

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
COMMERCIAL DIVISION

<p>JOSEFINA VALLE and WILFREDO VALLE, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>POPULAR COMMUNITY BANK f/k/a BANCO POPULAR NORTH AMERICA a/k/a BANCO POPULAR NORTH AMERICA,</p> <p style="text-align: center;">Defendant.</p>	<p>Index No. 653936/2012</p> <p>Hon. O. Peter Sherwood, J.S.C.</p> <p>SETTLEMENT AGREEMENT AND RELEASE</p>
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This Settlement Agreement and Release (“Agreement” or “Settlement”) is made by, between and among: (1) Plaintiffs Josefin Valle and Wilfredo Valle (“Plaintiffs”), on behalf of themselves and the Settlement Class (as defined below); and Popular Community Bank f/k/a Banco Popular North America a/k/a Banco Popular North America (“BPNA” or “Defendant”). BPNA, Settlement Class Counsel (as defined below), and Plaintiffs hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court (as defined below) of a Final Approval Order (as defined below), all claims of Plaintiffs and the Settlement Class Members (as defined below) against BPNA in the case styled *Valle v. Popular Community Bank*, Index No. 653936/2012 (N.Y. Sup.) (“Action”), shall be settled, compromised, and released upon the terms and conditions contained herein.

I. Recitals

1. Plaintiffs filed their original complaint in this action on November 14, 2012 (NYSCEF Doc. No. 1), challenging BPNA’s allegedly deceptive practices in connection with its imposition of bank Overdraft Fees. Plaintiffs’ operative Second Amended Class Action Complaint (“SAC”; NYSCEF Doc No. 319) alleges that BPNA violated New York General

Business Law (“GBL”) §349, when it imposed Overdraft Fees on Plaintiffs and other consumers as a result of BPNA’s practices of: (i) failing to disclose, prior to completion of an Automated Teller Machine (“ATM”) withdrawals or debits and Point-of-Sale (“POS”) withdrawal, debit or purchase, that those withdrawals, debits or purchases would cause the account to be overdrawn and incur Overdraft Fees imposed by BPNA; (ii) reordering the posting order of customer ATM withdrawals or debits and POS purchases from highest-to-lowest amounts to create or maximize the number of Overdraft Fees charged to a BPNA checking, savings or money market consumer (or retail) account; and (iii) providing inaccurate balance information in connection with ATM withdrawals or debits.

2. After BPNA removed the action to federal court, Plaintiffs’ remand motion was granted. *Valle v. Popular Cmty. Bank*, 2013 U.S. Dist. LEXIS 111101 (S.D.N.Y. Aug. 6, 2013).

3. Plaintiffs filed a First Amended Class Action Complaint (“FAC”) on October 25, 2013. NYSCEF Doc. No. 49. BPNA’s motion to dismiss the GBL §349 and other claims made in that FAC was granted in part and denied in part on August 11, 2014. NYSCEF Doc. No. 124. Pursuant to a decision granting Plaintiffs’ motion to amend, NYSCEF Doc. No. 190, Plaintiffs filed the operative SAC on August 12, 2015.

4. On September 15, 2015, BPNA filed a Motion to Dismiss the SAC (NYSCEF No. 201), which Plaintiffs opposed on October 16, 2015 (NYSCEF No. 267). BPNA filed its Reply in support of its Motion to Dismiss on November 13, 2015 (NYSCEF No. 308).

5. After oral argument on January 21, 2016, the Court granted in part and denied in part BPNA’s Motion to Dismiss. NYSCEF Doc. No. 320.¹ BPNA filed a Notice to Appeal of that portion of that Decision and Order that denied dismissal of Plaintiffs GBL §349 claims on

¹ Prior to oral argument, Plaintiffs voluntarily dismissed the implied breach of contract claim alleged in the SAC. The SAC also did not re-plead the New York usury claims dismissed from the FAC.

April 4, 2016 (NYSCEF Doc. No. 327). After briefing and oral argument, the First Department affirmed this trial court's Decision and Order. *Valle v. Popular Cmty. Bank*, 149 A.D.3d 633 (1st Dept. 2017).

6. BPNA filed its Answer and Affirmative Defenses to the SAC on March 28, 2017. NYSCEF No. 324.

7. On April 18, 2016, Plaintiffs moved to strike BPNA's Affirmative Defenses No. 1 and 2 (NYSCEF Doc. No. 338). BPNA opposed that motion on May 6, 2016 (NYSCEF Doc. No. 341). The Court granted Plaintiffs' motion on April 13, 2017 (NYSCEF Doc. No. 416).

8. There has been substantial party, non-party, and class-wide discovery, including requests for the production of documents, interrogatories, requests for admissions, and party and non-party depositions. The Court has entered numerous orders regarding the scope of discovery and defining the boundaries of the discovery process.

9. In December 2013, the Parties exchanged settlement communications and discussed the possibility of a resolution of this Action. Those efforts did not result in a settlement.

10. In March 2015, the Parties again exchanged settlement communications and discussed the possibility of a resolution of this Action. Those efforts did not result in a settlement.

11. In August 2016, the Parties agreed to stay this Action pending mediation with JAMS mediator, Peter H. Woodin, Esq. In advance of the mediation, BPNA provided Plaintiffs with additional discovery, including information regarding class-wide damages. The Parties prepared and submitted mediation statements in advance of a day-long mediation session on September 21, 2016. That mediation did not result in a settlement.

12. In August 2017, the Parties renewed their settlement discussions. In November 2017, the Parties advised the Court of their settlement negotiations and jointly requested that the Court suspend all Court-imposed deadlines. NYSCEF Doc. No. 429. The Parties' arms-length settlement negotiations continued for over six months, resulting in this Agreement.

13. The Parties now agree to settle the Action in its entirety, without any admission of liability or wrongdoing, with respect to all Related Claims (as defined below) by the Settlement Class Members. The Parties intend for this Agreement, once it is finally approved pursuant to New York Civil Law and Rules ("CPLR") Sections 901, 902 and 907 and becomes effective, to bind Plaintiffs, BPNA, and the Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, Plaintiffs and BPNA agree to the Settlement, subject to approval by the Court, as follows.

II. Definitions

The following Defined Terms apply throughout this Agreement and the attached exhibits:

14. "Account" means any consumer or retail deposit account maintained by BPNA within the State of New York, including savings, checking and money market accounts, regardless of whether such account was closed during the Class Period.

15. "Account Holder" means a Settlement Class Member who had or still has an Account during the Class Period.

16. "BPNA's Counsel" means Barack Ferrazzano Kirschbaum & Nagelberg LLP and Lupkin & Associates PLLC.

17. "Claim for Payment" means a request for a distribution of a Settlement Class Member Payment, which may only properly be done by timely submitting the required Claim Form to the Settlement Administrator.

18. “Claim Form” means the form provided to putative Settlement Class Members for the purpose of making a Claim for Payment, substantially in the form of that portion of **Exhibit 2** to this Agreement identified as a claim form. A copy of the Claim Form will be posted to the Settlement Website. As stated in Spanish on the English version of the Claim Form and in the Spanish version of the Published Notice, a Spanish version of the Mailed Notice and accompanying Claim Form (**Exhibit 2** to this Agreement) will be posted to the Settlement Website and made available to Settlement Class Members upon request to the Settlement Administrator. The Spanish language version of the Claim Form shall conform to **Exhibit 2**.

19. “Claim Percentage” means the estimated percentage of each Settlement Class Member’s total Overdraft Fees incurred during the Class Period that the Settlement Class Member identifies on the Claim Form as having been caused by one or more of the Disputed Practices.

20. “Class Period” means the time period from November 14, 2009 through September 30, 2014.

21. “Confidential Information” shall have the same meaning given to that term in the *Stipulated Protective Order Regarding Confidential Documents and Information*, NYSCEF Doc. No. 56, approved and so-ordered by the Court on December 13, 2013.

22. “Court” means the Supreme Court of the State of New York, County of New York.

23. “Debit Card” means a card, sticker, tag or other device issued or provided by BPNA, including a debit card, check card, or ATM card, that can be used to withdraw or debit funds by ATM transactions or make purchases by POS transactions.

24. “Effective Date” means the first business day after all of the following events have occurred:

- a. All Parties, BPNA Counsel, and Settlement Class Counsel have executed this Agreement;
- b. The Court has entered, without material change, the Final Approval Order; and
- c. The time for appeal or petition has expired, and no appeal of the Final Approval Order or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal or *certiorari* could be taken has finally expired and relief from a failure to file same is not available.

25. “Escrow Account” means the interest bearing account to be established by the Settlement Administrator consistent with the terms and conditions described in Sections III and VII below. Any taxes incurred by the Escrow Account shall be paid out of the account and are not the obligation of BPNA or Plaintiffs.

26. “Final Approval” means the date that the Court enters the Final Approval Order granting final approval to the Settlement and determines the amount of fees, costs and expenses awarded to Settlement Class Counsel and the amount of the Incentive award (defined below) to Plaintiffs. The proposed Final Approval Order that will be attached to the motion seeking final approval of the Settlement shall be in a form agreed upon by Class Counsel and BPNA’s Counsel.

27. “Final Approval Order” means the order and judgment that the Court enters upon finally approving the Settlement.

28. “Incentive award” means any Court-ordered payment to Plaintiffs relating to their

role as the named plaintiffs and Settlement Class Representatives, as distinguished from any Settlement Class Member Payment that may be payable to them as Settlement Class Members.

29. “Long-Form Notice” means the notice that will be posted to the Settlement Website, substantially in the form of **Exhibit 1** to this Agreement.

30. “Mailed Notice” means the notice that will be mailed to the putative Settlement Class Members, substantially in the form of **Exhibit 2** to this Agreement. A copy of the Mailed Notice will be posted to the Settlement Website. As stated in Spanish on the English version of the Mailed Notice and in the Spanish version of the Published Notice, a Spanish version of the Mailed Notice and accompanying Claim Form (**Exhibit 2** to this Agreement) will be posted to the Settlement Website and made available to Settlement Class Members upon request to the Settlement Administrator. The Spanish language version of the Mailed Notice shall conform to **Exhibit 2**.

31. “Notices” mean the Long-Form Notice, Mailed Notice, and Published Notices, collectively.

32. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of the Mailed Notice, Long-Form Notice, Published Notice, and the Settlement Website itself. A complete description of the proposed Notice Program, subject to Court Approval, is provided in Section X.

33. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed or published, and that ends no later than 30 calendar days prior to the Final Approval Hearing, but which shall not exceed 90 calendar days. The Opt-Out deadline will be specified in the Notice and included on the Settlement Website.

34. “Overdraft Fee” means any fee imposed and collected by BPNA as a result of an Account being overdrawn, and shall include both one-time initial overdraft fees charged for each

transaction that exceeded a customer's account balance ("Initial Overdraft Fee") and continuous overdraft fees (that is, the daily fee that, effective January 25, 2012, BPNA charged beginning the 5th business day that an account remained overdrawn) ("Continuous Overdraft Fee"). The amount of these Overdraft Fees was \$5, \$10, and/or \$30, depending on the type of Account, the type of Overdraft Fee, and the date of the transaction.

35. "Parties" means Plaintiffs and BPNA.

36. "Payment Rate" shall be 50%, unless adjusted to be a higher or lower percentage as set forth herein at Paragraphs 75-78, and will be used by the Settlement Administrator to calculate Settlement Class Member Payment amounts as set forth in Paragraphs 74-78.

37. "Preliminary Approval" means the date on which the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties, substantially in the form of **Exhibit 4** to this Agreement.

38. "Point-of-Sale" or "POS" means a transaction in which an Account Holder uses his or her Debit Card to purchase a product or service.

39. "Published Notice" means the form of notices that will be published in accordance with Paragraph 97, substantially in the form of **Exhibit 3** (English language version) to this Agreement. The Spanish language version of the Published Notice shall conform to **Exhibit 3**.

40. "Qualified Claims" means all claims submitted by Settlement Class Members that the Settlement Administrator determines to be timely, complete, and supporting the distribution of a Settlement Class Member Payment.

41. "Released Claims" means all claims to be released as specified in Section XIV of this Agreement. The "Releases" means all of the releases contained in Section XIV of this Agreement.

42. "Released Parties" means BPNA and those other persons and entities released in

Section XIV below.

43. “Releasing Parties” means Plaintiffs and all Settlement Class Members who have not filed a timely opt-out request.

44. “Settlement” means the terms of the Settlement as set forth in this Agreement and the attached exhibits.

45. “Settlement Administrator” means A.B. Data, Ltd.

46. “Settlement Consideration” means the following consideration to be paid or provided, or agreed to be paid or provided, by BPNA in this Agreement:

- a. Settlement distributions to Settlement Class Members who submit timely, complete and valid claims (not to exceed \$5,200,000.00);
- b. Settlement Notice and Administration costs (not to exceed \$250,000.00);
- c. Plaintiff Incentive Awards (\$10,000.00);
- d. Settlement Counsel Attorneys’ Fees and Costs (\$1,950,000.00); and
- e. The new and additional disclosures concerning BPNA’s balance reporting policies set forth in Paragraph 58.

47. “Settlement Class” means: All persons who during the Class Period: (1) maintained one or more Accounts in New York, (2) incurred at least one Overdraft Fee in such Account(s), (3) in connection with an ATM withdrawal or POS Debit Card transaction, (4) as a result of one or more of the following alleged practices by BPNA: (i) reordering of ATM and/or POS Debit Card transactions from highest-to-lowest dollar amounts, (ii) providing inaccurate balance information in response to an ATM balance inquiry, ATM withdrawal, or other ATM transaction, and/or (iii) not providing a “real time” warning that an attempted ATM or POS transaction, if honored by BPNA, would overdraw the Account (collectively, “Disputed Practices”). Excluded from the Settlement Class are the following: (i) the Court, immediate

family members of the Court, and employees of the Court; and (ii) directors, officers and employees of BPNA, BPNA's parent entity(ies), any BPNA subsidiary, or any other entity(ies) in which BPNA has a controlling interest.

48. "Settlement Class Representatives" mean Plaintiffs Josefina Valle and Wilfredo Valle.

49. "Settlement Class Counsel" means Scott+Scott Attorneys at Law LLP and Tusa P.C.

50. "Settlement Class List" means the list to be prepared by BPNA of the names and last-known addresses of the persons identified on the Settlement Spreadsheet.

51. "Settlement Class Member" means any person in the Settlement Class who does not timely opt-out of the Settlement.

52. "Settlement Class Member Payment" means the payment that each Settlement Class Member who submits a Qualified Claim, as determined and coordinated by the Settlement Administrator, will receive under the Settlement.

53. "Settlement Spreadsheet" means a spreadsheet to be prepared by BPNA containing a list of ATM withdrawals and POS Debit Card purchases made in BPNA consumer or retail checking, savings, or money market accounts in BPNA's New York region during the Class Period that were assessed an Initial Overdraft Fee, the amount of each such Overdraft Fee, the BPNA account number associated with each such transaction, and the last-known customer name and mailing address associated with each such account number.

54. "Settlement Website" means the website that the Settlement Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program, as a means for putative members of the Settlement Class to: (i) review the Notices, Agreement and pleadings; (ii) file claims in the Settlement; (iii) obtain information

about their individual claims; (iv) find Settlement deadlines and hearing dates; (v) learn whom to contact for more information. These materials shall remain on the Settlement Website until the Effective Date. The URL of the Settlement Website shall be www.bpnaoverdraftfeesettlement.com or such other URL as Settlement Class Counsel and BPNA's Counsel may subsequently agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the BPNA logo or trademarks. Ownership of the Settlement Website URL shall be transferred to BPNA within ten (10) days of the date on which operation of the Settlement Website ceases.

