlement class, shall not be used or cited thereafter by any person or entity, including in any contested proceeding relating to the certification of any class in the Action or any other action. Notwithstanding this provision, if Final Judgment is not achieved, nothing in this section prevents any Party from seeking or opposing a definition of a class that is the same as or similar to the definition of the class contemplated by this Settlement.

6.3 Manner of Giving Notice. Subject to Court approval, the Settlement Administrator will provide the Class Notice to all Class Members after preliminary approval of the Settlement by the Court, and in the manner prescribed herein. The cost of such Class Notice shall be paid from the Settlement Fund. No further notice shall be required after the Court enters a judgment finally approving the Settlement of the Action.

6.3.1 Within 10 days or such other time as provided for in the Preliminary Approval Order, M&T shall compile the Settlement Class List and provide that list to the Settlement Administrator and Class Counsel. The Settlement Administrator shall then update the entire Settlement Class List through the National Change of Address (“NCOA”) database, or its equivalent, before sending out Class Notice.

6.3.2 The Settlement Administrator shall send Class Notice to Class Members no later than 30 days after entry of the Preliminary Approval Order, unless another time is specified in the Preliminary Approval Order. The Class Notice shall be sent to Class Members at their last known mailing address as updated by the NCOA by first class mail. Only one Class Notice shall be mailed to each Class Member. Where more than one Class Member is a borrower on the same unique loan, only one Class Notice shall be mailed, which will be addressed to both Class Member borrowers on that loan. The Settlement Administrator shall cause a skip trace to be run with respect to any Class Notice returned

as undeliverable, and shall resend the Class Notice once in accordance with updated information, if any, obtained from the skip trace.

6.4 **Settlement Website.** In accordance with the Class Notice, the Settlement Administrator shall maintain a dedicated settlement website, which shall (a) prominently display the Class Notice, (b) provide an online and toll-free number whereby Class Members may request additional information or documents, in which event appropriate information shall be promptly provided by the Settlement Administrator, and (c) make available for download the operative complaint(s), this Agreement and any exhibits thereto, any motions and memoranda seeking approval of the Settlement or approval of attorneys' fees and costs payable to Class Counsel, and any orders of the Court relating to the Settlement. The settlement website shall also provide answers to frequently asked questions, the text of which shall conform to the Class Notice approved by the Court.

7. Release of Claims

7.1 **Class Claims.** Upon Final Approval, Class Representative, and each Settlement Class Member, and each of their respective executors, representatives, heirs, successors, bankruptcy trustees, guardians, and all those who claim by or through them or who assert claims on their behalf, will be deemed to have completely released and forever discharged the Released Parties, and each of them, from all actions, causes of action, claims, demands, obligations, or liabilities of any and every kind that were or could have been asserted in any form by Class Representative or Class Members, including but not limited to, statutory or regulatory violations, state or federal debt collection claims (including but not limited to violations of the Fair Debt Collection Practices Act and the California Rosenthal Act), unfair, abusive or deceptive act or practice claims, tort, contract, or other common law claims, or violations of any other related or comparable federal, state, or local law, statute or regulation, and any damages (including any compensatory damages, special damages, consequential damages, punitive damages, statutory penalties, attorneys' fees, costs) proximately caused thereby or attributable thereto, directly or indirectly, and any equitable, declaratory, injunctive, or any other form of relief arising thereunder, whether or not currently known, arising out of, based upon or related in any way to the collection or attempted collection of Pay-to-Pay Fees. Nothing in this Release or in the Agreement otherwise alters or affects the rights or obligations of any Class Member and M&T with respect to any relationship with M&T, including but not limited to any to any banking, credit card or investment relationship, nor does this Release or Agreement in any way change any Class Member's continuing obligations on his or her residential mortgage loan with M&T, including any mortgage loan serviced by M&T, or in any way limit M&T's rights with respect to such loan.

7.2 **Unknown Claims.** Class Representative and Settlement Class Members each waive and release any and all provisions, rights, and benefits conferred either (a) by section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, with respect to the claims released pursuant to section 7.1. Section 1542 of the California Civil Code reads:

Section 1542. Certain claims not affected by general release. 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.

