

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made on October 28, 2020

(the “**Execution Date**”)

Amended on January 22, 2021

Between

COBURN AND WATSON’S METROPOLITAN HOME DBA METROPOLITAN HOME (“Metropolitan Home”) AND MAYNARD’S SOUTHLANDS STABLES LTD., HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL, 1739793 ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS, MACARONIES HAIR CLUB AND LASER CENTER INC. OPERATING AS FUZE SALON

and

**BANK OF MONTREAL (“BMO”),
THE BANK OF NOVA SCOTIA (“BNS”),
CANADIAN IMPERIAL BANK OF COMMERCE (“CIBC”),
ROYAL BANK OF CANADA (“RBC”), AND
THE TORONTO-DOMINION BANK (“TD”)**

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RECITALS

A. WHEREAS the Plaintiffs have commenced and prosecuted the Canadian Proceedings in the Courts and allege that the Settling Defendants participated in the Alleged Conduct, and the Plaintiffs claim class-wide damages allegedly caused as a result of the Alleged Conduct, as well as equitable relief;

B. AND WHEREAS, through their participation in the Visa network, the Mastercard network or both, the Settling Defendants received Interchange Fees in Canada during the Class Period;

C. AND WHEREAS the Settling Defendants believe that they are not liable in respect of the Alleged Conduct, and believe they have good and valid defences in respect of the claims advanced in the Canadian Proceedings;

D. AND WHEREAS the Settling Defendants do not admit through the execution of this Settlement Agreement any allegation of unlawful conduct, as alleged in the Canadian Proceedings or at all;

E. AND WHEREAS the Parties agree that neither this Settlement Agreement nor any statement made in the negotiations thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which the Settling Defendants expressly deny;

F. AND WHEREAS, despite their firm belief that they are not liable in respect of the Alleged Conduct and that they have good and valid defences in respect of the claims advanced in the Canadian Proceedings, the Settling Defendants have negotiated and entered into this Settlement

Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation of the Canadian Proceedings and any other present or future litigation arising out of the facts that gave rise to them, to avoid the risks inherent in uncertain, complex and protracted litigation and to achieve final resolutions of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent in relation to the Alleged Conduct;

G. AND WHEREAS the Settling Defendants expressly reserve their right to contest or appeal certification or authorization of other related or unrelated proceedings and assert that the actions herein would not be appropriately certified or authorized in the absence of this Settlement Agreement, and that this Settlement Agreement does not constitute in any way a precedent to support the certification or authorization of classes of this nature;

H. AND WHEREAS counsel for the Releasees have engaged in extensive arm's-length settlement discussions and negotiations with Class Counsel in respect of this Settlement Agreement;

I. AND WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of all Courts;

J. AND WHEREAS as part of this resolution, the Settling Defendants have agreed to pay the Settlement Amount for the benefit of the Settlement Class Members;

K. AND WHEREAS the Plaintiffs have agreed to accept the Settlement Amount, in part, because of the value of the Settlement Amount paid under this Settlement Agreement, as well as the

attendant risks of litigation in light of the potential defences that may be asserted by the Settling Defendants;

L. AND WHEREAS the Plaintiffs will ask the Courts to approve a Distribution Protocol that provides for compensation to be paid to the Settlement Class Members from the Settlement Amount;

M. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the proposed dismissal of the Canadian Proceedings in their entirety, the value of the Settlement Amount to be provided by the Settling Defendants, the burdens and expense associated with prosecuting the Canadian Proceedings, including the risks and uncertainties associated with motions, trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent in the Canadian Proceedings;

N. AND WHEREAS the Plaintiffs and the Settlement Class Members intend to fully and completely settle and resolve the claims advanced or which could have been advanced in the Canadian Proceedings as against the Releasees on the Effective Date pursuant to this Settlement Agreement;

O. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a nationwide basis, without admission of liability, all of the Canadian Proceedings as against the Releasees;

P. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or

authorization of the Canadian Proceedings as class proceedings and have consented to the Settlement Class and the Common Issue in each of the Canadian Proceedings;

Q. AND WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Canadian Proceedings;

R. AND WHEREAS for the purposes of settlement only and conditional on approvals by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Canadian Proceedings as against the Settling Defendants;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Canadian Proceedings be fully and finally settled and dismissed with prejudice and without costs, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (a) *Acquirers* mean those Persons entering into contracts with Merchants for the provision of Visa Credit Card services and/or Mastercard Credit Card services and charging Merchant Discount Fees, which account for and/or include Interchange Fees, in Canada, but does not include the Settling Defendants, other than TD.

(b) ***Additional Class Proceedings*** means the proceeding commenced by 1023926 Alberta Ltd. in the form of an action filed in the Alberta Court, File No. 1203 10620 (Edmonton Registry), filed on July 13, 2012, as amended on September 18, 2012, the proceeding commenced by The Crown & Hand Pub Ltd. in the form of an action filed in the Saskatchewan Court, Court File No. 1206 of 2012, filed on July 12, 2012, as amended on November 14, 2012, the proceedings commenced by Kondiman Foods Inc. in the form of an action filed in the Saskatchewan Court, QBG no. 834/2014, as amended on August 23, 2017, and any future proceeding commenced prior to the Final Order in respect of the Alleged Conduct or relating to any conduct alleged, or which could have been alleged, against the Settling Defendants by the Plaintiffs in the Canadian Proceedings.

(c) ***Administration Expenses*** mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices and claims administration, including payments to the Fonds d'aide aux actions collective in Quebec (to the extent applicable), but excluding Class Counsel Fees.

(d) ***Alberta Court*** means the Alberta Court of Queen's Bench.

(e) ***Alberta Mastercard Settlement Class*** means all Merchants resident in Alberta who, during the Class Period, accepted payments for the supply of goods or services by way of Mastercard Credit Cards, except the Excluded Persons.

(f) ***Alberta Proceeding*** means the proceeding commenced by Macaronies Hair Club and Laser Center Inc., operating as Fuze Salon, in the form of an action filed in the Alberta Court, File No. 1203 18531 (Edmonton Registry), filed on December 14, 2012.

- (g) **Alberta Visa Settlement Class** means all Merchants resident in Alberta who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except Excluded Persons.
- (h) **Alleged Conduct** means all conduct that has been alleged or could have been alleged as against any Defendant in the Canadian Proceedings, including conduct in respect of or relating in any way to the payment of Merchant Discount Fees, Interchange Fees, the Visa Network Rules, the Mastercard Network Rules, or any combination of the foregoing.
- (i) **Approval Hearings** means the hearings of the motions brought by Class Counsel for the approval of the terms provided for in this Settlement Agreement in each of the Courts.
- (j) **BC Court** means the Supreme Court of British Columbia.
- (k) **BC Mastercard Settlement Class** means all Merchants resident in British Columbia who, during the Class Period, accepted payments for the supply of goods or services by way of Mastercard Credit Cards, except the Excluded Persons.
- (l) **BC Proceeding** means the proceeding commenced by Metropolitan Home in the form of an action filed in the BC Court (Vancouver registry), Court File No. VLC-S-S-112003, filed on March 28, 2011, as amended.
- (m) **BC Protective Order** means the consent orders of the BC Court dated September 17, 2012 and May 7, 2019 made in the BC Proceedings.