III. The Settlement Consideration; Establishing and Maintaining the Escrow Account During Appeals; Costs of Notice and Settlement Administration; Injunctive Relief

55. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases set forth in Section XIV and the dismissal of the Action upon the Effective Date, BPNA agrees to pay and provide the Settlement Consideration described in Paragraph 46.

56. In no event shall BPNA be required to pay or provide more than the Settlement Consideration in connection with this Settlement.

57. BPNA shall make the following payments of the Settlement Consideration as set forth below:

- a. Payments to the Settlement Class shall be administered on a "claims made" basis, meaning that BPNA will pay only those Qualified Claims submitted by members of the Settlement Class in accordance with the distribution plan set forth in Section VIII below. BPNA will not be required to establish a settlement fund. Instead, once the Settlement Administrator has processed and made a final determination regarding all

claims submitted during the Claims Period, BPNA will deposit into the Escrow Account to be established by the Settlement Administrator for that purpose the aggregate amount of the Settlement Class Member Payments (not to exceed a total of \$5,200,000), as determined by the Settlement Administrator, for payment of Qualified Claims submitted by Settlement Class Members.

- b. Payments of the Court-approved incentive awards to the Plaintiffs shall be paid by BPNA to an account designated by the Settlement Class Counsel, by wire transfer, within fifteen (15) business days of the Effective Date;
- c. Payments of Settlement Administration and Notice costs and expenses, including Settlement Administrator invoices, not to exceed \$250,000.00, shall be paid by BPNA to an account designated by the Settlement Administrator, by wire transfer, within fifteen (15) business days from entry by the Court of the Preliminary Approval Order and subsequent receipt of an invoice by BPNA's counsel from the Settlement Administrator; and
- d. Payments of the Court-approved Settlement Class Counsel attorneys' fees and costs shall be paid by BPNA to an account designated by the Settlement Class Counsel, by wire transfer, within fifteen (15) business days of the Effective Date.

58. New and Additional Disclosures. Within sixty (60) days from the Effective Date, BPNA will provide supplemental notice, which language was reviewed by Settlement Class Counsel prior to execution of this Settlement Agreement, through a disclosure in its Personal Banking Disclosure and Agreement booklet that will be provided to new deposit account

customers for a period of at least three (3) years from the Effective Date, of: (1) the type(s) of account balance information (*e.g.*, available balance or ledger balance) that BPNA may provide or otherwise make available at ATM terminals and, if applicable, POS terminals, including a definition or other description of each type of balance information; and (2) the type of account balance information that BPNA uses to determine when an overdraft has occurred for the purpose of assessing an Overdraft Fee. Nothing herein will be construed as an admission or other concession by BPNA that its current or previous disclosures are or were in any way inadequate.

59. If any person files an appeal of the Final Order granting Final Approval of the Settlement, the Court-approved Settlement Class Member Payments, Plaintiff Incentive Awards and Settlement Class Counsel attorneys' fees and costs will be placed in an interest-bearing Escrow Account maintained and administered by the Settlement Administrator, serving as Escrow Agent, pending resolution of the appeal(s). If the appeal(s) is denied (such that Settlement approval is affirmed on appeal), the Parties shall cooperate in having the escrow funds promptly released from the Escrow Account and promptly paid to the Settlement Class Members, Plaintiffs and Settlement Class Counsel. If the Final Order granting Final Approval is reversed or vacated, the Parties shall cooperate in having the escrow funds promptly released from the Escrow Account and returned to BPNA.

60. The funds in the Escrow Account, if any, shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed upon BPNA, Plaintiffs and/or Settlement Class Counsel with respect to income earned by the Escrow Account for any period

during which the Escrow Account does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Escrow Account. The Escrow Account shall indemnify and hold BPNA, Plaintiffs, and Settlement Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification) and BPNA, Plaintiffs and Settlement Class Counsel shall have no liability or responsibility for any of the Taxes.

IV. Conditional Certification of the Settlement Class and Appointment of Settlement Class Representatives and Settlement Class Counsel

61. For purposes of settlement, Plaintiffs shall move the Court, with BPNA’s consent as provided in this Agreement, to preliminarily and conditionally certify the Settlement Class and to appoint Plaintiffs as the Settlement Class Representatives, and the firms Scott+Scott Attorneys at Law LLP and Tusa P.C. as Settlement Class Counsel, pending the Court’s Final Approval of the Settlement pursuant to CPLR 901, 902 and 907.

V. Preliminary Approval

62. Upon execution of this Agreement by all Parties, Settlement Class Counsel, on behalf of Plaintiffs and the proposed Settlement Class, shall promptly move the Court for an Order granting Preliminary Approval of this Settlement (“Preliminary Approval Order”). The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Settlement Class Counsel and BPNA’s Counsel. The motion for Preliminary Approval shall request that the Court:

- a. Approve the terms of the Settlement as within the range of fair, adequate and reasonable;
- b. Preliminarily and conditionally certify the Settlement Class pursuant to CPLR 901, 902 and 907 for settlement purposes only;

- c. Approve the Notice Program set forth herein and approve the form and content of the Notices, substantially in the forms attached to this Agreement as Exhibits 1, 2, and 3;
- d. Approve the procedures below for persons in the Settlement Class to exclude themselves from the Settlement;
- e. Approve the procedures below for persons in the Settlement Class to object to the Settlement;
- f. Approve the Parties' selection of the Settlement Administrator;
- g. Stay the Action pending Final Approval of the Settlement; and
- h. Schedule a Final Approval Hearing at which hearing the Court will conduct an inquiry into the fairness, reasonableness and adequacy of the Settlement and Settlement Class Counsel's application for attorneys' fees, costs and expenses and for an Incentive Award to Plaintiffs ("Final Approval Hearing").

VI. Settlement Discovery

63. BPNA and Plaintiffs have exchanged and participated in substantial pre-settlement discovery regarding the GBL §349 claim alleged in the SAC, as well as the Overdraft Fees allegedly incurred by Plaintiffs and the Settlement Class as a result of the Disputed Practices.

64. Within five (5) calendar days (or the first business day thereafter) of the execution of this Agreement, or April 30, 2018, whichever is later, BPNA shall conduct a reasonable and good faith search of its books and records and provide the Settlement Class List to the Settlement Administrator and Settlement Class Counsel. The Settlement Class List will be used by the Settlement Administrator to provide the Mailed Notice to the putative Settlement

Class Members. The Settlement Class List will not be used by Settlement Class Counsel to initiate contact with the putative Settlement Class Members, and will only be used by Settlement Class Counsel for the purpose of facilitating this Settlement.

65. Upon service by BPNA of the Settlement Class List, BPNA shall provide Settlement Class Counsel with a sworn Affidavit describing the methods and manner in which BPNA prepared the Settlement Class List.

66. Within ten (10) calendar days (or the first business day thereafter) following delivery by BPNA of the Settlement Class List to the Settlement Administrator and the supporting affidavit to Settlement Class Counsel, Settlement Class Counsel shall have the right to obtain discovery from BPNA concerning the methods and manner in which BPNA searched its books and records to prepare the Settlement Class List.

67. Within ten (10) calendar days (or the first business day thereafter) after Preliminary Approval of this Agreement, or April 9, 2018, whichever is later, BPNA shall conduct a reasonable and good faith search of its books and records and thereafter provide the Settlement Spreadsheet to the Settlement Administrator and Settlement Class Counsel. The Settlement Spreadsheet will not be used by Settlement Class Counsel to initiate contact with the putative Settlement Class Members, and will only be used by Settlement Class Counsel for the purpose of facilitating this Settlement.

68. Upon delivery of the Settlement Spreadsheet to the Settlement Administrator, BPNA shall provide Settlement Class Counsel with a sworn Affidavit describing the methods and manner in which BPNA searched its books and records to prepare the Settlement Spreadsheet.

69. Within ten (10) calendar days (or the first business day thereafter) following delivery of the Settlement Spreadsheet to the Settlement Administrator and the supporting

affidavit to Settlement Class Counsel, Settlement Class Counsel shall have the right to obtain discovery from BPNA concerning the methods and manner in which BPNA searched its books and records to prepare the Settlement Spreadsheet.

VII. Settlement Administration

70. Settlement Class Counsel and BPNA's Counsel shall jointly select the Settlement Administrator for approval by the Court by the time this Agreement is executed. The Settlement Administrator shall administer various aspects of the Settlement as described in Paragraph 72 below and perform such other functions assigned to the Settlement Administrator elsewhere in this Agreement, including, but not limited to: providing Mailed Notice to the putative Settlement Class Members; effectuating the Notice Program pursuant to Section X below; and distributing the Settlement Consideration to claiming Settlement Class Members. Settlement Class Counsel and BPNA counsel shall jointly supervise and oversee the Settlement Administrator.

71. The Parties agree to the following schedule with respect to the payment of the costs of Settlement Notice, Settlement Administration and claims administration:

- 1) BPNA agrees to pay the first \$250,000 of the combined cost of notice and claims administration;
- 2) Settlement Class Counsel agrees to pay the next \$100,000 of the combined cost of notice and claims administration; and
- 3) BPNA and Settlement Class Counsel agree to each pay one-half of any costs of notice and claims administration in excess of \$350,000.

To the extent any part of these notice and administration costs are to be paid pursuant to the Minimum Payment provision described in Paragraph 78, for the avoidance of doubt, the parties will treat any such payments as if paid in the order set forth in this Paragraph 71.²

72. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, are as follows:

- a. Obtain from BPNA name and last known mailing address information (to the extent it is reasonably available) of Settlement Class Members, and to the extent necessary, verify and update the addresses received through the National Change of Address database for the purpose of mailing the Mailed Notice to Settlement Class Members, and later mailing distribution checks to Settlement Class Members;
- b. Administering the Notice Program approved by the Court;
- c. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;
- d. Establish and maintain the Settlement Website;
- e. Administering the claims process and processing claim forms submitted by Settlement Class Members;

² Example #1: If only \$350,000 in Qualified Claims are submitted, \$200,000 will remain under the Minimum Payment. That \$200,000 remainder will be applied to BPNA's initial layer (\$250,000) of notice and administration costs. BPNA then will be responsible for the next \$50,000 in notice and administration costs. Settlement Class Counsel will then be responsible for the next \$100,000 in notice and administration costs. Any remaining notice and administration costs will be paid one-half by BPNA and one-half by Settlement Class Counsel. Example #2: If only \$250,000 in Qualified Claims are submitted, \$300,000 will remain under the Minimum Payment. The first \$250,000 of that remainder will be applied to BPNA's initial (\$250,000) layer of notice and administration costs. The \$50,000 remainder then will be applied to Settlement Class Counsel's layer (\$100,000) of notice and administration costs. Settlement Class Counsel will be responsible for the next \$50,000 in notice and administration costs. Any remaining notice and administration costs will be paid one-half by BPNA and one-half by Settlement Class Counsel.

- f. Establishing a process for online claim form submission by Settlement Class Members using the Settlement Website;
- g. Establishing a process for Settlement Class Members to obtain information about the total Overdraft Fees paid from their Account(s);
- h. Establish and maintain an automated toll-free telephone line for persons in the Settlement Class to call for the following information regarding the Settlement: court deadlines (including deadlines for submitting the Claim Form or filing an objection); how to obtain copies of Settlement-related documents (including the Claim Form and the Settlement Agreement); and the total amount of Initial Overdraft Fees incurred by each putative Settlement Class Member during the Class Period for ATM withdrawals or POS Debit Card purchases. It is expressly understood and agreed that the Settlement Administrator shall not give, and shall not be expected to give, legal advice.
- i. Respond to any mailed inquiries from persons in the Settlement Class;
- j. Process all requests for exclusion from persons in the Settlement Class;
- k. Provide weekly reports and a final report to Settlement Class Counsel and BPNA's Counsel that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date and other pertinent information;
- l. At Settlement Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each person in the Settlement Class who timely and properly requested exclusion from the Settlement Class;

- m. Process and transmit distributions to Settlement Class Members from funds made available by BPNA once the Claims Period has closed and the Settlement Administrator has completed the claims process;
- n. Perform all tax-related services for the Escrow Account as provided in this Agreement;
- o. Perform any other Settlement-administration-related functions at the instruction of Settlement Class Counsel and BPNA's Counsel; and
- p. Pay invoices, expenses, and costs upon approval by Settlement Class Counsel and BPNA's Counsel, as provided in this Agreement.

VIII. Settlement Class Member Payments

73. As soon as practicable, but no later than sixty (60) days from the Effective Date, the Settlement Administrator will make the requisite distribution of Settlement Class Member Payments to the Settlement Class Members who submitted Qualified Claims, as calculated and otherwise determined by the Settlement Administrator in accordance with Section IX and this Section. To the extent an Overdraft Fee was not paid or was later refunded, the amount of any corresponding distribution may be reduced accordingly.

74. Every Settlement Class Member who submits a Qualified Claim shall be paid the Settlement Class Member Payment to which they are entitled based on this Agreement. In no event will the total Settlement Class Member Payments for all Qualified Claims submitted by the Settlement Class exceed \$5,200,000. Except as otherwise set forth herein at Paragraphs 75-78, each Settlement Class Member who submits a Qualified Claim will be entitled to receive a Settlement Class Member Payment calculated as follows:

- a. With respect to Initial Overdraft Fees, Qualified Claims shall be the total amount of Initial Overdraft Fees paid by the Settlement Class Member during the Class Period

for ATM withdrawals or POS Debit Card purchases (as reflected in the Settlement Spreadsheet or otherwise demonstrated by submission of other documents by the putative Settlement Class Member) (“Qualifying Overdraft Fees”) multiplied by the Claim Percentage that the Settlement Class Member states on his or her Claim Form, multiplied by the Payment Rate (50%), as set forth in the following formula: (Qualifying Overdraft Fees x Claim Percentage x Payment Rate).

b. With respect to Continuous Overdraft Fees, Qualified Claims shall be one (1) Continuous Overdraft Fee for every two (2) Initial Overdraft Fees incurred by the Settlement Class Member after January 25, 2012 for ATM withdrawals or POS Debit Card purchases (as reflected in the Settlement Spreadsheet or otherwise demonstrated by submission of other documents by the putative Settlement Class Member) multiplied by the Payment Rate (50%).

75. If the total amount of the Qualified Claims submitted by Settlement Class Members exceeds \$5,200,000, each eligible Settlement Class Member Payment shall be proportionately reduced on a *pro rata* basis, such that the aggregate value of the cash payments does not exceed \$5,200,000.

76. To calculate the *pro rata* reduction as set forth in Paragraph 75, the Settlement Administrator shall conduct the following calculation:

- a. divide \$5,200,000 by the total amount of potential distributions to Settlement Class Members, as calculated pursuant to Paragraph 74 and Section IX, aggregating all Overdraft Fees for each Settlement Class Member, which yields the “Per Dollar Percentage”;
- b. multiply each Settlement Class Member’s individual settlement distribution by the Per Dollar Percentage, which yields each Settlement Class Member’s Pro Rated Payment Amount.

77. If the total value of all Settlement Class Members Payments based on Qualified Claims submitted by Settlement Class Members is less than \$550,000.00 (“Minimum Payment”) based on the 50% Payment Rate used in Paragraph 74, the amount of each Qualified Claim shall be proportionately increased by increasing the Payment Rate applied to each Qualified Claim on a *pro rata* basis until the Payment Rate equals 100% or the total value of all Settlement Class Members Payments based on Qualified Claims submitted by Settlement Class Members equals \$550,000, whichever comes first.