Class Representative and Settlement Class Members may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the claims released pursuant to the terms of section 7.1, but each of those individuals expressly agrees that, upon entry of the Final Judgment, he or she shall have waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the claims released pursuant to section 4.1, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts.

7.3 **Bar to Future Suits.** Class Representative and Settlement Class Members shall be enjoined from prosecuting any legal proceeding against any Released Party with respect to the claims released pursuant to sections 7.1 and 7.2. The Court shall retain jurisdiction to enforce the judgment, releases, and bar to suits contemplated by the Settlement. The Settlement may be pleaded as a complete defense to any proceeding subject to this section.

8. Attorneys' Fees and Litigation Expenses and Reimbursements

8.1 **Attorneys' Fees and Expenses.** Class Counsel agree to request approval of attorneys' fees in an amount not to exceed one third of the Settlement Fund, plus litigation costs and expenses. The Settlement Administrator will make payment of Attorneys' Fees and Expenses to Class Counsel from the Settlement Fund within 60 days after the Effective Date, in accordance with Section 5.8 of this Agreement. It is not a condition of this Agreement that any particular amount of Attorneys' Fees and Expenses be approved by the Court, or that such Attorneys' Fees and Expenses be approved at all. Any order or proceeding relating to the amount of any award of Attorneys' Fees and Expenses or any appeal from any order relating thereto, or reversal or modification thereof, shall not operate to modify, terminate, or cancel this Agreement, or affect or delay the finality of the Final Judgment. A decision by the Court to approve less than Class Counsel may request as Attorneys' Fees and Expenses shall not be deemed a basis to void any provision of this Agreement.

8.2 **Service Award.** Class Counsel will request Court approval of a Service Award consisting of a cash payment of \$10,000 to the Class Representative. M&T will pay any such award approved by the Court up to \$10,000. The Settlement Administrator will make payment of the Service Award within 60 days after the Effective Date, in accordance with Section 5.8 of this Agreement. It is not a condition of this Agreement that any particular amount of Service Award be approved by the Court, or that such Service Award be approved at all. Any order or proceeding relating to the amount of any Service Award, or any appeal from any order relating thereto, or reversal or modification thereof, shall not operate to modify, terminate, or cancel this Settlement, or affect or delay the finality of the Final Judgment. A decision by the Court to award less than Plaintiff may request as an award shall not be deemed a basis to void any provision of this Agreement.

9. Dismissal of Litigation

9.1 The Class Representative, on behalf of herself and the Class Members, consents to the dismissal of the Action with prejudice upon Final Approval and in accordance with the terms of the Agreement, and the Parties hereby stipulate to the entry of the Final Judgment.

10. Continuing Jurisdiction

10.1 In the event that any Party reasonably believes in good faith that another Party is not meeting the other Party's obligations, that Party will engage in a meet and confer through Counsel for the Parties for the purposes of attempting to resolve those issues. If the Parties cannot resolve the issues informally, they will first attempt to mediate the issues with the assistance of an agreed-upon mediator.

10.2 The Court will retain jurisdiction to enforce the terms of this Agreement. Nothing in this provision is intended to prevent the Court from exercising its authority to inquire about the bases for settlement, settlement terms, the implementation of the Settlement, or the information provided to the Court in connection with Preliminary or Final Approval of the Settlement.

11. Exclusions (Opt Outs)

11.1 Any Class Member who receives Class Notice under Section 6.3 of this Agreement and who wishes to be excluded from the Settlement must submit a written request for exclusion by first class U.S. mail, postage paid, to the United States Post Office Box established and maintained by the Settlement Administrator for the purposes of this Settlement. Any request for exclusion from the Settlement must be postmarked on or before the deadline set by the Court and specified in the Class Notice, which shall be no less than sixty (60) calendar days after the Initial Mailing of the Class Notice. Anyone submitting a request for exclusion must: (a) set forth his/her full name and current address; (b) set forth his/her M&T loan number; and (c) specifically state his/her desire to be excluded from the Settlement.