(n) ***BC Visa Settlement Class*** means all Merchants resident in British Columbia who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except the Excluded Persons.

(o) ***BofA Settlement*** means the settlement that has been negotiated with Bank of America Corporation and has been approved by the BC Court on November 9, 2015, the Saskatchewan Court on November 12, 2015, the Alberta Court on November 18, 2015, the Ontario Court on November 19, 2015 and the Quebec Court on December 7, 2015.

(p) ***Canadian Proceedings*** mean the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding, the Ontario Proceeding and the Quebec Proceeding.

(q) ***Capital One Settlement*** means the settlement that has been negotiated with Capital One Financial Corporation and Capital One Bank (Canada Branch), and has been approved by the BC Court on November 9, 2015, the Saskatchewan Court on November 12, 2015, the Alberta Court on November 18, 2015, the Ontario Court on November 19, 2015, and the Quebec Court on December 7, 2015.

(r) ***Citi Settlement*** means the settlement that has been negotiated with Citigroup Inc., Citi Cards Canada Inc., Citibank Canada and Citibank N.A., and has been approved by the BC Court on November 9, 2015, the Saskatchewan Court on November 12, 2015, the Alberta Court on December 4, 2015, the Ontario Court on November 19, 2015, and the Quebec Court on December 7, 2015.

(s) ***Claims Administrator*** means a Person proposed by Class Counsel and appointed by the Courts to administer this Settlement Agreement, including any claims process, in

accordance with the provisions of this Settlement Agreement and any Distribution Protocol, and any employees of such Person.

(t) ***Class Counsel*** means Camp Fiorante Matthews Mogerman, Branch MacMaster LLP and Consumer Law Group.

(u) ***Class Counsel Fees*** means the fees, disbursements, costs, and other applicable taxes or charges of Class Counsel, including any applicable GST, HST, PST or QST.

(v) ***Class Period*** means March 23, 2001 to the date of the last of the orders referred to in sections 2.2(2) and (3) of this Settlement Agreement certifying or authorizing any of the Canadian Proceedings for purposes of this Settlement Agreement.

(w) ***Common Issue*** means: Did the Settling Defendants conspire with each other and others to fix, maintain, increase or control Merchant Discount Fees and/or Interchange Fees in Canada during the Class Period?

(x) ***Confidential Opt-Out Threshold*** means the threshold agreed to by the Parties for valid opt-outs by Persons in the Settlement Class who have the right to opt-out, as set out in Schedule C to this Settlement Agreement and signed prior to or contemporaneously with the execution of this Settlement Agreement, which Schedule shall be kept confidential, and filed and maintained under seal in any filings in the Courts, and may be shown to judges of the Courts but shall not otherwise be disclosed. The Confidential Opt-Out Threshold shall be considered a material term of this Settlement Agreement and, if met, shall give rise to a right of termination by the Settling Defendants pursuant to section 12.

(y) **Courts** mean the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court and the Quebec Court (each a “**Court**”).

(z) **Credit Card** means any card, plate or other payment code, device or service, even where no physical card is issued and the code or device is used for only one transaction (including, without limitation, a plastic card, a mobile telephone, a fob, or any other current or future code, device or service by which a Person, business or other entity can pay for goods or services) that is issued or approved for use through a Visa or Mastercard payment network and that may be used to defer payment of debt or incur debt and defer its payment, including cards commonly known as credit cards, charge cards, commercial credit cards, corporate credit cards, fleet cards, or purchasing cards. For greater certainty, Credit Card also includes any process or electronic device or application linked to or supported by, or both, a credit card account permitting payment for the supply of goods or services from a Merchant, but does not include debit cards.

(aa) **Defendant(s)** means, individually or collectively, the Settled Defendants and the Settling Defendants.

(bb) **Desjardins Settlement** means the settlement that has been negotiated with Fédération des caisses Desjardins, and has been approved by the BC Court on May 24, 2016, the Quebec Court on May 30, 2016, the Ontario Court on June 1, 2016, the Saskatchewan Court on June 10, 2016, and the Alberta Court on June 28, 2016.

(cc) **Distribution Protocol** means a plan to be developed by Class Counsel for distributing the Settlement Amount, prior settlement amounts, and accrued interest, in whole or part, as approved by the Courts.

(dd) **Document(s)** has the meaning given to that term in Rule 1-1(1) of the *British Columbia Supreme Court Civil Rules*.

(ee) **Effective Date** means the date on which the Final Orders have been received from all of the Courts.

(ff) **Excluded Person(s)** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

(gg) **Final Order** means a final order made by a Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

(hh) **Interchange Fees** mean interchange fees collected by Issuers arising from transactions made under the terms of the Visa Network Rules and/or the Mastercard Network Rules in Canada.

(ii) **Issuers** mean the banks or other financial institutions which issued Visa and/or Mastercard Credit Cards in Canada.

(jj) **Mastercard** means Mastercard International Incorporated and Mastercard Canada, Inc.

(kk) ***Mastercard Credit Cards*** mean Credit Cards bearing the trademark “Mastercard” and authorized by Mastercard to be issued by Issuers.

(ll) ***Mastercard Network Rules*** means the Mastercard Rules (including the Canada Region chapter) and Mastercard’s Bylaws and Rules, in effect prior to or as of the Effective Date or as modified pursuant to the Mastercard Settlement, or as amended or modified in future to the extent that they are substantially similar to the foregoing, and for further certainty includes the determination and setting of Interchange Fees by Mastercard, as a default rate or otherwise, pursuant to the Mastercard Rules and Mastercard’s Bylaws and Rules.

(mm) ***Mastercard Settlement*** means the settlement that has been negotiated with Mastercard International Incorporated, and has been approved by the BC Court on July 13, 2018, the Quebec Court on November 13, 2018, the Ontario Court on September 11, 2018, the Saskatchewan Court on October 11, 2018, and the Alberta Court on August 30, 2018.

(nn) ***Merchant Discount Fees*** mean fees paid by Merchants arising from the acceptance by them of payments for the supply of goods or services by way of Visa Credit Cards and/or Mastercard Credit Cards in Canada.

(oo) ***Merchants*** mean all Persons or entities resident or operating in Canada who accept payments for the supply of goods or services by way of Visa Credit Cards and/or Mastercard Credit Cards in Canada.

(pp) ***National Bank Settlement*** means the settlement that has been negotiated with National Bank of Canada Inc., and has been approved by the BC Court on July 13, 2018,

the Quebec Court on November 13, 2018, the Ontario Court on September 11, 2018, the Saskatchewan Court on October 11, 2018, and the Alberta Court on August 30, 2018.