78. In the event that Qualified Claims submitted by Settlement Class Members do not total \$550,000.00, even after proportionately increasing the *pro rata* Payment Rate to 100%, the difference between \$550,000.00 and the total value of Settlement Class Member Payments will be applied in the first instance to settlement notice and administration costs as provided in Paragraph 71. Thereafter, if the Minimum Payment has not yet been met, any remaining amount under the Minimum Payment shall be paid in the following manner: first, to pay the Incentive Awards to the named Plaintiffs; and second, to pay Court-approved attorneys’ fees and costs to Settlement Class Counsel.

79. Settlement Class Member Payments will be made by check with an appropriate legend, in a form approved by Settlement Class Counsel and BPNA’s Counsel, to indicate that it is from the Settlement. Checks will be prepared and mailed by the Settlement Administrator, and will be sent to the addresses that the Settlement Administrator identifies as valid Settlement Class Member addresses. Checks shall be valid for one hundred eighty (180) days. The Settlement Administrator will make reasonable efforts to locate the proper address for any Settlement Class Member whose check is returned by the Postal Service as undeliverable, and will re-mail it once to an updated address.

IX. Claims Process

80. All Settlement Class Members making a Claim for Payment must do so by timely completing and submitting a Claim Form substantially in the form attached as **Exhibit 2**, and approved by the Court. The deadline for submission of a Claim Form shall be sixty (60) calendar days from the initial mailing of the Mailed Notice by the Settlement Administrator (“Claims Period”), as determined by the postmark of Claim Forms submitted by mail, or by the time online submission of the Claim Form is complete.

81. Claim Forms will be mailed to all putative Settlement Class Members identified on the Settlement Class List. Claim Forms in English and Spanish language will also be available on the Settlement Website or by request to the Settlement Administrator. Claim Forms can be submitted by mail or online via the Settlement Website. Each Settlement Class Member will be entitled to submit only one (1) Claim for Payment for all Overdraft Fees paid from all BPNA Account(s) to which he or she was the individual or joint Account owner.

82. If a putative Settlement Class Member attempts to make a Claim for Payment other than by using the Claim Form, the Settlement Administrator may request that the person re-submit the information using the Claim Form. If a Claim for Payment is not resubmitted using the Claim Form within twenty-one (21) calendar days (or the first business day thereafter) after the Settlement Administrator’s request is mailed, the Claim for Payment shall be deemed abandoned and denied without further notice. Within fourteen (14) calendar days (or the first business day thereafter) following receipt of a Claim Form that is missing required information, but has otherwise been submitted in the manner approved in this Preliminary Approval Order, the Settlement Administrator shall notify the claiming Settlement Class Member by mail of the deficiency(ies) affecting the Claim Form. The claiming Settlement Class Member shall have twenty-one (21) calendar days (or the first business day thereafter) from the Settlement

Administrator's transmission of this notice, or until the end of the Claims Period, whichever is later, to cure the stated deficiency(ies) by mail, email or another manner deemed sufficient by the Settlement Administrator. The untimely submission of a Claim Form is not a curable deficiency.

83. If multiple Claims for Payment are submitted with respect to any Account, only the last-received timely Claim for Payment will be considered by the Settlement Administrator.

84. If a single Claim for Payment is submitted on a joint Account, the full amount of any Qualified Claim pertaining to that joint Account will be paid to the claiming Settlement Class Member for that joint Account, and a Claim Form shall not be considered deficient if submitted for a qualifying joint Account, but signed by less than all joint Account owner(s). However, if any Account Holder for a joint Account has excluded themselves from the Settlement Class pursuant to Paragraph 100, the Claim for Payment submitted by a joint Account Holder for the same joint Account will not be deemed a Qualified Claim with respect to that joint Account only.

85. If multiple Claims for Payment are submitted by different Settlement Class Members on a joint Account, and each Claim is a Qualified Claim, the eligible Settlement Class Member Payment will be distributed by the Settlement Administrator in *pro rata*, equal amounts to both (all) Settlement Class Members.

86. A Settlement Class Member may submit a Claim for Payment for Overdraft Fees, even if he or she is not identified on the Settlement Class List and/or Settlement Spreadsheet ("Unidentified Claimant.").

87. The following information, at a minimum, shall be submitted by Unidentified Claimants:

- a. a Claim Form substantially in the form attached as **Exhibit 2**,

- b. current mailing address and (if available) email address and telephone number;
- c. Account number(s) subject to the Claim for Payment;
- d. Documentation sufficient to substantiate the Claim for Payment including bank statements reflecting the Overdraft Fee(s) and other Account transactions providing sufficient detail that the calculations provided in Section VIII can be made.

88. A Settlement Class Member who submits a Claim for Payment without any supporting documents will have their Settlement Distribution amount determined by the Settlement Administrator based upon the Settlement Spreadsheet provided by BPNA to the Settlement Administrator (*i.e.*, absent additional evidence submitted by the claimant, the Settlement Administrator will treat the Settlement Spreadsheet as determinative of the total available OD fees).

89. If a Settlement Class Member submits documentation with or in support of a Claim for Payment, the Settlement Administrator shall review and consider such documents in determining the proper amount Settlement Distribution, even if the proper Settlement Distribution is different from the amount reflected on the Settlement Spreadsheet provided by BPNA to the Settlement Administrator.

90. The Settlement Administrator shall have final authority to determine whether and to what extent a Claim shall be deemed a Qualified Claim. BPNA may, however, at its option, audit or review any Claim for Payment and bring any issues to the Settlement Administrator's attention, with notice to Settlement Class Counsel. The Settlement Administrator shall have discretion to require a putative Settlement Class Member to submit additional information and documentation to support a Claim. In exercising its discretion under this Paragraph, the

Settlement Administrator shall take into account the burden imposed by requiring additional information and documentation, the number and amount of the Overdraft Fees that are the subject of the Claim for Payment, and other appropriate considerations. The Settlement Administrator shall provide written notice to all persons whose timely Claims for Payment it proposes to reject in whole or in part, and shall provide each such person with an opportunity to remedy curable deficiencies, and/or state any grounds for contesting the proposed decision of the Settlement Administrator. Such person shall receive one twenty-one (21)-calendar day period (or the first business day thereafter) from the Settlement Administrator's transmission of a proposed rejection of a Claim for Payment, or until the end of the Claims Period, whichever is later, to cure the stated deficiency(ies) by mail, email or another manner deemed sufficient by the Settlement Administrator. Untimely submission of a Claim for Payment is not a curable deficiency within the meaning of this Paragraph.

91. If submitted by mail, a Claim for Payment (or remedial submission) shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), a Claim for Payment (or remedial submission) shall be deemed to have been submitted on the shipping date reflected on the shipping label. If submitted electronically, a Claim for Payment (or remedial submission) shall be deemed to have been submitted on the date it is uploaded to the Settlement Website.

92. The Parties agree the foregoing methodology is exclusively for purposes of computing, retrospectively, in a reasonable and efficient fashion, the amount of any distribution each Settlement Class Member should receive from the Settlement Consideration. The methodology, along with the underlying documents and data (including, without limitation, the

Settlement Spreadsheet and Settlement Class List), is not intended and shall not be used for any other purpose or objective whatsoever.

X. Providing Notice to the Settlement Class

93. Upon Preliminary Approval of the Settlement, the Settlement Administrator shall implement the Notice Program using Notices and procedures approved by the Court in the Preliminary Approval Order. The Mailed Notice will include, among other information: (i) a description of the material terms of the Settlement; (ii) a date and procedure by which persons in the Settlement Class may exclude themselves from or “opt out” of the Settlement Class; (iii) a date and procedure by which Settlement Class Members may object to the Settlement; (iv) a date and procedure by which putative Settlement Class Members may make a Claim for Payment by submitting the required Claim Form; (v) the date upon which the Final Approval Hearing will occur; and (vi) the URL address of the Settlement Website at which persons in the Settlement Class may access this Agreement, the Long-Form Notice, the SAC, all Settlement-related deadlines and other related documents and information. Settlement Notices provided under or as part of the Notice Program shall not bear or include the BPNA logo or trademarks, the return address of BPNA, the BPNA colors, or otherwise be styled so as to appear to originate from BPNA.

94. The Notice Program has four components: (i) Mailed Notice; (ii) Published Notice; (iii) Long-Form Notice; and (iv) Settlement Website.

95. Not later than thirty (30) calendar days after the date of Preliminary Approval, or twenty-one (21) days after receipt of the Settlement Class List from BPNA, whichever occurs later, the Settlement Administrator will run the addresses included on Settlement Class List through the National Change of Address Database, and will mail to all such persons (the putative members of the Settlement Class) the Mailed Notice. The Settlement Administrator

will provide Settlement Class Counsel and BPNA's Counsel with an affidavit confirming that the Mailed Notice was completed in accordance with the Preliminary Approval Order. Settlement Class Counsel will file that affidavit with the Court in conjunction with Plaintiffs' motion for Final Approval of the Settlement.

96. The Settlement Administrator will perform updated change of address searches using the federal change of address database for all Mailed Notices that are returned as undeliverable and, to the extent new or different address information is thereby discovered, will promptly re-mail the Mailed Notice to those putative Settlement Class Members whose original Mailed Notice was returned as undeliverable ("Notice Re-mailing Process").

97. The Settlement Administrator will cause the Published Notice to be published once in one English-language newspaper (in English) and once in one Spanish-language newspaper (in Spanish) of general circulation in the metropolitan New York City area. The Notice Program and the Published Notice will be presented to the Court in conjunction with the preliminary approval motion. The Published Notice will occur no later than five (5) calendar days after the initial mailing of the Mailed Notice. Within seven (7) days after the date the Settlement Administrator completes the Published Notice, the Settlement Administrator will provide Settlement Class Counsel and BPNA's Counsel with one or more affidavits confirming that the Published Notice was completed in accordance with the Preliminary Approval Order. Settlement Class Counsel will file such affidavit(s) with the Court in conjunction with Plaintiffs' motion for final approval of the Settlement. The Settlement Administrator will establish a Settlement Website as a means for putative members of the Settlement Class to obtain notice of, and information about, the Settlement. The Settlement Website will be established as soon as practicable following Preliminary Approval and before commencement of the Notice Program. The Settlement Website will include hyperlinks to this Agreement, the Long-Form Notice, the

Mailed Notice, the Claim Form, the Preliminary Approval Order, the SAC, and such other documents as Settlement Class Counsel and BPNA agree to post or that the Court directs to be posted. Documents posted on the Settlement Website shall remain on the Settlement Website at least until Final Approval, and the Settlement Website shall remain available to the public until forty-five (45) days after the deadline for the Settlement Administrator distribute the Settlement Class Member Payments following the Effective Date of the Settlement.

98. The Long-Form Notice available on the Settlement Website will provide more detailed information about the Action, the Settlement, and the process for objecting and opting out than the Mailed Notice.

99. The Settlement Administrator will establish and maintain a toll-free, automated telephone line for putative Settlement Class Members to obtain Settlement-related information in English and Spanish language as set forth in Paragraphs 72(h) and 81. The toll-free, automated telephone line will be established as soon as practicable following Preliminary Approval, but no later than before commencement of the Notice Program, and will remain operational at least forty-five (45) days after the deadline for the Settlement Administrator distribute the Settlement Class Member Payments following the Effective Date of the Settlement.

100. The Mailed Notice and Long-Form Notice shall include a procedure for persons in the Settlement Class to opt-out at any time during the Opt-Out Period. A person in the Settlement Class who does not timely and validly request to opt-out shall be bound by the terms of this Agreement. If a Settlement Class Member submits a valid opt-out, as well as an objection, she/he will be deemed to have opted-out of the Settlement. To opt-out, a Settlement Class Member, by no later than the last day of the Opt-Out Period, must submit a letter to the Settlement Administrator that includes the following:

- a. the Settlement Class Member's name, address and telephone number;
- b. a statement that the person is a Settlement Class Member and wants to be excluded from the Settlement in *Valle v. Popular Community Bank*, Index No. 653936/2012 (N.Y. Sup.);
- c. the Settlement Class Member's personal signature; Settlement Class Members may only opt-out on their own behalf; no person may opt-out on behalf of someone else, whether on an individual or on a class basis.

101. The Mailed Notice and Long-Form Notice shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and for Incentive Awards to Plaintiffs. If a Settlement Class Member submits a valid opt-out, as well as an objection, she/he will be deemed to have opted-out of the Settlement. Objections to the Settlement or to the application for attorneys' fees, costs, expenses and Incentive Awards must be mailed to the Clerk of the Court, Settlement Class Counsel and BPNA's Counsel. For an objection to be considered by the Court, the objection must be postmarked no later than the last day of the Opt-Out Period, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. The name of the Action;
- b. The objector's full name, address and telephone number;
- c. An explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. All grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- e. The number of times in which 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 or opinions related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
- f. 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;
 - g. 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 the objector files the 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 firm's prior such objections that were issued by the trial and appellate courts in each listed case;
 - h. Any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between objector or objector's counsel and any other person or entity;
 - i. The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
 - j. A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
 - k. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
 - l. The objector's signature (an attorney's signature is not sufficient); and

- m. If the objector is represented by an attorney(s) in connection with the objection, the signature of each such attorney below a statement that “No other attorney has a financial interest, either directly or indirectly, in the representation of this objecting party.”

XI. Final Approval Order and Judgment

102. Plaintiffs’ motion for Preliminary Approval of the Settlement will include a request to the Court to schedule the Final Approval Hearing, as well as a proposed Final Approval Order. Plaintiffs shall file their motion for Final Approval of the Settlement and their motion for application for attorneys’ fees, costs and expenses and for Incentive Awards for Plaintiffs no later than five (5) business days prior to the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs’ motion for Final Approval of the Settlement, and on Settlement Class Counsel’s application for attorneys’ fees, costs and expenses and for an Incentive Award for Plaintiffs. In the Court’s discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the fee, cost, expense or Incentive Award application, provided the objectors filed timely objections that meet all of the requirements listed in Paragraph 101.

103. At the Final Approval Hearing, the Court will determine whether to enter an order granting Final Approval of the Settlement, and whether to approve Settlement Class Counsel’s request for attorneys’ fees, costs, expenses and Plaintiff Incentive Awards. The proposed Final Approval Order shall be in a form agreed upon by Settlement Class Counsel and BPNA’s Counsel. If approved and entered by the Court, the Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, reasonable and adequate;

- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies due process requirements;
- d. Dismiss the Action with prejudice and without costs (except as provided in this Agreement);
- e. Bar and enjoin Plaintiffs and all Settlement Class Members from asserting any Released Claims, as set forth in Section XIV, including during any appeal from the Final Approval Order;
- f. Release BPNA and the Released Parties from the Released Claims, as set forth in Section XIV; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Plaintiffs, BPNA and all Settlement Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

XII. Termination of Settlement

104. This Settlement may be terminated by either BPNA or Plaintiffs by serving on counsel for the opposing Party and filing with the Court a written notice of termination within fourteen (14) calendar days (or the first business day thereafter) after any of the following occurrences:

- a. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- b. An appellate court reverses the Final Approval Order, and the Settlement is not reinstated without material change by the Court on remand;
- c. The Effective Date does not occur; or

- d. Any other ground for termination provided for elsewhere in this Agreement.

105. Should any of the events described in Paragraph 104 occur, the Parties, collectively or individually, shall not be obligated to terminate the Settlement. Among their Parties rights in the event of any of the events described in Paragraph 104 occur, the Parties agree to make good-faith efforts to modify the Settlement and re-submit it for Court approval.

106. In the event of a termination of the Settlement pursuant to this Section, the Parties retain all of their pre-Settlement litigation rights and defenses, including Plaintiffs' right to seek class certification and BPNA's right to oppose class certification.

XIII. Effect of a Termination

107. The grounds upon which this Agreement may be terminated are set forth in Paragraph 104. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of BPNA's obligations under the Settlement shall cease to be of any force and effect; the amounts in the any Escrow Account created during the pendency of any appeal of the Final Approval Order shall be returned to BPNA less any amounts paid to the Settlement Administrator or for the payment of taxes; and the Parties shall return to the status quo ante in the 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 claims and defenses will be preserved.