11.2 Any timely written request for exclusion submitted by any co-borrower or joint borrower on a given loan will have the effect of excluding all other co-borrowers or joint borrowers on that loan, none of whom thereafter will be treated as Settlement Class Members.

11.3 Any Class Member who receives Class Notice under section 6.3 and does not submit a request for exclusion in complete accordance with the deadlines and other specifications set forth in the Class Notice shall be bound by all proceedings, orders, and judgments of the Court pertaining to the Settlement, absent a court order to the contrary obtained by the Class Member at his or her own expense.

12. Objections

12.1 Any Class Member who wishes to object to the Settlement must send a written objection ("Objection") to the Settlement Administrator by first class U.S. mail, postage paid, to the United States Post Office box established and maintained by the Settlement Administrator for the purposes of this Settlement. All Objections must also be filed with the Court and served on Class Counsel and on Counsel for M&T at the addresses specified in section 14. Any Objection must be postmarked on or before the deadline specified in the Class Notice, which shall be no less than 60 calendar days after the Initial Mailing of the Class Notice. Only Class Members may object to the Settlement. A Class Member who submits a request for exclusion shall not be entitled to object to the Settlement, and if both a request for exclusion and an Objection are submitted, the request for exclusion shall control, and the Objection shall be deemed invalid.

In the Objection, an objecting Class Member must: (a) set forth his/her full name, current address, and telephone number; (b) state his/her loan number, which shall be partially redacted by the Settlement Administrator before filing with the Court; (c) set forth a statement of the position the objector wishes to assert, including the factual and legal grounds for the position; (d) set forth the names and a summary of testimony of any witnesses that the objector might want to call in connection with the Objection; (e) provide copies of all documents that the objector wishes to submit in support of his/her position; (f) provide the name(s) of any attorney(s) representing the objector; and (g) state the name, court, and docket number of any class action litigation in which the objecting Class Member and/or the objector's attorney(s) has previously appeared as an objector or provided legal assistance with respect to an objection; and (h) state whether the objection applies only to the objector, to a specific subset of the class, or to the entire class.

12.2 Subject to approval of the Court, any objecting Class Member may appear at the Fairness Hearing, in person or through counsel, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable.

13. Press Releases

13.1 Any press release relating to this settlement shall be issued jointly.

14. Notices

14.1 Any communication, verification, or notice sent by Class Counsel or a Party in connection with this Settlement Agreement shall be effected by facsimile and U.S. mail as follows:

To Plaintiffs:

James Kauffman
Bailey & Glasser LLP
1055 Thomas Jefferson Street NW
Suite 540
Washington, DC 20007

Hassan Zavareei
Tycko & Zavareei LLP
1828 L Street, NW – Suite 100
Washington, DC 20036

To M&T:

Michael J. Agoglia
Alston & Bird LLP
560 Mission Street, Suite 2100
San Francisco, CA 94501

15. Miscellaneous

15.1 **Entire Agreement.** This Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement.

15.2 **No Liability.** This Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission by any Party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations or claims in this Action. This Agreement does not

constitute a waiver of any defenses or affirmative defenses that M&T or its successor may be entitled to assert in any future litigation, including the applicable statute of limitations.

15.3 **Invalidity on Modification or Disapproval.** In the event any court disapproves or sets aside this Settlement Agreement or any material part hereof for any reason, or holds that it will not enter or give effect to the Final Judgment without modification, or holds that the entry of the Final Judgment or any material part thereof should be overturned or modified in any material way, then:

- (A) If any Party does not agree to jointly appeal such ruling, this Agreement will become null and void, and the Action will continue, and the Parties stipulate to a joint motion (a) that any and all orders entered pursuant to this Agreement be vacated, and (b) that any and all dismissals pursuant to this Agreement be vacated; or
- (B) If the Parties do agree to jointly appeal such ruling and if the Final Judgment or its equivalent in all material respects is not in effect after the termination of all proceedings arising out of such appeal, this Agreement will become null and void, and the Action will continue, and the Parties stipulate to a joint motion (a) that any and all orders entered pursuant to this Agreement be vacated, including, without limitation, any order modifying the class certification order or permitting amendment of the complaint to conform the complaint to the class definition set out in section 6.1, and (b) that any and all dismissals pursuant to this Agreement be vacated.