(qq) ***New Merchants*** means Merchants who began accepting Visa Credit Cards or Mastercard Credit Cards during the Class Period and after the Previous Opt-Out Deadline, and for clarity, does not include Merchants who had an opportunity to opt-out in any of the Previous Settlements.

(rr) ***Notice of Certification/Authorization and Settlement Hearing*** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the principal elements of this Settlement Agreement; (ii) the certification or authorization of the Canadian Proceedings for settlement purposes; (iii) the dates and locations of the Approval Hearings.

(ss) ***Notice of Claims Procedure*** means any form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of

(i) the approval of this Settlement Agreement, and

(ii) the process by which the Settlement Class Members may apply to obtain compensation from the Settlement Amount.

(tt) ***Notices*** means

(i) Notice of Certification/Authorization and Settlement Hearing,

- (ii) Notice of Claims Procedure,
- (iii) notice of termination of this Settlement Agreement if it is terminated after notice provided under subparagraph (i) above or otherwise ordered by the Courts, and
- (iv) any other notice that may be required by the Courts.

(uu) ***Ontario Court*** means the Ontario Superior Court of Justice.

(vv) ***Ontario Mastercard Settlement Class*** means all Merchants who, during the Class Period, accepted payments for the supply of goods or services by way of Mastercard Credit Cards, except the BC Mastercard Settlement Class, the Alberta Mastercard Settlement Class, the Saskatchewan Mastercard Settlement Class, the Quebec Mastercard Settlement Class, and Excluded Persons. For greater certainty, any legal person established for a private interest and any partnership resident in Quebec, which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal person established for a public interest resident in Quebec, shall be included in this Ontario Mastercard Settlement Class.

(ww) ***Ontario Proceeding*** means the proceeding commenced by Jonathon Bancroft-Snell and 1739793 Ontario Inc. in the form of a Statement of Claim filed in the Ontario Court (Toronto registry), Court File No. CV-11-426591CP (Toronto), filed on May 16, 2011.

(xx) ***Ontario Visa Settlement Class*** means all Merchants who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except

the BC Visa Settlement Class, the Alberta Visa Settlement Class, the Saskatchewan Visa Settlement Class, the Quebec Visa Settlement Class, and Excluded Persons. For greater certainty, any legal person established for a private interest and any, partnership resident in Quebec, which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal person established for a public interest resident in Quebec, shall be included in this Ontario Visa Settlement Class.

(yy) **Parties** mean the Plaintiffs and the Settling Defendants (each a “**Party**”).

(zz) **Person(s)** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(aaa) **Plaintiffs** mean, in addition to the plaintiffs in the Canadian Proceedings listed on page 1 of this Settlement Agreement, any other Person who may in the future be added or substituted as a plaintiff to any of the Canadian Proceedings; provided that, to the extent that any Person may in the future be removed as a plaintiff to any of the Canadian Proceedings, that Person from that point forward shall cease to be a Plaintiff for purposes of this Settlement Agreement, in accordance with the terms of the order that removed that Person as a plaintiff, but that Person shall not cease to be a Settlement Class Member.

(bbb) **Plan of Dissemination** means a plan for distribution of Notices.

(ccc) ***Previous Opt-Out Deadline*** means May 31, 2018.

(ddd) ***Previous Settlements*** means the BofA Settlement, Citi Settlement, Capital One Settlement, Desjardins Settlement, and, to the extent that their approval is not overturned on appeal, the National Bank Settlement, the Visa Settlement and the Mastercard Settlement.

(eee) ***Proportionate Liability*** means the proportion of any judgment with respect to a Reinstated Rule that the courts and/or an arbitration tribunal would have apportioned to the Releasees, and shall also be deemed to include any amount that a Releasee would have been liable to pay to Mastercard or Visa or any other Person as indemnification or contribution for or to any judgment with respect to a Reinstated Rule, in the absence of this settlement and the bar orders contained herein.

(fff) ***Quebec Court*** means the Superior Court of Quebec.

(ggg) ***Quebec Mastercard Settlement Class*** means all natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of Mastercard Credit Cards, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment and any legal person established for a public interest resident in Quebec.

(hhh) ***Quebec Proceeding*** means the proceeding commenced by 9085-4886 Quebec Inc. and Peter Bakopanos, in the form of a Motion to authorize the bringing of a class action

and to ascribe the status of representative in the Quebec Court, Court File No. 500-06-000549-101 (District of Montreal), filed on December 17, 2010, as amended.

(iii) **Quebec Visa Settlement Class** means all natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment and any legal person established for a public interest resident in Quebec.

(jjj) **Reinstated Rule** means a provision of the Mastercard Network Rules or the Visa Network Rules purporting to bar a Merchant's right to impose a surcharge based on the Merchant Discount Fee or Interchange Fee associated with the use of a particular Credit Card, that either: (1) Visa introduces or reinstates at any time after the "Effective Date" defined in the Visa Settlement; or (2) Mastercard introduces or reinstates at any time after the "Effective Date" defined in the Mastercard Settlement.

(kkk) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, collective, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and

liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time through the pendency of the Canadian Proceedings, in respect of the Alleged Conduct or relating to any conduct alleged (or which could have been alleged) in the Canadian Proceedings and future claims relating to continuing acts or practices that occurred during the pendency of the Canadian Proceedings including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the Alleged Conduct, or as a result of or in connection with any other alleged unlawful horizontal or vertical anticompetitive conduct in connection with the payment of Merchant Discount Fees, including Interchange Fees. Notwithstanding the generality of the foregoing, the Parties expressly acknowledge and agree that nothing in this Settlement Agreement restricts the ability of United States or other non-Canadian affiliates or related entities or businesses of the Releasors from pursuing any claims relating to non-Canadian interchange in jurisdictions outside Canada, including the United States. For greater certainty, nothing herein releases future claims which may arise as a result of future changes in the law, including but not limited to, future amendments to the *Competition Act*. For further certainty, and without limiting the scope of the Released Claims, nothing herein authorizes or allows any Party to contravene the *Competition Act*.

(III) ***Releasee(s)*** mean, jointly and severally, individually and collectively, the Settling Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or

corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives (subject to such particular inclusions or exclusions of individuals as may be specified in writing by the Settling Defendants in their sole discretion prior to the Effective Date); and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

(mmm) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective present, former, and future direct and indirect parents, affiliates, subsidiaries, officers, directors, attorneys, servants, predecessors, successors, trustees, representatives, heirs, executors, administrators, insurers, and assigns of each of the foregoing.

(nnn) **Saskatchewan Court** means the Saskatchewan Court of Queen's Bench.

(ooo) **Saskatchewan Mastercard Settlement Class** means all Merchants resident in Saskatchewan who, during the Class Period, accepted payments for the supply of goods or services by way of Mastercard Credit Cards, except the Excluded Persons.