108. In the event of a termination, absent a determination of bad faith by the Court, neither Plaintiffs nor Settlement Class Counsel shall be liable to BPNA for any settlement administration-related costs and expenses paid to the Settlement Administrator by BPNA.

109. This Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of Paragraphs 104-106.

110. If the Settlement is terminated in accordance with the provisions of Paragraph 104, any non-public discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose, without prejudice to Plaintiffs' right to seek discovery and class certification, and BPNA's right to oppose class certification. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XIV. Releases

111. As of the Effective Date, Plaintiffs, and each of their respective executors, representatives, heirs, successors, bankruptcy trustees, guardians, wards, agents and assigns, and all those who claim through them or who assert claims on their behalf, shall automatically be deemed to have fully and irrevocably released and forever discharged BPNA and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively, "Released Parties"), of and from any claim, right, demand, charge, complaint, action, cause of action, obligation, or liability for any type of relief and statutory or punitive damages predicated on any claim and for actual or statutory damages, punitive damages, restitution or other monetary relief of any and every kind, including, without limitation, those based on any federal, New York, or local law, statute, regulation, or common law, including all claims for declaratory or injunctive relief, whether known or unknown, suspected or unsuspected, Plaintiffs ever had, now has, or may have in the future resulting from, arising out of or in any way, directly or indirectly, relating to BPNA or any Released Party.

112. As of the Effective Date, Plaintiffs and all Settlement Class Members (who do not timely opt-out of the Settlement) (collectively, “Releasing Parties”), and each of their respective executors, representatives, heirs, successors, bankruptcy trustees, guardians, wards, agents and assigns, and all those who claim through them or who assert claims on their behalf, shall automatically be deemed to have fully and irrevocably released and forever discharged BPNA and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively, “Released Parties”), of and from any claim, right, demand, charge, complaint, action, cause of action, obligation, or liability for any type of relief and statutory or punitive damages predicated on any claim and for actual or statutory damages, punitive damages, restitution or other monetary relief of any and every kind, including, without limitation, those based on any federal, New York, or local law, statute, regulation, or common law, including all claims for declaratory or injunctive relief, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, which the Settlement Class Representatives or any Settlement Class Member ever had, now has, or may have in the future resulting from, arising out of or in any way, directly or indirectly, relating to (a) any claims that were or could have been alleged in the SAC or any prior Complaint filed in this Action related to the imposition or payment of Overdraft Fees; (b) any conduct, policy or practice prior to the date of Final Approval that was or could have been alleged in the SAC or any prior Complaint filed in this Action related to the imposition or payment of Overdraft Fees; and (c) any other conduct, policy or practice prior to the date of Final Approval related to the imposition or payment of Overdraft Fees.

113. Plaintiffs 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, 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 and conduct described in or subsumed by this Paragraph and Paragraphs 111-112. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases contained in this Paragraph and in Paragraph 111-112, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement or never receives a distribution of funds or credits from the Settlement.

XV. Payment of Attorneys' Fees, Costs and Incentive Awards

A. Settlement Class Counsel Fees and Costs

114. BPNA agrees to pay Settlement Class Counsel, subject to Court approval, attorneys' fees, costs and expenses totaling \$1,950,000.00. Any payment of such attorneys' fees, costs and expenses to Class Counsel is separate and distinct from any Settlement Consideration to be paid by BPNA to the Settlement Class. Notwithstanding anything herein, a determination by the Court not to approve, in whole or in part, any award of attorneys' fees and expenses to Settlement Class Counsel will not be grounds for termination or prevent the Agreement from becoming effective; rather, the remaining provisions of this Agreement will remain in full force

and effect. The Parties negotiated this Agreement regarding the terms of this Paragraph only after reaching agreement on all other material terms of this Settlement.

115. To the extent that BPNA issues an IRS Form 1099 or any other federal or state tax document or form, to document payment by BPNA of the Court-approved attorneys' fees, costs and expenses, BPNA shall not indicate or represent on such IRS Form 1099 or other document that attorneys' fees, cost and expenses were paid or attributable to any other person other than Settlement Class Counsel, including Plaintiffs or the Settlement Class (in the aggregate or individually).

B. Payment of Attorneys' Fees and Costs

116. Within fifteen (15) business days following the Effective Date, BPNA will pay to Settlement Class Counsel all Court-approved attorneys' fees, costs and expenses, including interest accrued thereon in the event an appeal was filed and the fees, costs and expenses approved by the Court were deposited into an Escrow Account. If the award of attorneys' fees and expenses is reduced on appeal, the Escrow Agent will only pay to Settlement Class Counsel the reduced amount of such award, including interest accrued thereon. Settlement Class Counsel will furnish to the Escrow Agent any required tax information or forms before the payment is made.

117. The payment of attorneys' fees, costs and expenses of Settlement Class Counsel will be made directly to Settlement Class Counsel, in the name of Settlement Class Counsel, by wire transfer to any account designated by Settlement Class Counsel.

C. Settlement Class Representative Incentive Awards

118. BPNA agrees to pay, subject to the Court's approval, an aggregate Incentive Award of ten thousand dollars (\$10,000) for all Plaintiffs. Any Incentive Awards are to be paid from the Settlement Fund and are in addition to each Plaintiff's Settlement Distribution.

Notwithstanding anything herein, the Court's failure to approve, in whole or in part, the Incentive Awards sought by Settlement Class Counsel will not prevent the Agreement from becoming effective, nor will it be grounds for termination. If Court declines to approve, in whole or in part, any Incentive Awards in the amounts set forth above, or at all, the remaining provisions of this Agreement will remain in full force and effect. The Parties negotiated this agreement regarding any Incentive Awards only after reaching agreement on all other material terms of this Settlement.

XVI. Parties' Positions on the Action and Settlement

119. The Parties acknowledge that during the Class Period, BPNA ceased its policy of posting ATM and/or POS withdrawals, debits, and/or purchases from highest-to-lowest amounts; ceased charging Overdraft Fees for overdrafts of less than \$5.00; began providing "real time" on-screen notice at BPNA-operated ATMs that the completion of a transaction could overdraw the account and, thus, result in an Overdraft Fee; and began subscribing to permit "real time" on-screen notice at NYCE-participating, non-BPNA-operated ATMs and POS terminals that the completion of a transaction could overdraw the account and, thus, result in an Overdraft Fee.

120. 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, including the changes in the Bank's policies described in this Section.

121. Settlement Class Counsel and Plaintiffs believe that the claims asserted in the 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 Action. Settlement Class Counsel have fully investigated the facts and law relevant to the merits of the claims, have conducted extensive formal and informal discovery, and have conducted independent investigation of the challenged practices. Settlement Class Counsel and Plaintiffs have concluded that the proposed Settlement set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

122. BPNA disputes the claims alleged in the Action and the SAC, and denies that any of the claims asserted have merit. BPNA does not, by entering into this Agreement or otherwise, admit any liability or wrongdoing of any kind. BPNA 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 have been asserted in the Action.

123. 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 Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; 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 Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

124. In addition to any other defenses BPNA 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.

XVII. Miscellaneous Provisions

125. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

126. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

127. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect regardless of events that may occur, or court decisions that may be issued, in any other case in any court.

128. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and represent to the Court that they have consulted.

129. Settlement Class Counsel, on behalf of themselves and their expert witnesses and consultants, as well as others retained by them, acknowledge that during the course of this Action, they have received Confidential Information. No later than thirty (30) days (or the first business day thereafter) after the Effective Date, Settlement Class Counsel shall: (1) delete or destroy all Confidential Information that Settlement Class Counsel received from BPNA, and (2) certify under oath that they and their expert witnesses and consultants have not retained any copies or summaries or compilations or indices of such information. Within the same time

period, Settlement Class Counsel shall also: (1) identify for BPNA the expert witnesses, outside consultants, and any other individuals or entities to whom or to which Settlement Class Counsel provided BPNA's Confidential Information; and (2) advise those persons of this requirement and ensure their compliance with it. This provision is not intended to cover work product of Settlement Class Counsel, but is intended to cover Confidential Information that might simply be attached to any work product. Settlement Class Counsel also shall not use any of the Confidential Information learned or obtained in this Action, including in connection with the Settlement, for any purpose after the date of Effective Date, except to enforce the terms of this Agreement and the Final Approval Order.

130. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter herein. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

131. 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.

132. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

133. The Court shall retain jurisdiction over the implementation, enforcement and performance of this Agreement, which shall be construed in accordance with, and be governed by, the laws of the State of New York. The Court 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 respective agreements to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

134. All notices to counsel provided for herein shall be sent by email and facsimile with a hard copy sent by overnight mail to:

As to Plaintiffs and the Settlement Class:

Joseph P. Guglielmo.
Erin Green Comite
SCOTT+SCOTT
ATTORNEYS AT LAW LLP
The Helmsley Building
230 Park Avenue, 17th Floor
New York, NY 10169
Telephone: (212) 223-6444
Facsimile: (212) 223-6334
jguglielmo@scott-scott.com
ecomite@scott-scott.com

Joseph S. Tusa
TUSA, P.C.
P.O. Box 566
Southold, NY 11971
Telephone: (631) 407-5100
Facsimile: (516) 706-1373
joseph.tusapc@gmail.com

As to BPNA:

Jonathan D. Lupkin
LUPKIN & ASSOCIATES, PLLC
26 Broadway, 19th Fl.
New York, NY 10004
Telephone: (646) 367-2772
jlupkin@lupkinassociates.com

Rachael M. Trummel
Andrew E. Nieland
BARACK FERRAZZANO KIRSCHBAUM
& NAGELBERG LLP
200 W. Madison Street, Suite 3900
Chicago, IL 60606
Telephone: (312) 984-3100
rachael.trummel@bfkn.com
andrew.nieland@bfkn.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice

Program.

135. This Agreement may be amended or modified only by a written instrument signed by the Parties and their respective counsel and approved by the Court.

136. 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.

137. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

138. Neither BPNA nor Plaintiff, 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.

139. The Parties understand and acknowledge that: (a) they have performed an independent investigation of the allegations of fact and law made in connection with the Action; and (b) 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 Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. BPNA has provided and is providing information that Plaintiffs reasonably request to identify putative members of the Settlement Class and the alleged Overdraft Fees they incurred. It is the Parties' intention to resolve their disputes in connection with the Action pursuant to the terms of this Agreement now. Accordingly, 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.

140. Each Party acknowledges, agrees and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Section XIV above, received independent legal advice with respect to the advisability of entering this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

141. Except where stated otherwise, reference to “days” means calendar days. If the last day upon which an act must or may be done falls on a weekend, holiday or other non-business day, such act must or may be done on the next subsequent business day.

FOR PLAINTIFFS:

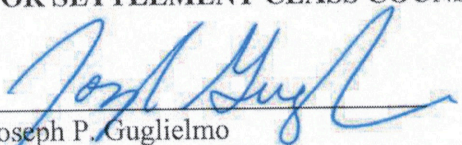


Josefina Valle

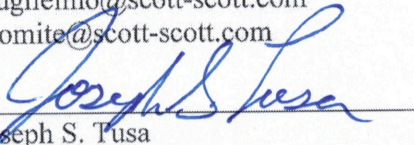


Wilfredo Valle

FOR SETTLEMENT CLASS COUNSEL:

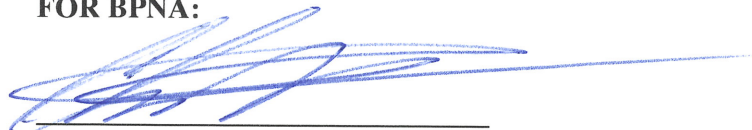


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FOR BPNA:



Christopher Lalan
Senior Vice President and Director of the Legal Division
Banco Popular North America d/b/a Popular Community Bank

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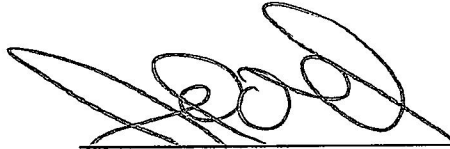
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EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, COMMERCIAL DIVISION

<p>JOSEFINA VALLE and WILFREDO VALLE, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs, v.</p> <p>POPULAR COMMUNITY BANK f/k/a BANCO POPULAR NORTH AMERICA a/k/a BANCO POPULAR NORTH AMERICA,</p> <p style="text-align: center;">Defendant.</p>	<p>Index No. 653936/2012</p> <p>Hon. O. Peter Sherwood, J.S.C.</p>
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NOTICE OF CLASS ACTION SETTLEMENT

**IF YOU WERE CHARGED AN OVERDRAFT FEE
BY POPULAR COMMUNITY BANK (FORMERLY BANCO POPULAR)
FROM NOVEMBER 14, 2009 THROUGH SEPTEMBER 30, 2014,
THIS SETTLEMENT MAY AFFECT YOUR RIGHTS**

A Court authorized this Notice.

If you are a Settlement Class Member, your legal rights are affected whether you act or don't act.

- This document ("Notice") provides notice of a proposed settlement ("Settlement") of a putative class action lawsuit in New York State Supreme Court against Banco Popular North America d/b/a Popular Community Bank ("Popular"), named *Valle v. Popular Community Bank*, Index No. 653936/2012 ("Lawsuit").
- If you maintained a consumer or retail checking, savings, or money market account with Popular in New York, and you were charged any overdraft fee in that account in connection with an Automated Teller Machine ("ATM") withdrawal or Point-of-Sale ("POS") debit card purchase between November 14, 2009 and September 30, 2014 ("Class Period") as a result of one or more disputed practices alleged in the lawsuit, you may be a **"Settlement Class Member."**
- If you are a Settlement Class Member, you have the right to submit a claim form requesting a settlement payment ("**Claim Form**"). You may receive a Claim Form by mail, online on the settlement website, or by request to the Settlement Administrator. You will not receive any settlement payment, and your rights will be released, if you do not submit a timely and complete Claim Form.
- Both current and past Popular consumer or retail deposit account holders who incurred Overdraft Fees (as defined herein) during the Class Period may be Settlement Class Members.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MAY:

<p>SUBMIT A CLAIM FORM</p>	<p>Submit a claim for a monetary settlement payment. If you are a Settlement Class Member, you must complete and submit a valid Claim Form, postmarked or filed online no later than [REDACTED], 2018, to receive a settlement payment.</p> <p>You may have received a Claim Form by mail. If you did not receive a Claim Form by mail, you can obtain a Claim Form from the Settlement website: www.bpnaoverdraftfeesettlement.com, or by requesting a Claim Form from the Settlement Administrator, A.B. Data, Ltd.</p> <p>You may submit your Claim Form and the required documentation by uploading it at www.bpnaoverdraftfeesettlement.com, or mailing it to the Settlement Administrator at Banco Popular Overdraft Settlement, c/o A.B. Data, Ltd., P.O. Box 170500, Milwaukee, WI 53217. Each Settlement Class Member may file a single Claim Form for all of his or her Popular accounts.</p> <p>Submitting a Claim Form is the only way to get payment resulting from this Settlement. You must submit a Claim Form to the Settlement Administrator to be eligible to receive any payment from the Settlement.</p>
<p>EXCLUDE YOURSELF FROM THE SETTLEMENT</p>	<p>Exclude yourself from the Settlement by following the instructions in this Notice (below). If you properly exclude yourself, you will not receive any payment from this Settlement, but you will retain any rights that you may have to bring your own lawsuit against Popular relating to the conduct alleged in the Lawsuit.</p>
<p>OBJECT TO SETTLEMENT</p>	<p>Write to the Court about why you are opposed to the Settlement. You may object to the Settlement by following the instructions in this Notice (below). If you do not follow the instructions, or provide all of the requested information, your objection may not be considered. You may only object to the Settlement if you have not excluded yourself from the Settlement. If you object to the Settlement and the Settlement is finally approved, your claims against Popular will be released in the same manner as all other Settlement Class Members.</p>
<p>ATTEND THE FINAL APPROVAL HEARING</p>	<p>You, or a personal attorney retained by you at your expense, may request permission to attend the hearing where the Court will consider final approval of the Settlement.</p>
<p>DO NOTHING</p>	<p>If you do not submit a Claim Form, you will not receive any payment resulting from this Settlement and, if the Settlement receives final approval, your claims against Popular will be released in the same manner as all other Settlement Class Members. By doing nothing, you will give up any right you have to bring your own lawsuit against Popular based on the legal claims in this case.</p>

- These rights and options, **and the deadlines to exercise them**, are explained in this Notice.
- The Court still has to decide whether to approve the Settlement. Any payments to Settlement Class Members will be paid only if the Court grants final approval of the Settlement and only after any appeals, if any, are resolved. Please be patient.