15.4 **Amendment.** This Agreement may be amended or modified before Final Approval only by a written instrument signed by each Party or his, her, or its successor in interest or duly authorized representative. After Final Approval this Agreement and any amendments or modifications will be subject to Court approval.

16. Representations and Warranties

16.1 **No Additional Persons with Financial Interest.** Class Representative and Class Counsel warrant and represent that they are not aware of any persons (natural or legal) having any interest in any award of Attorneys' Fees and Expenses costs, or litigation expenses in connection with the Action, other than Class Counsel.

16.2 **Parties Authorized to Enter into Settlement Agreement.** Class Representative and M&T represent and warrant that they are fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each Party hereto further represents and warrants that he, she, or it intends to be bound fully by the terms of this Agreement.

16.3 **No Attempt by Parties to Object.** Class Representative and Class Counsel and M&T each represent and warrant that they have not attempted to, nor will they attempt to, (a) void this Agreement in any way, or (b) solicit, encourage, or assist in any fashion in, any effort by any person (natural or legal) to object to the Settlement.

16.4 **Signatures.** Each person executing this Agreement on behalf of a Party covenants, warrants, and represents that he or she has been fully authorized, and is authorized, to do so by such Party. In addition, signature by facsimile will constitute sufficient execution of this Settlement Agreement.

16.5 **Best Efforts.** The Parties agree that the terms of the Settlement Agreement reflect a good-faith settlement of disputed claims. Class Counsel, Class Representative, and M&T consider the Settlement to be fair, reasonable, and adequate, and will use their best efforts to support this Agreement and to seek approval of this Agreement by the Court according to its terms without modification, and in responding to any objectors, intervenors, or other persons or entities seeking to preclude the final approval of this Settlement Agreement. The Parties further agree to cooperate and work together in good faith throughout the administration of the Settlement and to adhere to the terms of this Agreement.

16.6 **Time Periods.** The time periods and dates provided in this Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Class Counsel and counsel for M&T.

16.7 **Governing Law.** This Agreement is intended to be and shall be governed by the laws of the State of California.

16.8 **No Construction Against Drafter.** This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

16.9 **Agreement Binding on Successors in Interest.** This Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

16.10 **Execution in Counterparts.** This agreement shall become effective upon its execution by the Parties, Class Counsel, and counsel for M&T. The Agreement may be executed in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

CLASS REPRESENTATIVE

DATED: May , 2020
5/25/2020

DocuSigned by:
By: Lisa Silveira
Lisa Silveira MFC...

DEFENDANT

DATED: May , 2020

M&T Bank

By: _____
Christopher Lightcap
Group Vice President

APPROVED AS TO FORM:

DATED: May ²⁶, 2020

BAILEY & GLASSER LLP

By: James Kauffman
James Kauffman
Attorney for Class Representative, Lisa Silveira

DATED: May , 2020

TYCKO & ZAVAREEI LLP

By _____
Hassan Zavareei
Attorney for Class Representative, Lisa Silveira

DATED: May , 2020

ALSTON & BIRD LLP

By _____
Michael Agoglia
Attorney for M&T Bank

CLASS REPRESENTATIVE

DATED: May , 2020
5/25/2020

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By: Lisa Silveira
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BAILEY & GLASSER LLP

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James Kauffman
Attorney for Class Representative, Lisa Silveira

DATED: May 26 , 2020

TYCKO & ZAVAREEI LLP

By: 
Hassan Zavareei
Attorney for Class Representative, Lisa Silveira

DATED: May , 2020

ALSTON & BIRD LLP

By: _____
Michael Agolia
Attorney for M&T Bank

CLASS REPRESENTATIVE

DATED: May , 2020

By: _____
Lisa Silveira

DEFENDANT

DATED: May 26 , 2020

M&T Bank

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Attorney for Class Representative, Lisa Silveira

DATED: May 26, 2020

ALSTON & BIRD LLP

By _____
Michael Agoglia
Attorney for M&T Bank