(ppp) **Saskatchewan Proceeding** means the proceeding commenced by Hello Baby Equipment Inc. in the form of a Statement of Claim filed in the Saskatchewan Court of Queen's Bench, Court File No. 133 of 2013, filed on January 24, 2013.

(qqq) **Saskatchewan Visa Settlement Class** means all Merchants resident in Saskatchewan who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except the Excluded Persons.

(rrr) **Settled Defendants** means Bank of America Group, Capital One Financial Corporation, Capital One Bank (Canada Branch), Citigroup Inc., Citi Cards Canada Inc., Citibank Canada, Citibank N.A., Fédération des caisses Desjardins, National Bank of Canada, Mastercard International Incorporated and Visa Canada Corporation all of their and its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their and its respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

(sss) **Settlement Agreement** means this agreement, including the Recitals and Schedules.

(ttt) **Settlement Amount** means

(i) the all-inclusive sum of CAD \$120,000,000 (one hundred and twenty million dollars), and

(ii) accrued interest on the sum described in subparagraph (i) from December 27, 2019 on deposit in accounts as directed by Class Counsel.

(uuu) **Settlement Class** means all Persons included in the BC Mastercard Settlement Class, the BC Visa Settlement Class, the Alberta Mastercard Settlement Class, the Alberta Visa Settlement Class, the Saskatchewan Mastercard Settlement Class, the Saskatchewan Visa Settlement Class, the Ontario Mastercard Settlement Class, the Ontario Visa

Settlement Class, the Quebec Mastercard Settlement Class and the Quebec Visa Settlement Class.

(vvv) **Settlement Class Member(s)** means a member of the Settlement Class who has not validly opted-out of the Canadian Proceedings in accordance with the orders of the Courts, as applicable, whether in connection with this Settlement Agreement or in connection with the Previous Settlements.

(www) **Settling Defendant(s)** means, individually or collectively, BMO, BNS, CIBC, RBC and TD.

(xxx) **Trust Account** means a segregated interest-bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of the Settlement Class Members.

(yyy) **Visa** means Visa Canada Corporation and Visa Inc.

(zzz) **Visa Credit Cards** means Credit Cards bearing the trademark “Visa” and authorized by Visa to be issued by Issuers.

(aaaa) **Visa Network Rules** mean the Visa Canada Operating Regulations and Visa International Operating Regulations, Visa Core Rules, and Visa Product and Service Rules in effect prior to or as of the Effective Date or as modified pursuant to the Visa Settlement or as amended or modified in future to the extent that they are substantially similar to the foregoing, and for further certainty includes the determination and setting of Interchange Fees by Visa, as a default rate or otherwise, pursuant to the Visa Network Rules, the Visa Canada Operating Regulations and Visa International Operating Regulations.

(bbbb) *Visa Settlement* means the settlement that has been negotiated with Visa Canada Corporation, and has been approved by the BC Court on July 13, 2018, the Quebec Court on November 13, 2018, the Ontario Court on September 11, 2018, the Saskatchewan Court on October 11, 2018, and the Alberta Court on August 30, 2018.

SECTION 2- SETTLEMENT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to

- (a) effectuate this Settlement Agreement, including obtaining the approval of the Courts, and to secure the prompt, complete and final dismissal with prejudice, or where applicable a declaration of settlement, of the Canadian Proceedings as against the Settling Defendants, and
- (b) secure the prompt, complete and final dismissal of the Canadian Proceedings and Additional Class Proceedings, with prejudice, it being understood and agreed that best efforts include exhausting applicable and reasonable legal proceedings and appeals on any given issue, as the case may be.

2.2 Motions Certifying or Authorizing the Canadian Proceedings and for Approvals

- (1) At a time mutually agreed to by the Plaintiffs and the Settling Defendants after this Settlement Agreement is executed, the Plaintiffs shall bring motions before the Courts for orders certifying or authorizing each of the Canadian Proceedings as a class proceeding as against the

Settling Defendants solely for settlement purposes and approving the Notice of Certification/Authorization and Settlement Hearing.

(2) The British Columbia order certifying the BC Proceeding as a class proceeding referred to in section 2.2(1) shall be substantially in the form set out in Schedule A.

(3) The Quebec, Ontario, Alberta and Saskatchewan orders certifying or authorizing the Quebec Proceeding, the Ontario Proceeding, the Alberta Proceeding and the Saskatchewan Proceeding shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the British Columbia order referred to in section 2.2(2), taking into account the rules and practices of each province and any changes required by the Courts of each province that are acceptable to the Parties.

(4) Following receipt of any orders referred to in sections 2.2(2) or 2.2(3) and the expiration of the applicable opt-out period in the Quebec Proceeding and for New Merchants, and at a time mutually agreed to by the Parties, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

(5) The British Columbia order approving this Settlement Agreement referred to in section 2.2(4) shall be substantially in the form set out in Schedule B.

(6) The Quebec, Ontario, Alberta and Saskatchewan orders approving this Settlement Agreement referred to in section 2.2(4) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the British Columbia order referred to in section 2.2(5), taking into account the rules and practices of each province and any changes required by the Courts of each province that are acceptable to the Parties.

2.3 Agreement on Form of Orders

(1) It is a material term of this Settlement Agreement that the Plaintiffs and the Settling Defendants must agree on the form and content of the orders to be sought pursuant to section 2.2 (collectively, the “**Certification and Approval Orders**”), including the form of Notice of Certification/Authorization and Settlement Hearing, and that the issued Certification and Approval Orders and the Notice of Certification/Authorization and Settlement Hearing be as provided for in this Settlement Agreement or as otherwise agreed by the Parties. The form and content of the Certification and Approval Orders shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the form and content of the Certification and Approval Orders substantially in the form agreed upon shall give rise to a right of termination pursuant to section 12.

(2) At least thirty days in advance of the motions referred to in sections 2.2(1) and 2.2(4), or such shorter period of time as the Parties may agree, Class Counsel shall provide the Settling Defendants with drafts of the Notices of Application (or the equivalent) and any supporting materials which are intended to be filed with the Courts in support of those motions, for review and approval by the Settling Defendants.

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by section 2.2(1) is brought, the Parties shall keep all of the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the Parties, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

(2) Notwithstanding section 2.4(1), at any time after the execution of this Settlement Agreement, the Settling Defendants may elect to disclose this Settlement Agreement to one or more of the Settled Defendants or for insurance purposes provided the recipient has agreed to act in accordance with section 2.4(1). If the Settling Defendants elect to disclose this Settlement Agreement to any of the Settled Defendants, they will provide immediate notice of this fact to the Class Counsel.

2.5 Sequence of Motions

(1) At any time as mutually agreed to by the Plaintiffs and the Settling Defendants after this Settlement Agreement is executed, the Plaintiffs may bring motions before the Courts to request that the Courts hold joint hearings to consider any of the motions required by this Settlement Agreement pursuant to the *Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions*.