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BASIC INFORMATION**1. Why was this Notice issued?**

The judge handling this Lawsuit is Justice O. Peter Sherwood of the Supreme Court of the State of New York (“Court”). In this Lawsuit, the persons who sued are the “Plaintiffs,” and the entity they sued is the “Defendant,” Popular.

The Court authorized this Notice because, as a potential Settlement Class Member, you have a right to know about a proposed Settlement of this class action lawsuit, including the right to make a claim for payment, and about all of your options, before the Court decides whether to give “final approval” to the Settlement. If the Court approves the parties’ proposed Settlement Agreement and Release (“Settlement Agreement”), and after any objections and appeals are resolved, settlement payments will be distributed to Settlement Class Members who timely submit a valid Claim Form.

2. What is this Lawsuit about?

The Lawsuit claims that Popular used three disputed practices (“Disputed Practices”) to unlawfully charge Overdraft Fees to Settlement Class Members during the Class Period in connection with automated teller machine (“ATM”) withdrawals and Point-of-Sale (“POS”) Debit Card purchases. Those Disputed Practices are:

1. Failing to Provide a “Real Time” Warning that an Attempted ATM or POS Transaction Would Overdraw the Account. Plaintiffs allege that Popular knew prior to the completion of its customers’ ATM withdrawals and POS Debit Card purchases that those transactions would cause customers to overdraw their accounts, and therefore be subject to Overdraft Fees. Plaintiffs also allege that Popular could have provided that information to its customers at ATM and POS terminals before the transactions were completed, but did not. Plaintiffs assert that Popular was obligated to provide such notice and, on that basis, assert that this failure to warn was deceptive, denied Popular’s customers the knowledge that certain ATM and POS transactions would result in Overdraft Fees, and thereby caused Plaintiffs and other customers to incur Overdraft Fees that they otherwise would not have incurred for those ATM and POS transactions.

2. “Reordering” Withdrawals and Purchases. Before August 2013, Popular did not always post its customers’ ATM withdrawals and POS purchases in the order in which they occurred. Instead, it held all withdrawals and purchases until the end of the day (or the next business day, if the transactions occurred on a weekend or holiday), and posted them, within different categories of transactions, in order of highest-to-lowest dollar amount (“Reordering”). For example, a \$100 ATM withdrawal made at 3:00 p.m. would be posted before a \$40 ATM withdrawal made at 10:00 a.m. on the same day. As a result of Popular’s practice of “Reordering” ATM withdrawals and POS purchases, Popular charged Overdraft Fees that might not have been incurred had Popular posted ATM withdrawals and POS purchases either: (i) in the date and time order in which they actually occurred; or (ii) from lowest-to-highest dollar amount. Plaintiffs assert that Popular’s Reordering practice was deceptive and resulted in Overdraft Fees that Popular should not have charged for ATM and POS transactions.

3. Providing Inaccurate Balance Information for ATM Transactions. Plaintiffs allege that Popular sometimes provided inaccurate information regarding a customer’s account balance in response to ATM balance inquiries or following ATM withdrawals. Plaintiffs claim that this practice caused Popular customers to inadvertently overdraw their account and incur Overdraft Fees they would otherwise not have been charged.

The Court and a New York Appellate Court agreed that Plaintiffs had a right to challenge the Disputed Practices under New York General Business Law § 349, but no Court has determined whether Plaintiffs would prevail on their claims as to any of these Disputed Practices, either individually or for any proposed class of Popular account holders.

Popular denies that it provided inaccurate balance information, denies that it had any duty to provide real-time notice of a potential ATM or POS-related overdraft, denies that any of the alleged Disputed Practices were deceptive, misleading, or injurious to consumers, and denies that Popular violated any laws. Popular also denies that Plaintiffs’ claims, if not settled, are suitable for class action treatment. Popular further maintains that, if this

Lawsuit were not settled, Popular would defeat each of Plaintiffs' claims at or before trial.

The Second Amended Class Action Complaint filed by the Plaintiffs in this Lawsuit ("Complaint"), and Popular's Answer and Affirmative Defenses to Plaintiffs' Second Amended Class Action Complaint to that Complaint ("Answer") are posted and available on the Settlement Administrator's website: www.bpnaoverdraftfeesettlement.com.

3. What do "Account," "Overdraft Fee," and "Debit Card" Mean?

"Account" means any consumer or retail deposit account maintained by Popular within the State of New York, including savings, checking and money market accounts, regardless of whether such account was closed during the Class Period.

"Overdraft Fee" means any fee imposed and collected by Popular as a result of an Account being overdrawn, including both the one-time initial fee charged by Popular for each transaction that exceeded a customer's account balance (**"Initial Overdraft Fee"**), and the daily fee that, effective January 25, 2012, Popular charged beginning the 5th business day that an account remained overdrawn (**"Continuous Overdraft Fee"**). Overdraft Fees include those fees described in monthly account statements as: "Overdraft Withdrawal," "Overdraft Fee," "Continuous Overdraft Fee" or "NSF/Unavailable Fee." Only Overdraft Fees charged as a result of ATM withdrawals or POS Debit Card purchases are potentially recoverable in this Settlement.

"Debit Card" means a card, sticker, tag or other device issued or provided by Popular, including a debit card, check card or ATM card, that can be used to withdraw or debit funds by ATM transactions or make purchases by POS transactions.

Other terms relevant to the parties' Settlement are defined in the Settlement Agreement available on the Settlement Administrator's website: www.bpnaoverdraftfeesettlement.com.

4. What is a class action?

In a class action lawsuit, one or more people called "class representatives" (in this case, two former Popular savings account customers who were charged Overdraft Fees) sue on behalf of themselves and other people who have similar claims, experiences, and injuries. The group of people who share similar claims, experiences, and injuries are collectively called the "class" or "class members," even though most do not directly participate in the lawsuit. When a class action is settled, the claims of all settlement class members, except for those people who choose to exclude themselves from the settlement, are settled at one time in one court. For information on how to exclude yourself, see Question 13 below.

5. Why is there a settlement?

In this Lawsuit, the Court has not decided in favor of Plaintiffs or Popular with respect to any of the Disputed Practices, and the Court has not found that Popular did anything wrong. Instead, Plaintiffs and Popular agreed to settle this Lawsuit on behalf of Plaintiffs and all Settlement Class Members (except those that have elected to exclude themselves from the Settlement). For the Plaintiffs and Settlement Class Members, the Settlement assures that a financial recovery is available to all Settlement Class Members and avoids the risk that Plaintiffs ultimately will not be successful on their claims or will not be successful in having this Lawsuit certified as a class action. Given the risks associated with litigation, Plaintiffs and Settlement Class Counsel believe that the Settlement is in the best interest of the Settlement Class Members and that the Settlement is fair, adequate, and reasonable. Popular has agreed to the Settlement to avoid the risk of losing at trial, and to avoid the time, expense, and inconvenience associated with the defense of this Lawsuit.

ARE YOU A SETTLEMENT CLASS MEMBER?

If you received a notice or postcard by mail addressed to you providing notice of the Settlement ("Mailed Notice"), Popular has identified you as a person who incurred at least one Overdraft Fee on ATM or POS Debit Card transactions during the Class Period in a New York-based Popular Account. To the extent you incurred any such Overdraft Fee as a result of one or more of the Disputed Practices, you may be a Settlement Class

Member and may submit a Claim Form. Even if you did not receive a Mailed Notice, you may still be a Settlement Class Member, as described below. To determine whether you are a Settlement Class Member and therefore eligible to file a Claim Form to receive a payment resulting from this Settlement, you must be a person contained within the definition of Settlement Class Member, as explained below.

6. Who is a Settlement Class Member?

You are a Settlement Class Member if, during the Class Period, you: (1) held at least one Account in New York, and (2) incurred at least one Overdraft Fee in such Account(s), (3) in connection with an ATM withdrawal or POS Debit Card transaction, (4) as a result of one or more of the Disputed Practices.

If the Account was maintained by a single person, that person is the Settlement Class Member. If the Account was a joint account, all joint account holders are Settlement Class Members. Persons who maintained only Popular business or commercial accounts are not Settlement Class Members.

See Question 7 below for exceptions to the Settlement Class Member definition.

7. Are there exceptions to being included?

The following are not Settlement Class Members:

- (a) directors, officers and employees of Popular, Popular's parent entity(ies), any Popular subsidiary, or any other entity(ies) in which Popular has a controlling interest;
- (b) the Court, immediate family members of the Court, and employees of the Court; and
- (c) any person that timely and properly excludes himself or herself from the Settlement Class.

THE SETTLEMENT BENEFITS – WHAT CAN SETTLEMENT CLASS MEMBERS GET?

8. What benefits does the Settlement provide?

Popular has agreed to provide the following payments to Settlement Class Members who submit timely and complete Claim Forms:

1. Absent the *pro rata* adjustments set forth below, Settlement Class Members will receive a distribution equal to (i) 50% of all Initial Overdraft Fees paid by them on their Account(s) during the Class Period for ATM withdrawals or POS Debit Card transactions that the Settlement Class Member estimates were caused by one or more of the Disputed Practices; and (ii) 50% of one (1) Continuous Overdraft Fee for every two (2) Initial Overdraft Fees incurred by the Settlement Class Member on ATM withdrawals or POS Debit Card transactions from January 25, 2012 through September 30, 2014. If the total amount of all Qualified Claims received from all Settlement Class Members is more than \$5,200,000.00, then each claim will be reduced *pro rata* to reduce the total amount of Popular's aggregate settlement payments to Settlement Class Members to \$5,200,000.00. If the total value of all Qualified Claims received is less than \$550,000.00, then the 50% payment rate applied above will be increased until it reaches 100% or the total amount of Popular's aggregate settlement payments to Settlement Class Members equals \$550,000.00, whichever occurs first.

Popular has searched its records to determine the total amount of Initial Overdraft Fees (but not Continuous Overdraft Fees) paid by each Settlement Class Member for qualifying ATM withdrawals or POS Debit Card transactions during the Class Period, for each Popular Account. Settlement Class Members can obtain the total amount of Initial Overdraft Fees they paid during the Class Period by calling the Settlement Administrator at 1-888-208-9630 or visiting the Settlement Administrator's website: www.bpnaoverdraftfeesettlement.com. The Settlement Administrator will calculate the amount to be paid to each Settlement Class Member based on the information provided by Popular, unless a Settlement Class Member submits evidence to the Settlement Administrator that he or she was charged a different amount of Initial Overdraft Fees for ATM withdrawals or POS Debit Card transactions during the Class Period.

Settlement Class Members should only submit one (1) Claim Form, regardless of the number of eligible Popular Accounts they maintained. If more than one Account holder for a joint Popular Account submits a Claim Form for the same Account, the Settlement payments will be allocated among them by the Settlement Administrator. If any Account holder for a joint Popular Account excludes himself or herself from this Settlement, no Settlement payment will be made by the Settlement Administrator for that Account.

Settlement Class Members are *not* required to submit any proof in support of their claims, *except for* the Claim Form, unless (i) Popular's records show they were not charged any Initial Overdraft Fees on ATM withdrawals or POS Debit Card transactions during the Class Period, or (ii) they dispute the number of Initial Overdraft Fees charged on ATM withdrawals or POS Debit Card transactions during the Class Period shown in Popular's records.

2. In addition to the payments described in No. 1 above, Popular has agreed to pay the costs of settlement administration and notice up to \$250,000.00.

3. In addition to the payments described in Nos. 1 and 2 above, Popular has agreed to pay the Settlement Class Counsel's attorneys' fees, costs, and expenses in an amount of up to \$1,950,000.00 and an incentive award to the Plaintiffs of \$10,000.00.

4. In addition to the payments described in Nos. 1, 2, and 3 above, Popular has agreed to revise the disclosures provided to new Account holders to describe (1) the type(s) of account balance information that Popular may provide or otherwise make available at ATM terminals and, if applicable, POS terminals, including a definition or other description of each type of balance information; and (2) the type of account balance information that Popular uses to determine when an overdraft has occurred for the purpose of assessing an Overdraft Fee.

9. How do I receive a payment from this Settlement?

If you are a Settlement Class Member, whether or not you received a Claim Form in the mail, you **must** submit a valid and timely Claim Form in order to receive any payment. A Claim Form will be mailed to all putative Settlement Class Members who can be identified by Popular, and for whom Popular has a valid mailing address. You may also submit a claim online by visiting the Settlement website, www.bpnaoverdraftfeesettlement.com, or request a Claim Form by calling 1-888-208-9630, or by mailing the Settlement Administrator at the address in Question 24 below.

10. How do I submit a Claim Form?

You should read the instructions on the Claim Form carefully and fill out the **entire** Claim Form. You'll need to include:

- (a) your full name and the name used on your Popular Account, if different
- (b) your current mailing address;
- (c) your estimate of the percentage (1 to 100%) of Initial Overdraft Fees you incurred that were caused by one or more of the Disputed Practices; AND
- (d) a signed Certification that your Claim Form has been completed fully and accurately.

To properly submit a Claim Form, follow these steps:

- Complete and sign your Claim Form;
- Submit your Claim Form by mailing to Banco Popular Overdraft Settlement, c/o A.B. Data, Ltd., P.O. Box 170500, Milwaukee, WI 53217; or online using the Settlement Administrator's website, www.bpnaoverdraftfeesettlement.com. If you submit your Claim Form online, you will need to include either: (i) the **Claim #** provided in the Claim Form mailed to You; or (ii) the Popular Account Number(s) for all eligible Popular Accounts. Your Claim Form must be postmarked or filed online no later than , 2018.
- Submit only one Claim Form. If you submit more than one Claim Form, only the last timely Claim Form will be considered.

- If you dispute the amount of Initial Overdraft Fees that the Settlement Administrator believes that you paid, based on information provided by Popular, you may submit documentary proof (such as a bank statement) of the amount of Initial Overdraft Fees that you paid to Popular for ATM withdrawals or POS Debit Card transactions during the Class Period.

Do **not** send a copy of the Claim Form to the Court, Plaintiffs, Popular, Settlement Class Counsel, or Popular's Counsel. If you mail your Claim Form so that it is not postmarked by the deadline, you will not be eligible to receive payment from this Settlement. It is recommended that you keep a copy of your completed Claim Form.

11. When will I get my payment?

The payments will be mailed to Settlement Class Members who submitted valid and timely Claim Forms after (1) the claims period has expired, (2) the Court has granted "final approval" of the Settlement, (3) and any appeals are resolved.

The Court will hold a hearing on [REDACTED] at 2018 to decide whether to finally approve the Settlement (see the section below titled "The Court's Final Approval Hearing"). If the Court approves the Settlement, there may be appeals. Resolving any appeals that are made can take a long time. Please be patient. Please check the settlement website, www.bpnaoverdraftfeesettlement.com, for updates and other important information about the Settlement. You may also call 1-888-208-9630 toll-free for settlement updates.

12. What am I giving up as a Settlement Class Member?

In exchange for the settlement payments discussed above, Settlement Class Members agree to release any legal claims they may have against Popular based on this Lawsuit or Popular's charging of Overdraft Fees. If you do not exclude yourself from the Settlement, and the Settlement receives final approval, you will be bound by these releases, even if you did not submit a Claim Form or receive a Settlement payment, and you cannot sue or be part of any other lawsuit against Popular, as described in Section XIII of the Settlement Agreement.

A complete copy of the Settlement Agreement can be obtained at www.bpnaoverdraftfeesettlement.com, or by calling 1-888-208-9630 toll-free. The Settlement Agreement specifically describes the Settlement Class Members' releases in legal terminology. Speak with Settlement Class Counsel (see the section below on "The Lawyers Representing You") or your own lawyer if you have questions about the releases or what they mean.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to maintain the right to sue Popular based on the legal claims alleged in this case, then you must follow the steps below to exclude yourself from the Settlement. This is also called "opting out" of the Settlement. If you exclude yourself, you cannot get a payment from this Settlement.

13. How do I get out of the Settlement?

To exclude yourself from the Settlement, you **must** send a letter to the Settlement Administrator by U.S. Mail, including the following:

- your name, address, and telephone number;
- a clear statement that you want to be excluded from the settlement of the lawsuit named *Valle v. Popular Community Bank*, Index No. 653936/2012; AND
- your personal signature.

You must mail your exclusion notice, **postmarked no later than** [REDACTED], 2018 to:

Banco Popular Overdraft Settlement
c/o A.B. Data, Ltd.
P.O. Box 170500
Milwaukee, WI 53217

You cannot exclude yourself by telephone, by e-mail, or on the Settlement Administrator's website. If you submit an exclusion notice as provided above, (1) you will not receive any payment from this Settlement; (2) you cannot object to the Settlement; and (3) you will not be legally bound by anything that happens in this Lawsuit.

14. If I do not exclude myself, can I sue Popular myself for Overdraft Fees I was charged?

No. Unless you exclude yourself, you give up any right to sue Popular for any of the claims that this Settlement resolves. You must exclude yourself from this Settlement in order to pursue your own lawsuit against Popular or any of the other "Released Parties" defined and described in the Settlement Agreement. If you have a pending lawsuit against Popular or any of the Released Parties, speak to your lawyer immediately.

15. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you cannot get a payment from the Settlement.

THE LAWYERS REPRESENTING SETTLEMENT CLASS MEMBERS

16. Do I have a lawyer in this case?

The Court has appointed the following attorneys and law firms to represent you and other putative Settlement Class Members:

Joseph P. Guglielmo
Scott+Scott, Attorneys at Law, LLP
The Helmsley Building
230 Park Avenue, 17th Floor
New York, New NY 10169

Joseph S. Tusa
Tusa P.C.
150 Motor Parkway, Ste. 401
Hauppauge, NY 11788

These lawyers have been certified by the Court as "Settlement Class Counsel." You will not be charged for services performed by Settlement Class Counsel, except for the attorneys' fees that Popular has agreed to pay to Settlement Class Counsel if the Settlement is finally approved and those attorneys' fees are approved by the Court, as described directly below. Settlement Class Counsel will not assist any Settlement Class Member in objecting to approval of the Settlement or opting out of the Settlement. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will Settlement Class Counsel be paid?

Settlement Class Counsel will ask the Court to approve a payment of up to \$1,950,000.00 for attorneys' fees and reimbursement of their expenses incurred during this five-year litigation. The attorneys' fees and reimbursement of expenses that Popular has agreed to pay to Settlement Class Counsel are in addition to any payments that Popular has agreed to make to Settlement Class Members who submit a valid, timely and complete Claim Form, in addition to the settlement administration and notice costs that Popular has agreed to pay (up to \$250,000.00), and in addition to the incentive awards that Popular has agreed to pay to Plaintiffs Josefina and Wilfredo Valle for their services as Plaintiffs and class representatives (\$10,000.00 total).

OBJECTING TO THE SETTLEMENT

If you are a Settlement Class Member and do not exclude yourself from the Settlement, you can object to approval of the Settlement or some part of it.

18. How do I object to the Settlement?

If you are Settlement Class Member and you do not exclude yourself from the Settlement, you can object to approval of the proposed Settlement. You may not file an objection if you are not a Settlement Class Member or if you exclude yourself from the Settlement.

You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. To object, you must file your objection with the Court, mail a copy to the Settlement Administrator and parties listed below, and include the following information in your objection:

- a caption or title identifying it as an “Objection to Class Settlement in *Valle v. Popular Community Bank*, Index No. 653936/2012 (N.Y. Sup.)”;
- your full name, address, and telephone number;
- an explanation of the basis upon which you claim to be a Settlement Class Member;
- all grounds for the objection, accompanied by any legal support for the objection known to you or to your counsel;
- the number of times you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection, and a copy of any orders or opinions related to or ruling upon your prior such objections that were issued by the trial and appellate courts in each listed case;
- the identity of all counsel who represent you, 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;
- the number of times in which your counsel and/or counsel’s law firm have objected to a class action settlement within the five years preceding the date that you object or file the 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 firm’s prior such objections that were issued by the trial and appellate courts in each listed case;
- any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between you and your counsel and any other person or entity;
- the identity of all counsel representing you who will appear at the Final Approval Hearing;
- a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- a statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing;
- your personal signature (an attorney’s signature is not sufficient); and
- if you are represented by an attorney(s) in connection with the objection, the signature of each such attorney below a statement that “No other attorney has a financial interest, either directly or indirectly, in the representation of this objecting party.”

You must file with the Court and serve your objection to the parties at the following addresses, postmarked **no later than** , 2018:

Clerk of the Court New York County Courthouse 60 Centre Street New York, NY 10007	Banco Popular Overdraft Settlement c/o A.B. Data, Ltd. P.O. Box 170500 Milwaukee, WI 53217
Rachael M. Trummel BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG LLP	Jonathan D. Lupkin LUPKIN & ASSOCIATES, PLLC 26 Broadway, 19th Fl.

200 W. Madison Street, Suite 3900 Chicago, IL 60606	New York, NY 10004
Joseph P. Guglielmo SCOTT+SCOTT, ATTORNEYS AT LAW, LLP The Helmsley Building 230 Park Avenue, 17th Floor New York, NY 10169	Joseph S. Tusa TUSA P.C. 150 Motor Parkway, Ste. 401 Hauppague, NY 11788

Only persons who remain members of the Settlement Class and who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. See Questions 20 and 22 below.

19. What's the difference between objecting and excluding yourself?

Objecting is simply telling the Court that you do not agree with something about the Settlement. Excluding yourself is making the election to not be part of the Settlement Class. If you exclude yourself, you have no basis to object, because the Settlement no longer affects you. If you object and the Court approves the Settlement anyway, you will be legally bound by the result, including the releases of claims set forth in the Settlement Agreement. If you file an objection, you can and should submit a timely, complete Claim Form to preserve your potential eligibility to receive a payment under the Settlement.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing called a "Final Approval Hearing" (also known as a "Fairness Hearing") to decide whether to approve the Settlement. **No Settlement Class Member is required attend the Final Approval Hearing**, even if you filed a Claim Form to receive a Settlement payment.

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

The Court will hold a Final Approval Hearing to decide whether to finally approve the Settlement. You may attend and you may ask to speak, but you don't have to do either one.

The Final Approval Hearing will be on [REDACTED], 2018 before Judge O. Peter Sherwood, at the New York State Court Courthouse, 60 Centre Street, Room 252, New York, NY 10007. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check Settlement Administrator's website for updates.

At this hearing, the Court will consider whether the Settlement and all of its terms are adequate, fair, and reasonable. If there are objections, the Court will consider them. The Court may listen to people who have asked for permission to speak at the hearing and complied with the other requirements for objections explained in Question 18 above. The Court may also decide how much to award Settlement Class Counsel for attorneys' fees and expenses for representing the Settlement Class Members and whether and how much to award the Plaintiffs for representing the Settlement Class Members.

At or after the hearing, the Court will decide whether to finally approve the proposed Settlement. There may be appeals after that. We do not know how long these decisions will take.

The Court may change deadlines listed in this Notice without further notice to Settlement Class Members. To keep up on any changes in the deadlines, please contact the Settlement Administrator or review the settlement website, www.bpnaoverdraftfeesettlement.com.

21. Do I have to attend the Final Approval Hearing?

No. Settlement Class Members are not required to attend the Final Approval Hearing, and not attending will not affect any Claim Form you file to receive a payment from the Settlement. Settlement Class Counsel will answer any questions asked by the Court. But, you are welcome to attend at your own expense. If you intend to have a lawyer appear on your behalf at the Final Approval Hearing, your lawyer must enter a written notice of

appearance of counsel with the Clerk of the Court no later than [REDACTED], 2018 and you must comply with all of the requirements explained above in Question 18.

If you send a valid and timely objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time and complied with the other requirements for a proper objection, the Court will consider it.

22. May I speak at the Final Approval Hearing?

If you submitted a proper written objection to the Settlement, you or a lawyer acting on your behalf may speak at the Final Approval Hearing to the extent permitted by the Court. To do so, you must send a letter saying that you intend to appear and wish to be heard. This letter is called a “Notice of Intention to Appear,” and it must include the following:

- your name, address, and telephone numbers;
- a statement that this is your “Notice of Intention to Appear” at the Final Approval Hearing in *Valle v. Popular Community Bank*, Index No. 653936/2012 (N.Y. Sup.);
- the reasons you want to be heard;
- copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and
- Your personal signature (an attorney’s signature is not sufficient).

You must mail your Notice of Intention to Appear, postmarked no later than [REDACTED], 2018 to all addresses in Question 18.

IF YOU DO NOTHING

23. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will get no payment from this Settlement, and you will be legally bound by the Court’s decisions in this Settlement. Unless you exclude yourself, if the Court grants final approval to the Settlement, you will not be able to sue or be part of any other lawsuit against Popular or any of the Released Parties regarding the legal claims in this case.

GETTING MORE INFORMATION

24. How do I get more information about the Settlement?

You may obtain additional information by:

- Calling the Settlement Administrator toll-free at 1-888-208-9630.
- Writing to the Settlement Administrator at the following address:

Banco Popular Overdraft Settlement
c/o A.B. Data, Ltd.
P.O. Box 170500
Milwaukee, WI 53217

- Visiting the settlement website, www.bpnaoverdraftfeesettlement.com, where you will find: answers to frequently asked questions about the Settlement; a Claim Form; Settlement-related documents; Settlement-related deadlines; the Court Order Preliminarily Approving the Settlement and Conditionally Certifying the Settlement Class; Plaintiffs’ Complaint; Popular’s Answer to the Complaint; and other relevant information.

- Reviewing legal documents that have been filed with the Clerk of Court in this Lawsuit at the Court offices provided in Question 18 during regular office hours.
- Contacting Settlement Class Counsel listed in Question 16 above.

PLEASE DO NOT CALL THE JUDGE, THE COURT CLERK, ANYONE ELSE AT THE COURT, OR POPULAR TO ASK QUESTIONS ABOUT THIS LAWSUIT OR NOTICE.

THE COURT WILL NOT RESPOND TO LETTERS OR TELEPHONE CALLS. IF YOU WISH TO ADDRESS THE COURT, YOU MUST FILE AN APPROPRIATE PLEADING OR MOTION WITH THE CLERK OF THE COURT IN ACCORDANCE WITH THE COURT'S USUAL PROCEDURES.

EXHIBIT 2

NOTICE OF CLASS ACTION SETTLEMENT

This Notice describes a settlement of a proposed class action lawsuit filed in New York claiming that, between November 14, 2009 and September 30, 2014 (“Class Period”), Banco Popular North America d/b/a Popular Community Bank (“Popular”) improperly charged certain overdraft fees by (1) not providing a real-time warning to its account holders that an attempted ATM or point-of-sale (“POS”) transaction, if completed, would overdraw their account (“Failure to Warn” claim); (2) processing ATM and POS (“Card”) transactions from highest-to-lowest dollar amount (“Reordering” claim); and (3) providing inaccurate balance information in response to ATM balance inquiries, ATM withdrawals or other ATM transactions (“Inaccurate Balance Reporting” claim) (collectively, “Disputed Practices”). Popular denies any and all wrongful conduct, but to avoid the burden and expense of litigation, Popular has agreed to pay a total amount to the Settlement Class of not less than \$550,000 and not more than \$5.2 million to satisfy the aggregated valid claims submitted by settlement class members. Except as set forth in the Settlement Agreement, Popular’s total payment to the Settlement Class shall not be reduced by settlement notice or administration costs or attorneys’ fees to Settlement Class Counsel.

Am I a Settlement Class Member? You may be a Settlement Class Member if you maintained a Popular consumer or retail checking, savings or money market account in New York and incurred at least one overdraft fee in such account resulting from a Card transaction during the Class Period as a result of one or more of the three Disputed Practices. Popular’s records indicate you may be a Settlement Class Member and have the right to submit a Claim Form.

What Can I Get? If the Court approves the settlement and if you timely submit a completed Claim Form, except as otherwise provided in the settlement agreement, you may receive up to 50% of eligible initial overdraft fees that you paid on Card transactions during the Class Period (which fees ranged from \$10 to \$30), as well as up to 50% of eligible \$5.00 per day “continuous” overdraft fees that you incurred, beginning in January 2012, if your account remained overdrawn for more than 5 business days. The overdraft fees charged by Popular must actually have been paid by the Settlement Class Member(s) to be reimbursable.

How Do I Make a Claim? To make a claim, you must complete and submit the Claim Form attached to this Notice or a Claim Form available on the Settlement Website (using the Claim # stated on this Notice) by **DATE**. All Claim Forms are subject to verification by the Settlement Administrator.

What Are My Other Options? You may do nothing, which means you are giving up any right to participate in this settlement. You may also exclude yourself from the settlement by sending a letter to the Settlement Administrator by **DATE** stating that you do not wish to participate in the settlement. If you exclude yourself, you will not receive payment under the settlement, but you will retain any right to file your own suit against Popular regarding the overdraft fees that you incurred. If you do not exclude yourself, any claim(s) that you have against

Popular relating to the claims in the lawsuit will be satisfied and released, even if you do not file a claim for payment. If you do not request exclusion, you may object to the settlement by mailing a signed written objection to the Settlement Administrator and counsel for the parties by **DATE**.

Who Represents Me? The Court has appointed Scott+Scott, Attorneys at Law, LLP and Tusa P.C. as Settlement Class Counsel. If the Court approves the settlement, Settlement Class Counsel will be paid attorneys' fees and expenses in an amount approved by the Court. Popular's payment of court-approved attorneys' fees will not reduce the payments to Settlement Class Members.

When Will the Court Consider the Proposed Settlement? The Court will hold a final approval hearing on **DATE** at **TIME** at **COURT**. At that hearing, the Court will decide whether to approve the settlement and award the requested attorneys' fees expenses to Settlement Class Counsel.

For more information, visit www.bpnaoverdraftsettlement.com ("Settlement Website") or contact the Settlement Administrator at 888-208-9630.

[In Spanish, English version only] A Spanish version of this Notice and Claim Form is available at www.bpnaoverdraftsettlement.com or upon request to the Settlement Administrator.