(2) If no request is made under section 2.5(1), or if the Courts do not agree to hold joint hearings, the Parties agree that, unless they agree otherwise, or unless any Court orders otherwise, any motions required by this Settlement Agreement shall be heard first by the BC Court. The Parties may take steps to schedule parallel motions in Quebec, Ontario, Alberta and Saskatchewan before any BC hearing, but, if necessary, Class Counsel may seek an adjournment of these hearings to permit the BC Court to render its decision on the motions.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within thirty (30) days of the Execution Date, the Settling Defendants shall pay the Settlement Amount to Class Counsel in full satisfaction of

(a) all payment obligations under this Settlement Agreement, and

(b) the Released Claims against the Releasees.

(2) None of the Releasees shall have any obligation to pay any amount other than the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(3) When the Settling Defendants pay the Settlement Amount under section 3.1(1), Class Counsel will receive it in trust in full satisfaction of all payment obligations under this Settlement Agreement and in full satisfaction of the Released Claims against the Releasees.

(4) On receipt of the Settlement Amount under section 3.1(3), Class Counsel will deposit it in the Trust Account.

(5) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement. Class Counsel shall not pay out all or part of the monies in the Trust Account, except in accordance with this Settlement Agreement or in accordance with an order of the Courts obtained after notice to the Settling Defendants, and in any event, after all appeal rights have either lapsed or been exhausted.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class Members and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class Members. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall each and all be responsible for the payment of all taxes on such interest.

SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST

4.1 Distribution Protocol

(1) After the Effective Date, at a time within the discretion of the Plaintiffs, but on notice to the Settling Defendants, the Plaintiffs will seek orders from the Courts approving a Distribution Protocol.

(2) The Plaintiffs acknowledge that the Settling Defendants have an interest in protecting their respective brands and addressing operational impacts on their businesses, and for this purpose, at least thirty days in advance of the motions referred to in section 4.1(1), Class Counsel shall provide the Settling Defendants with an opportunity to review and provide input into the Notices of Application (or the equivalent) and any supporting materials which are intended to be filed with the Courts in support of those motions. However, the Parties acknowledge and agree that the Settling Defendants will not comment on the proposed allocation of settlement proceeds as between Merchants or groups of Merchants, and that the Plaintiffs reserve the right to challenge the standing of the Settling Defendants to make submissions in respect of the Distribution Protocol, save and except for the limited purpose of protecting their individual brands or addressing operational impacts on their issuing businesses in respect of all the Settling Defendants and its acquiring business in respect of TD.

4.2 No Responsibility for Administration or Fees

(1) Class Counsel shall bear all risks related to the investment of the monies in the Trust Account. The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the

Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees and any responsibility, financial obligation or liability as a result of any decrease or depreciation of the value of the Trust Account, howsoever caused, including but not limited to, a decrease or depreciation in the value of any investments purchased and/or held in the Trust Account.

(2) All funds held by Class Counsel shall be considered to be in *custodia legis* of the Courts and shall remain subject to the jurisdiction of the Courts until such time as such funds have been distributed pursuant to this Settlement Agreement and/or further order of the Courts.

(3) Class Counsel hereby indemnifies, defends, and holds harmless the Settling Defendants and their respective directors, officers and employees from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel with the Settlement Amount or monies in the Trust Account not strictly in accordance with the provisions of this Settlement Agreement or any implementing order of the Courts.

SECTION 5 - RELEASES, DISMISSALS AND STAYS

5.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasers shall be deemed to and do hereby forever and absolutely release, acquit and discharge the Releasees from the Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the orders obtained from the Courts approving this Settlement Agreement. The Plaintiffs and Settlement Class Members acknowledge that they are

aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Canadian Proceedings and this Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims (including, without limitation, anything that might be based on additional or different facts later discovered), and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

(2) If at any time the Releasees acquire part or all of the credit card business of any one or more Issuers (the “**Acquired Business**”), the release shall apply to any Interchange Fees collected in respect of the Acquired Business and, for greater certainty, the release shall continue to apply for Interchange Fees collected in respect of the Settling Defendants’ existing credit card business at the time of any such acquisition.

5.2 Covenant Not To Sue

(1) Notwithstanding section 5.1(1), for any Releasor resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to sue or make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The Parties agree that the Final Order entered by the Court shall also enjoin the Releasors from making or pursuing such additional claims.

(2) The Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or

believe to be true with respect to the subject matter of the Canadian Proceedings and this Settlement Agreement, and that it is their intention to fully, finally and forever covenant and undertake not to sue or make any claim against the Releasees as set out in this section 5.2(1), and in furtherance of such intention, this covenant not to sue shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

5.3 No Further Claims

The Releasors shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any other class or any other Persons, any action, suit, cause of action, claim, proceeding, complaint or demand against or collect or seek to recover from any Releasee or any other Persons, excepting only Mastercard or Visa in the event of introduction of a Reinstated Rule, who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity, or other relief against any Releasee in respect of any Released Claim, and are permanently barred and enjoined from doing so. The Parties agree that it is a material term of this Settlement Agreement that the Settlement Class Members will be bound by the releases provided for herein.

5.4 Dismissal of the Canadian Proceedings

On or before a date to be agreed by the Parties, Class Counsel shall bring such motions as are necessary to dismiss the Canadian Proceedings with prejudice and without costs.

5.5 Dismissal of the Additional Class Proceedings

The Additional Class Proceedings shall be dismissed with prejudice. On or before a date to be agreed by the Parties, Class Counsel shall bring such motions as are necessary to dismiss the Additional Class Proceedings and the Releasees shall not be responsible for any costs incurred or otherwise ordered in bringing or adjudicating such motions.

5.6 Settlement of Quebec Proceeding

The Quebec Proceeding shall be settled, without costs and without reservation as against the Settling Defendants and any and all Releasees that are Defendants in the Quebec Proceeding and the Parties shall sign a declaration of settlement out of court, which shall be filed with the Quebec Court.

5.7 Releases and Covenants

The releases and covenants contemplated in this section shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the releases, or of the Releasers to abide by the covenants, contemplated herein shall give rise to a right of termination by the Settling Defendants pursuant to section 12.

SECTION 6 – BAR ORDER AND OTHER CLAIMS

6.1 British Columbia, Alberta, Saskatchewan and Ontario Bar Order

The Plaintiffs in the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding and the Ontario Proceeding shall seek a bar order from the BC Court, the Alberta Court, the Saskatchewan Court and the Ontario Court respectively, providing for the following:

(a) All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes, fees and costs, relating directly or indirectly to the Released Claims, which were or could have been brought in the Canadian Proceedings or otherwise, and may or could be brought in respect of a Reinstated Rule, by any Settled Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee are barred, prohibited and enjoined in accordance with the terms of the order (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Canadian Proceedings).