SETTLEMENT CLAIM FORM

To Make a Claim for Compensation Under the Settlement, You Must Provide All Requested Information and Sign and Mail this Claim Form, Postmarked On or Before , to the Settlement Administrator at

Banco Popular Overdraft Settlement
c/o A.B. Data, Ltd.
P.O. Box 170500
Milwaukee, WI 53217

BARCODE Claim #: ABC-1234567-8 Enter Any Name/Address Changes:

FIRST AND LAST NAME(S) _____
ADDRESS1 _____
ADDRESS2 _____
CITY, STATE ZIP _____

Name on Popular Account (if different from current name) _____

CLAIM: Popular’s records indicate that you were charged one or more overdraft fees on Card transactions during the Class Period. You can obtain the total amount of overdraft fees, not including any continuous overdraft fees, that you were charged during the Class Period on the Settlement Website by using the Claim # listed on this Notice or by calling the Settlement Administrator.

As described in the Notice included with this Claim Form, and in other Notices included on the settlement website, Plaintiffs allege that Popular engaged in three (3) practices that caused settlement class members to incur overdraft fees during the Class Period that should not have been charged: (1) Failure-to-Warn, (2) Reordering and (3) Inaccurate Balance Reporting (collectively, the “Disputed Practices”).

To make a claim, you must provide in the space indicated below an estimate of the *total* percentage (1% - 100%) of the Card overdraft fees that you incurred during the Class Period that you believe were caused by the Disputed Practices. The Settlement Administrator will use the estimated percentage that you provide to calculate the amount of your claim.

* Settlement Class Counsel believes that up to 100% of *all* Card overdraft fees paid by *all* Settlement Class Members during the Class Period were likely caused by one or any combination of the Disputed Practices, including that Popular did not provide a real-time warning at ATM and POS terminals that an attempted transaction, if completed, could overdraw the account and result in an overdraft. If you believe that all of your Overdraft Fees charged

by Popular for ATM and POS transactions were caused by one or more of the alleged Disputed Practices, you should indicate 100% in the line.

* BPNA believes that less than 100% of all Card overdraft fees paid by all settlement class members during the Class Period were likely caused by one or any combination of the Disputed Practices, including because at least some settlement class members may have knowingly overdrawn their accounts because they had an immediate need for more money than they had in their account. The estimated percentage that you provide on the line below should equal the total percentage of your Overdraft Fees that you believe were caused by one or more of the alleged Disputed Practices.

YOU MUST COMPLETE THIS SECTION: I believe that _____% (1-100%) of the overdraft fees I incurred during the Class Period were the result of one or more of the Disputed Practices.

CERTIFICATION: By signing and submitting this claim form, the undersigned (1) attests that, to the best of his or her knowledge, he or she is entitled to the requested relief, and (2) agrees to be bound by the terms of settlement agreement and release.

Date: _____ Signature of Account Holder: _____

Date: _____ Signature of Co-Account Holder (if any): _____

EXHIBIT 3

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK, COMMERCIAL DIVISION

<p>JOSEFINA VALLE and WILFREDO VALLE, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs, v.</p> <p>POPULAR COMMUNITY BANK f/k/a BANCO POPULAR NORTH AMERICA a/k/a BANCO POPULAR NORTH AMERICA,</p> <p style="text-align: center;">Defendant.</p>	<p>Index No. 653936/2012</p> <p>Hon. O. Peter Sherwood, J.S.C.</p>
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NOTICE OF CLASS ACTION SETTLEMENT

**IF YOU WERE CHARGED AN OVERDRAFT FEE
 BY POPULAR COMMUNITY BANK (FORMERLY BANCO POPULAR)
 FROM NOVEMBER 14, 2009 THROUGH SEPTEMBER 30, 2014,
 THIS SETTLEMENT MAY AFFECT YOUR RIGHTS**

Banco Popular North America d/b/a Popular Community Bank (“Popular”) has agreed to settle a putative class action lawsuit alleging that it improperly charged its New York consumer or retail checking, savings, and money market account holders overdraft fees between November 14, 2009 and September 30, 2014 (“Class Period”). If you are a Settlement Class Member (explained below), you have the right to submit a claim form requesting a settlement payment (“Claim Form”). You will not receive any settlement payment if you do not properly submit a Claim Form or if you exclude yourself from the Settlement Class. If you do not exclude yourself from the Settlement Class, any rights or claims that you may have will be released. Popular denies any and all wrongdoing or alleged unlawful conduct. Unless otherwise defined in this notice, capitalized terms have the meaning given them in the Settlement Agreement.

Who is a Settlement Class Member? The Settlement Class includes all persons who, during the Class Period: (1) maintained one or more Popular consumer or retail checking, savings, or money market accounts in New York (“Account”), (2) incurred at least one Overdraft Fee in such Account(s), (3) in connection with an Automated Teller Machine (“ATM”) withdrawal or Point-of-Sale (“POS”) Debit Card (“Card”) transaction, (4) as a result of one or more of the following alleged practices by Popular: (i) reordering of ATM and/or POS Debit Card transactions from highest-to-lowest dollar amounts, (ii) providing inaccurate balance information in response to an ATM balance inquiry, ATM withdrawal or other ATM transaction, and/or (iii) not providing a “real time” warning that an attempted ATM or POS transaction, if honored by Popular, would overdraw the Account (collectively, “Disputed Practices”), except that employees and immediate family members of the Court, Popular, and Popular-related entities are not Settlement Class Members.

How Much Can I Recover? Absent the *pro rata* adjustment described below, Settlement Class Members who establish a Qualified Claim by submitting a valid and timely Claim Form will receive a settlement payment of up to 50% of all eligible Initial Overdraft Fees paid on Card transactions during the Class Period as a result of the Disputed Practices. They may also be eligible to receive additional payment for Continuous Overdraft Fees. To the extent the Settlement Class in the aggregate submits Qualified Claims totaling less than \$550,000, or more than \$5,200,000, such claims would be subject to a *pro rata* increase or reduction, respectively.

How Do I Make a Claim? Settlement Class Members must submit, either by mail or online through the Settlement Administrator's website, a Claim Form to the Settlement Administrator by **DEADLINE**. Each Claim Form will be subject to verification by the Settlement Administrator. Claim Forms have been mailed to all putative Settlement Class Members identified by Popular. You may also obtain a Claim Form from the Settlement Administrator's website: www.bpnaoverdraftfeesettlement.com. **[Spanish version only, in Spanish:] A Spanish version of the Claim Form is available from the Settlement Administrator's website: www.bpnaoverdraftfeesettlement.com or upon request to the Settlement Administrator.**

Who Represents the Settlement Class? The Court has appointed the law firms Scott+Scott, Attorneys at Law, LLP and Tusa P.C. as attorneys for the Settlement Class.

What Are My Rights As a Settlement Class Member ? If you are a Settlement Class Member and do not elect to be excluded from the settlement, in exchange for the benefits provided to you under the Settlement, you will release certain legal rights against Popular and the other Released Parties. If you do not want to participate in the Settlement, you may request exclusion from the proposed Settlement by **DEADLINE**. If you do not exclude yourself, you may object to the proposed Settlement by filing an objection with the Court and providing notice to the Parties by **DEADLINE**. Information about how to file a Claim Form, request exclusion or object is available on the Settlement Administrator's website: www.bpnaoverdraftfeesettlement.com.

When is the Fairness Hearing?

The Court (the Honorable O. Peter Sherwood, J.S.C.) will hold a hearing on _____, 2018 at _____ m., at 60 Centre Street, Room 252, New York, NY 10007 to consider whether to finally approve the proposed Settlement, the plan of distribution, and Settlement Class Counsel's application to the Court for an award of attorneys' fees, expenses, and a service award to the Plaintiffs. You or a lawyer that you have separately retained at your own expense may ask to appear and speak at the hearing, but you do not have to. If you wish to appear, you must file a notice of intention to appear by _____, 2018.

How Can I Get More Information? You can obtain more information about this lawsuit, the Settlement, deadlines, and how to obtain and submit a Claim Form by visiting the Settlement Administrator's website, www.bpnaoverdraftfeesettlement.com, or by calling the Settlement Administrator at 1-888-208-9630.

EXHIBIT 4

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
COMMERCIAL DIVISION**

<p>JOSEFINA VALLE and WILFREDO VALLE, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>POPULAR COMMUNITY BANK f/k/a BANCO POPULAR NORTH AMERICA a/k/a BANCO POPULAR NORTH AMERICA,</p> <p style="text-align: center;">Defendant.</p>	<p>Part 45</p> <p>Index No. 653936/2012</p> <p>Hon. O. Peter Sherwood J.S.C.</p> <p>Motion Seq. 011</p>
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**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
TO PROPOSED CLASS ACTION SETTLEMENT AGREEMENT
AND PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

This matter having come before the Court on the motion of Plaintiffs Josefin Valle and Wilfredo Valle (collectively, “Plaintiffs”), individually and on behalf the proposed Settlement Class, with the consent of Defendant Popular Community Bank f/k/a and a/k/a Banco Popular North America (“Popular” or “Defendant”), for Preliminary Approval of the *Settlement Agreement and Release*, annexing Exhibits 1-4, dated March 12, 2018 (“Settlement Agreement”), annexed as Exhibit A to the Affirmation of Joseph S. Tusa, the Court, after due deliberation and consideration of the Settlement Agreement and Exhibits annexed thereto, the parties’ submissions in support of the motion for preliminary approval, the record and all prior proceedings had in this action, for good cause shown, HEREBY ORDERS as follows:

1. **Defined Terms:** The terms that are capitalized in this Preliminary Approval Order shall have the meaning ascribed to those terms in the Settlement Agreement, unless otherwise specified herein.

2. **Preliminary Approval of the Settlement:** The Court finds on a preliminary basis that the Settlement Agreement is sufficiently fair, reasonable, and adequate; that it was negotiated at arms-length by experienced counsel; and that it is in the best interests of the parties and proposed Settlement Class for the Court to hereby grant Preliminary Approval of the Settlement Agreement and to order the distribution of the (i) Long-Form Notice (Settlement Agreement, Ex. 1); (ii) Mailed Notice (Settlement Agreement, Ex. 2); and (iii) Published Notices (Settlement Agreement, Ex. 3) to the Settlement Class as described below.

The Court further finds on a preliminary basis that the Settlement Consideration proposed in the Settlement Agreement, summarized below, is fair, reasonable, and adequate consideration for the Releases being provided by Plaintiffs and the Settlement Class. Such Settlement Consideration consists of the following elements to be paid or provided by Defendant if the Settlement Agreement receives final approval (including after resolution of any appeals):

- a. Settlement distributions to Settlement Class Members who submit timely and valid claims (not to exceed \$5,200,000.00 in the aggregate);
- b. Settlement Notice and Administration costs (not to exceed \$250,000.00);
- c. Plaintiff Incentive Awards (\$10,000 in the aggregate);
- d. Settlement Counsel Attorneys' Fees and Costs (\$1,950,000); and
- e. New and additional disclosures concerning Popular's balance reporting policies.

Accordingly, the Court hereby grants Preliminary Approval of the Settlement on the terms set forth herein.

3. Certification of the Settlement Class: Pursuant to CPLR §§ 901, 902 and 907, the Court certifies the following class solely for the purposes of settlement (“Settlement Class”):

All persons who, during the Class Period: (1) maintained one or more Accounts in New York at Popular, (2) incurred at least one Overdraft Fee in such Account(s), (3) in connection with an ATM withdrawal or Point-of-Sale (“POS”) Debit Card transaction, (4) as a result of one or more of the following alleged practices by Popular: (i) reordering of ATM and/or POS Debit Card transactions from highest-to-lowest dollar amounts, (ii) providing inaccurate balance information in response to an ATM balance inquiry, ATM withdrawal or other ATM transaction, and/or (iii) not providing a “real time” warning that an attempted ATM or POS transaction, if honored by Popular, would overdraw the Account (collectively, “Disputed Practices”). Excluded from the Settlement Class are the following: (i) the Court, immediate family members of the Court, and employees of the Court; and (ii) directors, officers, and employees of Popular, Popular’s parent entity(ies), any Popular subsidiary, or any other entity(ies) in which Popular has a controlling interest.

Plaintiffs Josefina Valle and Wilfredo Valle are hereby designated and appointed as representatives for the Settlement Class and their counsel, Scott + Scott, Attorneys at Law and Tusa P.C., shall be designated and appointed as counsel for the Settlement Class (“Settlement Class Counsel”).

Persons who exclude themselves from the Settlement Class by filing a request for exclusion in accordance with the requirements set forth in this Preliminary Approval Order shall be excluded from the Settlement Class and shall not be permitted to participate in the Settlement or file an objection to the Settlement.

4. Requirements for Settlement Class Certification are Satisfied. Pursuant to CPLR §§ 901 and 902, and solely for the purposes of the proposed settlement, the Court finds on a preliminary basis that:

- a. the Settlement Class is so numerous that joinder of all members is impracticable;
- b. common questions of law and fact predominate among Plaintiffs and members of the Settlement Class;
- c. the parties' respective claims and defenses are typical insofar as Plaintiffs' claims allegedly result from the same course(s) of conduct by Popular as the claims possessed by the Settlement Class;
- d. Plaintiffs will fairly and adequately protect the interests of the Settlement Class;
- e. Scott + Scott, Attorneys at Law, LLP and Tusa P.C. are adequate counsel for the Settlement Class, each of whom possesses substantial experience and expertise in representing consumers in class action settlements; and
- f. a class action is superior to other available methods for the fair and efficient adjudication of the controversy, including, without limitation because (1) the Settlement would efficiently resolve the claims of all Settlement Class Members (except those who request exclusion, and (2) the amount of any individual Settlement Class Members' claim likely would not support the cost of adjudicating such claim.

5. Fairness Hearing: The Court shall conduct a Fairness Hearing regarding final approval of the Settlement at _____, on _____, 2018. The hearing shall be conducted by the Court for the following purposes:

- a. to determine whether the Court, pursuant to CPLR 908, should grant final approval to the proposed Settlement as fair, reasonable, and adequate;

whether the Court should enter the Final Order and Judgment, dismissing the Lawsuit on the merits and with prejudice; and whether the Releases set forth in the Settlement Agreement should be provided to the Released Parties;

- b. to determine whether the Court should approve the application for attorneys' fees and the reimbursement of expenses submitted by Settlement Class Counsel ("Fee and Expense Application");
- c. to determine whether the Court should approve the application for incentive awards to Plaintiffs, who are the Settlement Class Representatives;
- d. to determine whether the Court should approve the proposed plan of allocation of the Settlement proceeds as fair and reasonable;
- e. to consider any objections that comply with the requirements of this Preliminary Approval Order; and
- f. to rule upon such other matters as the Court may deem necessary or appropriate.

The Court reserves the right to continue or adjourn the Fairness Hearing without further notice other than an announcement (which may be made by docket entry) at or before the Fairness Hearing and, specifically, without further notice to the Settlement Class.

6. Approval with Modifications: The Court reserves the right to finally approve the Settlement at or after the Fairness Hearing, with or without such modifications as may be agreed upon by the parties and their respective counsel, and without further notice to the Settlement Class.

7. **Notices and Notice Program Approved:** The Court approves the form, substance, and distribution plan of the Notices annexed to the Settlement Agreement as Exhibits 1, 2 and 3. The Court approves the manner proposed by the parties in the Settlement Agreement to distribute the Mailed Notice, Published Notice, and Long-Form Notice (“Notice Program”). The Court finds that the proposed manner of providing Notice to the Settlement Class, if carried out in conformity with this Preliminary Approval Order, shall constitute reasonable and sufficient notice of the Settlement under CPLR §§ 904, 907 and 908, and conform with due process.

The Notice Program, as set forth in the Settlement Agreement, consists of the following:

- a. Within the time provided in the Settlement Agreement, Popular shall conduct a reasonable and good faith search of its books and records and thereafter provide to the Settlement Administrator and Settlement Class Counsel the list of names and last-known addresses of the persons it has identified as putative members of the Settlement Class (“Settlement Class List”).¹
- b. Within thirty (30) calendar days (or the next business day thereafter) of entry of this Preliminary Approval Order, or twenty-one (21) days after receipt of the Settlement Class List from Popular, whichever comes later, the Mailed Notice shall be sent by first class mail to each putative Settlement Class Member at the address identified on the Settlement Class List (as updated by the National Change of Address Database and

¹ The Court finds that the disclosure of the Settlement Class List, which shall include names, last-known addresses, account numbers, and the amount of each putative Settlement Class Member’s Qualifying Overdraft Fees is (1) reasonably necessary to provide notice to the Settlement Class and accomplish the notice distribution plan in conformity with CPLR 904 and 908 and due process, and (2) complies with the Graham-Leach-Bliley Act, 15 U.S.C. §6801 *et seq.*, including 15 U.S.C. §6802, as well as any other applicable federal or state privacy laws.

- searching on the federal change of address database for updated addresses for any Mailed Notice returned as undeliverable);
- c. Within five (5) calendar days after the initial mailing of the Mailed Notice, the Published Notice shall be published in one English-language newspaper (in English) and in one Spanish-language newspaper (in Spanish) of general circulation in the metropolitan New York City area, one time in each newspaper;
 - d. Within one (1) calendar day (or the next business day thereafter) after the initial mailing of the Mailed Notice, the Long-Form Notice shall be published on the Settlement website (www.bpnaoverdraftfeesettlement.com) to be created and maintained by the Settlement Administrator; and
 - e. A Spanish version of the Mailed Notice and Claim Form shall be made available on the Settlement Website or upon request to the Settlement Administrator, and this availability shall be disclosed (in Spanish) in the English version of the Mailed Notice and Claim Form and in the Spanish version of the Published Notice.

8. Claims Process Approved. The Court grants preliminary approval to the following claims process:

- a. To be eligible to receive a Settlement Class Member Payment, each putative Settlement Class Member must complete and timely submit a valid Claim Form to the Settlement Administrator during the Claims Period by either (a) completing, certifying and mailing the mailed paper Claim Form to the Settlement Administrator or (b) completing,

certifying and electronically submitting the online Claim Form using the website maintained by the Settlement Administrator for this Settlement.

b. The deadline for putative Settlement Class Members to submit a Claim Form, and thus preserve their eligibility to receive a Settlement Class Member Payment as provided in Paragraphs 73-92 of the Settlement Agreement (if the Settlement receives final approval), shall be sixty (60) calendar days from the initial mailing of the Mailed Notice by the Settlement Administrator (“Claims Period”), as determined by the postmark of Claim Forms submitted by mail, or by the time online submission of the Claim Form is complete.

c. Popular shall provide to the Settlement Administrator and Settlement Class Counsel a list or record of the total amount of Initial Overdraft Fees incurred by each putative Settlement Class Member during the Class Period (“Qualifying Overdraft Fees”), as determined by Popular’s diligent and reasonable search of its books and records. The Settlement Administrator shall make available to each putative Settlement Class Member the total amount of his or her Qualifying Overdraft Fees online and by telephone, as provided in the Settlement Agreement. Absent other persuasive proof by a claiming Settlement Class Member, the Settlement Administrator will rely on the Qualifying Overdraft Fee information provided by Popular to determine the amount of any Settlement Class Member Payments to be made under the Settlement. The Settlement Class List and Qualifying Overdraft Fees information provided by Popular will not be used by Settlement Class Counsel to initiate contact with the putative Settlement Class Members, and will only be used by Settlement Class Counsel for the purpose of facilitating this Settlement.

d. If a claiming Settlement Class Member disagrees with the amount of Qualifying Overdraft Fees attributed to him or her, he or she may supplement his or her Claim

Form with a written explanation of any perceived error(s), as well as any other supporting documents, regarding the amount of Qualifying Overdraft Fees. Absent such supplemental submission or showing, each claiming Settlement Class Member will be deemed to agree with the amount of Qualifying Overdraft Fees attributed to him or her, and will be precluded from disputing the amount of any Settlement Class Member Payment to them on that basis.

e. Within fourteen (14) calendar days (or the first business day thereafter) following receipt of a Claim Form that is missing required information, but has otherwise been submitted in the manner approved in this Preliminary Approval Order, the Settlement Administrator shall notify the claiming Settlement Class Member by mail of the deficiency(ies) affecting the Claim Form. The claiming Settlement Class Member shall have twenty-one (21) calendar days (or the first business day thereafter) from the Settlement Administrator's transmission of this notice, or until the end of the Claims Period, whichever is later, to cure the stated deficiency(ies) by mail, email, or another manner deemed sufficient by the Settlement Administrator. The untimely submission of a Claim Form is not a curable deficiency.

f. Persons who believe themselves to be members of the Settlement Class, but who were not identified by Popular's books and records as putative members of the Settlement Class and who, therefore, did not receive the Mailed Notice ("Unidentified Claimants"), may obtain a blank Claim Form from the Settlement Administrator and/or the website administered by Settlement Administrator, and submit a completed Claim Form to the Settlement Administrator in the same manner as putative Settlement Class Members, along with documentary proof of their claims. The Settlement Administrator shall adjudicate in good faith any timely claims submitted by Unidentified Claimants, and shall inform the Unidentified Claimants of any decision regarding the claim. If an Unidentified Claimant disputes the

decision of the Settlement Administrator, he or she may submit the dispute first to counsel for the parties by providing written notice of his or her disagreement within fourteen (14) calendar days (or the first business day thereafter) of receipt of notice of the Settlement Administrator's decision, and thereafter to the Court for final determination.

g. Except as provided in Paragraphs 75-78 of the Settlement Agreement, each Settlement Class Member who submits a Qualified Claim will be entitled to receive a Settlement Class Member Payment consisting of: (a) 50% of all Qualifying Overdraft Fees multiplied by the Claim Percentage that the Settlement Class Member states on his or her Claim Form; and (b) 50% of one Continuous Overdraft Fee for every two Qualifying Overdraft Fees charged after January 25, 2012.

h. If the total amount of the Qualified Claims submitted by Settlement Class Members, as calculated in the preceding paragraph, is less than \$550,000 or greater than \$5,200,000, each eligible Settlement Class Member Payment shall be proportionately reduced or increased as provided in Paragraphs 75-78 of the Settlement Agreement.

9. Right to Appear and Object: No person who has elected to be excluded from the Settlement shall be permitted to object or otherwise be heard on the matters to be considered at the hearing. Except as otherwise provided herein, Settlement Class Members who have not excluded themselves from the Settlement may appear at the Fairness Hearing, in person or by their counsel, to be heard, to the extent permitted by the Court, on the matters to be considered at the hearing. No person shall be heard (whether through statement, testimony, or any paper submitted to the Court) by the Court at or in connection with the Fairness Hearing unless he or she complies with the following:

a. Any objection by a putative Settlement Class Member must be filed with the Court, with a copy delivered to the Settlement Administrator, Settlement Class Counsel, and Popular's Counsel at the addresses set out in the Long-Form Notice, within the Opt-Out Period set forth in the Settlement Agreement, or by the first business day after the Opt-Out Period if the Opt-Out Period does not end on a business day. No putative Settlement Class Member shall be heard (whether through statement, testimony, or any paper submitted to the Court) by the Court at or in connection with the Fairness Hearing unless the putative Settlement Class Member properly files and delivers his or her written and signed objection postmarked no later than the Objection Deadline.

b. For an objection to be considered by the Court, in addition to being timely, it must contain a caption or title that identifies it as "Objection to Class Settlement in *Valle v. Popular Community Bank*, Index No. 653936/2012" and also state the following:

- i. The objector's full name, address, and telephone number;
- ii. An explanation of the basis upon which the objector claims to be a Settlement Class Member;
- iii. All grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- iv. The number of times in which 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 or opinions related to or ruling upon the objector's prior such

- objections that were issued by the trial and appellate courts in each listed case;
- v. 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;
 - vi. The number of times in which the objector's counsel (if any) and/or counsel's law firm have 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 counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
 - vii. Any and all agreements that relate to the objection or the process of objecting (whether written or verbal) between objector or objector's counsel (if any) and any other person or entity;
 - viii. The identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
 - ix. A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
 - x. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;

- xi. The objector's signature (an attorney's signature is not sufficient);
and
- xii. if the objecting putative Settlement Class Member is being represented by an attorney(s) in connection with the objection, the signature of each of such attorney below a statement that "No other attorney has a financial interest, either directly or indirectly, in the representation of this objecting party."

c. Putative Settlement Class Members may object on their own or through a separately retained counsel hired at their own expense. If a putative Settlement Class Member hires an attorney to represent him or her at the Fairness Hearing, he or she does so at his or her own expense, and the attorney must file a written notice of appearance with the Clerk of Court no later than the Objection Deadline, providing the name and current residential address of each objecting putative Settlement Class Member for which the attorney will appear. No putative Settlement Class Member represented by an attorney shall be deemed to have objected to the Settlement Agreement unless an objection signed by the Settlement Class Member is also filed and served by the Objection Deadline.

d. If a Putative Settlement Class Member fails to submit his or her objections in strict compliance with the foregoing procedures, including the Objection Deadline, he or she: (i) will be deemed to have waived all objections to the Settlement Agreement and will, thus, be bound by the Settlement and related Releases, (ii) will be deemed to have consented to the exercise of jurisdiction by the Court over all aspects of the Settlement Agreement, and (iii) will be forever barred from making any objections in the Lawsuit or in any other action or

proceeding concerning the Settlement, Settlement Agreement, Notice, Notice Program, and any other aspect of the Settlement and/or Settlement process.

10. Ability of Settlement Class Members to be Excluded from the Settlement.

Upon Final Approval of the Settlement, Settlement Class Members shall be bound by the terms of the Settlement Agreement and any and all Orders, Decisions, determinations and judgments in the Lawsuit, whether favorable or unfavorable, unless they elect to be excluded from the Settlement Class in the manner provided below.

a. All putative Settlement Class Members who wish to opt-out of or be excluded from the Settlement must do so by sending timely written notice (containing all required information and the putative Settlement Class Member's signature) of the putative Settlement Class Member's exclusion/opt-out election to the Settlement Administrator by first-class mail. To be timely and thus effective, the envelope transmitting the exclusion/opt-out election must be postmarked within the Opt-Out Period set forth in the Settlement Agreement, or by the first business day after the Opt-Out Period if the Opt-Out Period does not end on a business day. At or before the Fairness Hearing, Settlement Class Counsel shall file an Affidavit or Declaration from the Settlement Administrator attaching a final list of all timely submitted exclusion/opt-out notices.

b. Any putative Settlement Class Member who does not submit a timely and proper exclusion/opt-out notice to the Settlement Administrator shall be included in the Settlement Class and, if the proposed Settlement is finally approved and becomes effective, he or she shall be bound by all the terms and provisions of the Settlement Agreement, including, but not limited to, the Releases set forth in Paragraphs 111-113 of the Settlement Agreement. Each such Settlement Class Member shall be so bound whether or not he or she objected to the

Settlement, and whether or not he or she submitted a Claim Form to establish eligibility to receive a Settlement Class Member Payment.

c. Settlement Class Members who make an effective election to be excluded from the Settlement Class shall not be entitled to any Settlement Class Member Payment under the Settlement Agreement.

11. Administration of Settlement: The Court approves A.B. Data, Ltd. as the Settlement Administrator and Escrow Agent for this Settlement. The Settlement Administrator shall comply with all terms of this Preliminary Approval Order. Before the Fairness Hearing, the Settlement Administrator shall submit to the Court, or cause to be submitted to the Court by Settlement Class Counsel, a sworn statement attesting to: (i) compliance with this Preliminary Approval Order, (ii) the number of valid claims submitted by Settlement Class Members, and (iii) the number of exclusion/opt-out election notices received from Settlement Class Members. The Settlement Administrator shall retain: (i) all correspondence to, from, or between putative Settlement Class Members, (ii) all exclusion/option election notices submitted by putative Settlement Class Members, (iii) all Claim Forms submitted by putative Settlement Class Members and documents sufficient to show the disposition of each submitted Claim Form, and (iv) documents sufficient to show the distributions to be made to the Settlement Class Members if the Settlement receives Final Approval and the manner in which the proposed distributions were calculated or determined.

12. Costs of Notice. Pursuant to Paragraph 71 of the Settlement Agreement, the Court approves payments by Popular and/or Settlement Class Counsel related to the preparation and/or distribution of the Notice approved by this Preliminary Approval Order. Plaintiffs and Popular shall petition the Court for approval of other distributions from any account established

by the Settlement Administrator for purposes of holding funds in advance of making Settlement Class Member Payments.

13. Settlement Website: As soon as practicable after entry of this Preliminary Approval Order, but no later than ten (10) calendar days (or the next business day thereafter) after entry of this Preliminary Approval Order, the Settlement Administrator shall cause the establishment of a settlement website. The website shall include a copy of the operative Complaint and Answer in the Lawsuit, the Notices, the Claim Form, the Settlement Agreement, this Preliminary Approval Order, any subsequent Orders of this Court relating to the Settlement, and the Spanish version of the Mailed Notice (including the Claim Form). The Settlement Administrator shall also establish and maintain an automated toll-free telephone number to provide the following information regarding the Settlement in English and Spanish: court deadlines (including deadlines for submitting a Claim for Payment or filing an Objection); how to obtain copies of Settlement-related documents (including the Claim Form and the Settlement Agreement); and the total amount of Initial Overdraft Fees incurred by each putative Settlement Class Member during the Class Period for ATM withdrawals or POS Debit Card purchases. The Settlement Website shall remain available to the public, and the automated toll-free telephone number shall remain operational, until forty-five (45) days after the deadline for the Settlement Administrator to distribute the Settlement Class Member Payments.

14. Appearance by Putative Settlement Class Member. Any putative Settlement Class Member may enter an appearance in the Lawsuit, at his or her own expense, individually or through his or her own counsel. Any putative Settlement Class Member who does not enter an appearance will be represented by Class Counsel, except that Settlement Class Counsel shall not assist any Settlement Class Member in objecting to approval of the Settlement.

15. No Discovery of Settlement Materials. The Court finds that the parties have already engaged in substantial discovery regarding both the underlying Lawsuit and the proposed Settlement. There shall be no further discovery regarding the proposed Settlement except as expressly provided in the Settlement Agreement.

16. Stay of Non-Settlement Proceedings. All proceedings in the Lawsuit, apart from those related to the Settlement, are hereby stayed through and including the Effective Date of the Settlement or five (5) business days after the denial of Final Approval of the Settlement. During the pendency of the stay, Plaintiffs, all putative Settlement Class Members, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action that asserts Released Claims against any of the Released Parties.

17. Submissions Relating to Settlement and/or Settlement Class Counsel's Fee and Expense Motion: Any pleadings, affidavits, affirmations, declarations or memoranda in support of the Settlement and/or Settlement Class Counsel's Fee and Expense motion or application shall be filed by the Plaintiffs or Settlement Class Counsel with the Court no later than thirty (30) calendar days prior to the Fairness Hearing. Any response (whether by Popular or any putative Settlement Class Member) shall be filed with the Court no later than fourteen (14) calendar days prior to the Fairness Hearing. If any such response is filed, Plaintiffs may file a reply in support of their motion or application no later than seven (7) calendar days prior to the Fairness Hearing.

18. **Jurisdiction:** The Court retains sole and exclusive over the Lawsuit to consider all further matters arising out of or connected with the Settlement.

SO ORDERED THIS ____ Day of March, 2018.

Hon. O. Peter Sherwood, J.S.C.