(b) In the event of introduction of a Reinstated Rule and proceedings commenced claiming damages, injunctive or declaratory relief as against Mastercard or Visa, if any final adjudication determines that there is a right of contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise:

(i) The members of the BC Mastercard Settlement Class, BC Visa Settlement Class, Alberta Mastercard Settlement Class, Alberta Visa Settlement Class, Saskatchewan Mastercard Settlement Class, Saskatchewan Visa Settlement Class, Ontario Mastercard Settlement Class or Ontario Visa Settlement Class shall reduce or limit their claims against Mastercard or Visa (and/or named or unnamed co-conspirators who are not Releasees) in respect of a Reinstated Rule to not be entitled to claim or recover from Mastercard or Visa and/or named or un-named co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that

corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

(ii) The court seized of any proceedings in respect of a Reinstated Rule shall have full authority to determine, on procedures it may specify, the Proportionate Liability of the Releasees at the trial or other disposition of the proceeding in respect of a Reinstated Rule, whether or not the Releasees are parties or appear at the trial or other disposition, and any determination in respect of the Proportionate Liability of the Releasees shall only apply in such proceedings and shall not be binding on the Releasees in any other proceedings.

6.2 Quebec Waiver or Renunciation of Solidarity Order

The Parties agree that the Quebec order approving this Settlement Agreement must include an order providing for the following:

(a) In the event of introduction of a Reinstated Rule and proceedings commenced in Quebec claiming damages, injunctive or declaratory relief as against Mastercard or Visa, the Plaintiffs in Quebec and Settlement Class Members who are members of the Quebec Mastercard Settlement Class and the Quebec Visa Settlement Class expressly waive and renounce the benefit of solidarity against Mastercard or Visa with respect to the facts and deeds of the Releasees, and Mastercard and Visa are thereby released with respect to the Proportionate Liability of the Releasees for any damages or other award whatsoever proven at trial or otherwise, if any;

(b) The court seized of any proceedings in Quebec in respect of a Reinstated Rule shall have full authority, on procedures it may specify, to determine the Proportionate Liability of the Releasees at the trial or other disposition of such proceeding, whether or not the Releasees are parties or appear at the trial or other disposition, and any determination in respect of the Proportionate Liability of the Releasees shall only apply in such proceedings and shall not be binding on the Releasees in any other proceedings;

(c) In the event of introduction of a Reinstated Rule, the Plaintiffs in Quebec and Settlement Class Members who are members of the Quebec Mastercard Settlement Class and the Quebec Visa Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, as the case may be, from and attributable to the conduct of Mastercard or Visa; and

(d) Any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible, released and void in the context of proceedings commenced in Quebec in the event of introduction of a Reinstated Rule, provided that *bona fide* independent and direct claims and causes of action between the Settling Defendants and Visa or Mastercard are not precluded.

6.3 Material Term

The form and content of the orders contemplated in section 6 of this Settlement Agreement shall be considered a material term of this Settlement Agreement and the failure of any Court to approve

the orders contemplated herein shall give rise to a right of termination pursuant to section 12 of this Settlement Agreement.

SECTION 7 - EFFECT OF SETTLEMENT

7.1 No Admission of Liability

The Plaintiffs and the Settling Defendants expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any fault, omission, wrongdoing or liability by the Settling Defendants or by any Releasee, or of the truth of any of the claims or allegations contained in the Canadian Proceedings or any other pleading filed by the Plaintiffs or any other Settlement Class Member, including but not limited to those pleadings filed in the Additional Class Proceedings.

7.2 Agreement Not Evidence

Whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except

- (a) by the Parties in a proceeding to approve or enforce this Settlement Agreement,
- (b) by a Releasee to defend against the assertion of a Released Claim,
- (c) by a Releasee in any insurance-related proceeding, or
- (d) as otherwise required by law or as provided in this Settlement Agreement.

7.3 No Further Litigation & No Assistance to Other Plaintiffs

(1) Except as provided in sections 7.3(2) to 7.3(3), no Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, including by providing any direct or indirect assistance to any plaintiff or any plaintiff's counsel, including without limitation any claims made or actions commenced by Merchants, consumers or other Persons.

(2) Section 7.3(1) shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia (the "LSBC") to breach his or her obligations under Rule 4.7 of the LSBC's Professional Conduct Handbook by refraining from participation or involvement in any claim or action in a BC Court. This section shall not affect or render inoperative any other section or provision of this Settlement Agreement.

(3) No Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel may divulge to any Person for any purpose any information obtained in the course of the Canadian Proceedings or in

connection with this Settlement Agreement or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court in Canada.

SECTION 8 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

8.1 Settlement Class and Common Issue

(1) The Parties agree that the Canadian Proceedings shall be certified or authorized as class proceedings against the Settling Defendants solely for purposes of settlement of the Canadian Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Canadian Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class. The Plaintiffs acknowledge that the Settling Defendants agree to the definition of the Common Issue for purposes of settlement only.

SECTION 9 - NOTICE TO SETTLEMENT CLASS

9.1 Notices Required

The Settlement Class shall be given the Notices.

9.2 Form and Distribution of Notices

The form and content of the Notices and the manner and extent of publication and distribution of the Notices shall be as agreed to by the Plaintiffs and the Settling Defendants, it being understood and agreed that the Plan of Dissemination is to provide for notice no less in substance than that

approved by the Courts in relation to the Previous Settlements. Any and all other communications intended to reach Settlement Class Members in furtherance of the implementation of this Settlement Agreement, the Distribution Protocol or otherwise, will be subject to agreement of the Plaintiffs and the Settling Defendants, with any dispute subject to resolution by the Courts on application of the Plaintiffs.

9.3 Notice of Distribution

(1) Except to the extent provided for in this Settlement Agreement, the Courts shall determine the form of notice in respect to the administration of this Settlement Agreement and any Distribution Protocol, on motions brought by Class Counsel.

(2) The Plaintiffs shall notify the Settling Defendants in writing at least twenty days prior to the publication of any Notice, of the date on which the Notice will be published.

SECTION 10 - ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by the Plaintiffs. The Plaintiffs reserve the right to challenge the standing of the Settling Defendants to make submissions in respect of these matters, save and except where provided for in this Agreement or for the limited purpose of protecting their individual brands and addressing operational impacts on their businesses.

(2) Class Counsel and the Plaintiffs will engage in reasonable consultation with the Settling Defendants with respect to the timing, content, disclosure and any media publication of the

Distribution Protocol and any notice advising Settlement Class Members of the distribution of the Settlement Amount. Subject to sections 4.1(2), 9.2 and 13.4, the Settling Defendants understand and agree that Class Counsel and the Plaintiffs do not require any consent or approval on the part of the Settling Defendants on these matters.

(3) The Settling Defendants acknowledge that the Plaintiffs intend to seek the assistance of Visa, Mastercard and the Acquirers to facilitate Notice and the implementation of the Distribution Protocol. This includes requesting that upon receipt of consent by Settlement Class Members, Visa, Mastercard or the Acquirers provide to the Claims Administrator, in a summary form, reports setting out the total amount of Interchange Fees paid by each of the consenting Settlement Class Members.

(4) To the extent that Visa, Mastercard or any of the Acquirers are not prepared to cooperate in the absence of Court orders, the Settling Defendants will not oppose a motion by the Plaintiffs seeking any such necessary orders, save and except that this provision does not apply to TD.

SECTION 11 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) Class Counsel shall pay any costs of the Notices of this Settlement Agreement from the Trust Account.

(2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneously with seeking approval of this Settlement Agreement, or at such other time as they shall determine in their sole discretion. The Settling Defendants will not oppose such motions.

(3) Except as provided in sections 11(1) and 11(2), Class Counsel Fees and any Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Releasees shall not be liable for any fees, disbursements or taxes, including but not limited to any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or any Settlement Class Member's respective lawyers, experts, advisors, agents, or representatives.

SECTION 12 - TERMINATION OF SETTLEMENT AGREEMENT

12.1 Right of Termination

(1) The Settling Defendants or the Plaintiffs, in their respective sole discretion, have the option to terminate this Settlement Agreement in the event that:

(a) the form and content of any of the orders or Notices departs materially from the form and content of the orders and Notices as agreed upon by the Plaintiffs and the Settling Defendants;

(b) the form and content of any of the Final Orders approved by the Courts departs materially from the form and content of the orders agreed upon by the Plaintiffs and the Settling Defendants;

(c) any Court declines to approve this Settlement Agreement or any material term or part hereof;

(d) any Court declines to dismiss the Canadian Proceedings or the Additional Class Proceedings;

(e) any Court approves this Settlement Agreement in a materially modified form; or

(f) any orders approving this Settlement Agreement made by the Courts do not become Final Orders.

(2) The Settling Defendants, in their sole discretion, have the option to terminate this Settlement Agreement in the event that:

- (a) the releases and covenants contemplated in sections 5 and 6 are not complied with;
- or
- (b) the Confidential Opt-Out Threshold is met by valid requests to opt-out by Settlement Class Members who have the right to opt-out.

(3) To exercise a right of termination under section 12.1(1) or (2), a terminating Party shall deliver a written notice of termination pursuant to this Settlement Agreement within thirty business days of the fact of the condition being met becoming known to the terminating Party. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 12.4, shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(4) Any order, ruling or determination made by any Court that is not substantially in the form and content of the respective Final Orders, as agreed upon by the Plaintiffs and the Settling Defendants in accordance with section 2.3, shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the termination of this Settlement Agreement, provided however that the Settling Defendants may collectively agree to waive this provision.

(5) Any order, ruling or determination made by any Court with respect to Class Counsel Fees or any Distribution Protocol shall not be deemed to be a material modification of all, or a part, of

this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(6) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and the Settling Defendants understand and agree that any prior certification or authorization of any of the Canadian Proceedings as a class proceeding for the purposes of settlement, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or any Releasee may later take on any issue in any of the Canadian Proceedings or any other litigation.

(7) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and the Settling Defendants understand and agree that any appearance, attendance, filing or other action or step taken by the Settling Defendants pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that any Releasee may later take in respect of the jurisdiction of the Courts or any other court, including, without limitation, a motion to stay any of the Canadian Proceedings pursuant to applicable commercial arbitration legislation, a motion to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over any Releasee in the Canadian Proceedings or any other litigation.

12.2 If Settlement Agreement is Terminated

If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason it shall be null and void, have no further force and effect, shall not be binding, and shall not be used as evidence or otherwise in litigation, and:

- (a) no motion to certify or authorize any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement or the Distribution Protocol, which has not been decided, shall proceed;
- (b) any order certifying or authorizing any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise; and
- (c) the Parties shall negotiate in good faith to determine a new timetable, if the Canadian Proceedings are to continue against any Releasees.

12.3 Allocation of Monies in the Trust Account Following Termination

- (1) Class Counsel shall pay to the Settling Defendants the Settlement Amount plus all accrued interest thereon, within thirty (30) business days of termination in accordance with this Settlement Agreement.
- (2) The Plaintiffs and the Settling Defendants expressly reserve all of their respective rights if this Settlement Agreement is terminated.

12.4 Survival of Provisions After Termination

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2(3), 7.1, 7.2, 8.1, 9.2, 11(1), 11(4), 12, and 13 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this

Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 13 - MISCELLANEOUS

13.1 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration, implementation or enforcement of this Settlement Agreement or the Distribution Protocol.

13.2 Motions for Directions

(1) The Settling Defendants or the Plaintiffs may apply to the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) Class Counsel may apply to the Courts for directions in respect of any Distribution Protocol.

(3) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and the Settling Defendants.

13.3 Further Acts

(1) Without limiting the generality of any other provisions of this Settlement Agreement, until such time as the Courts have approved or refused to approve this Settlement Agreement,

(a) none of the Plaintiffs, the Releasers and Class Counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement, and

(b) none of the Releasees and their respective counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement.

(2) The Parties each covenant and agree that they will not, by any voluntary action, avoid or seek to avoid the observance of any of the terms of this Settlement Agreement or undermine the benefits obtained for the Settlement Class Members in the Previous Settlements, and will at all times in good faith carry out the provisions of this Settlement Agreement.

13.4 Publicity

Except as otherwise required for the purposes of approving the settlement, the Plaintiffs and the Settling Defendants agree that:

(a) the Parties shall not issue any press releases or other communication of any kind (with the media or otherwise) regarding this settlement, except those that: (1) may be agreed to by the Parties; (2) are required by law or regulation; or (3) are in response to media requests for comment directed to the Parties or any of them;

(b) the Parties shall act in good faith to ensure that any public statements, comments or any communications of any kind about any descriptions of the settlement and the terms of this Settlement Agreement are balanced, fair and accurate;

(c) the Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the Parties to comply with any order of the Courts or as may be required under any applicable law or regulation.

13.5 Destruction of Documents

Class Counsel and the Plaintiffs acknowledge their obligation pursuant to paragraph 32 of the BC Protective Order to return or destroy Documents following the termination of the BC Proceeding. Further to that provision, the Parties agree that on the Effective Date, the Settling Defendants shall be deemed to have requested that Class Counsel and the Plaintiffs destroy any Material (as defined in the BC Protective Order) that the Settling Defendants have produced or that was designated as Highly Confidential pursuant to the BC Protective Order, and Class Counsel and the Plaintiffs will comply with their obligation.

13.6 Headings, etc.

(1) In this Settlement Agreement:

(a) the division of this Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and

(b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

13.7 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a weekend or statutory holiday.

13.8 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the proceeding commenced in its jurisdiction, the parties thereto, and Class Counsel Fees in that proceeding.
- (2) The Plaintiffs and the Settling Defendants understand and agree that no Court shall make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Courts with which it shares jurisdiction over that matter.

13.9 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia, save for matters relating exclusively to the Settlement Class Members who are members of the Quebec Mastercard Settlement Class and Quebec Visa

Settlement Class, which matters shall be governed by and construed and interpreted in accordance with the laws of the Province of Quebec.

13.10 Entire Agreement

This Settlement Agreement, including the Recitals herein and the Schedules attached hereto, constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.11 Amendments and Waivers

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and the Courts with jurisdiction over the matter to which the amendment relates must approve any such modification or amendment.

(2) The waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party and, any such waiver shall not be deemed or construed as a waiver of any other right, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

13.12 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Releasers, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made

herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

13.13 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.14 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that 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 Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Settlement Agreement.

13.15 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents à son soutien soient rédigés en anglais.* Nevertheless, the Plaintiffs shall prepare a French translation of this Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for

convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

(2) The cost of translating the Notices, claims forms, or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required, be paid by the Plaintiffs out of the Settlement Amount.

13.16 Transaction

This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

13.17 Recitals

The recitals to this Settlement Agreement are true and form part of this Settlement Agreement.

13.18 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

13.19 Notice

Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

For the Plaintiffs and for Class Counsel in the Canadian Proceedings:

Reidar Mogerman, QC

CAMP FIORANTE MATTHEWS
4th Floor, Randall Building
555 West Georgia Street
Vancouver, BC V6B 1Z6
Tel: 604-689-7555
Fax: 604-689-7554
Email: rmogerman@cfmlawyers.ca

Jeff Orenstein

CONSUMER LAW GROUP
4150 Ste.- Catherine St. W Suite 330
Montréal, QC H3Z 2Y5
Tel: 1-888-909-7863 ext. 220
Fax: 514-868-9690
Email: jorenstein@clg.org

For BMO:

Larry Lowenstein

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8
Tel: 416-862-6454
Fax: 416-862-6666
Email: lloenstein@osler.com

For BNS:

Brad Dixon

BORDEN LADNER GERVAIS LLP
Waterfront Centre
200 Burrard Street
Suite 1200
Vancouver, BC V7X 1T2
Tel: 604-640-4111
Fax: 604-687-1415
Email: BDixon@blg.com

Luciana P. Brasil

BRANCH MACMASTER LLP
1410 - 777 Hornby Street
Vancouver, BC V7G 3E2
Tel: 604-654-2960
Fax: 604-684-3429
Email: lbrasil@branmac.com

David Rankin

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8
Tel: 416-862-4895
Fax: 416-862-6666
Email: drankin@osler.com

Shelby Liesch

BORDEN LADNER GERVAIS LLP
Waterfront Centre
200 Burrard Street
Suite 1200
Vancouver, BC V7X 1T2
Tel: 604-640-4199
Fax: 604-687-1415
Email: SLiesch@blg.com

For CIBC:

Katherine Kay

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9
Tel: 416-869-5507
Fax: 416-947-0866
Email: kkay@stikeman.com

Danielle Royal

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9
Tel: 416-869-5254
Fax: 416-47-0866
Email: droyal@stikeman.com

For RBC:

Geoffrey Cowper, QC

FASKEN MARTINEAU DUMOULIN
LLP
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3
Tel: 604-631-3185
Fax: 604-631-3232
Email: gcowper@fasken.com

Andrew Borrell

FASKEN MARTINEAU DUMOULIN
LLP
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3
Tel: 604-631-3195
Fax: 604-631-3232
Email: aborrell@fasken.com

For TD:

Christine Lonsdale

MCCARTHY TÉTRAULT LLP
66 Wellington Street West
Suite 5300, TD Bank Tower Box 48
Toronto ON M5K 1E6
Tel: 416-601-8019
Fax: 416-868-0673
Email: clonsdale@mccarthy.ca

Jill Yates

MCCARTHY TÉTRAULT LLP
745 Thurlow Street
Suite 2400
Vancouver BC V6E 0C5
Tel: 604-643-7908
Fax: 604-643-7900
Email: jyates@mccarthy.ca

13.20 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges the following:

(a) he, she or a representative of the Party with the authority to bind the Party with

respect to the matters set forth herein has read and understood this Settlement Agreement;

(b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;

(c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and

(d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.21 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified below their respective signatures.

Executed in counterparts on October 28, 2020.



LUCIANA P. BRASIL for Branch
MacMaster LLP and the Plaintiffs



REIDAR M. MOGERMAN QC for Camp
Fiorante Matthews Mogerman and the
Plaintiffs



JEFF ORENSTEIN for Consumer Law
Group and the Plaintiffs

BANK OF MONTREAL

THE BANK OF NOVA SCOTIA

By: 
Name: Adrian Lang
Title: Head, Operations and Small Business Solutions

By: _____
Name: _____
Title: _____

CANADIAN IMPERIAL BANK OF
COMMERCE

ROYAL BANK OF CANADA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

THE TORONTO-DOMINION BANK

By: _____
Name: _____
Title: _____

BANK OF MONTREAL

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA

By:  _____
Name: Dan Rees
Title: Group Head Canadian Banking

CANADIAN IMPERIAL BANK OF
COMMERCE

By: _____
Name:
Title:

ROYAL BANK OF CANADA

By: _____
Name:
Title:

THE TORONTO-DOMINION BANK

By: _____
Name:
Title:

BANK OF MONTREAL

THE BANK OF NOVA SCOTIA

By: _____
Name:
Title:

By: _____
Name:
Title:

CANADIAN IMPERIAL BANK OF
COMMERCE

ROYAL BANK OF CANADA

By:  _____
Name: Stephen Scholtz
Title: Senior Vice-President & General Counsel (Canada)

By: _____
Name:
Title:

THE TORONTO-DOMINION BANK

By: _____
Name:
Title:

BANK OF MONTREAL

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA

By: _____
Name:
Title:

CANADIAN IMPERIAL BANK OF
COMMERCE

By: _____
Name:
Title:

ROYAL BANK OF CANADA

By:  _____
Name: Sean Amato-Gauci
Title: EVP, Cards, Payments & Banking

THE TORONTO-DOMINION BANK

By: _____
Name:
Title:

BANK OF MONTREAL

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA

By: _____
Name:
Title:

CANADIAN IMPERIAL BANK OF
COMMERCE

By: _____
Name:
Title:

ROYAL BANK OF CANADA

By: _____
Name:
Title:

THE TORONTO-DOMINION BANK

By: *Katharine Boshart*
Name: Katy Boshart
Title: SVP, Canadian Credit Cards

“SCHEDULE A” TO THE CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Coburn and Watson’s Metropolitan Home dba Metropolitan Home
and Maynard’s Southlands Stables Ltd.

Plaintiffs

and:

Bank of America Corporation, BMO Financial Group, Bank of
Nova Scotia, Canadian Imperial Bank of Commerce, Capital One
Bank (Canada Branch), Citigroup Inc., Fédération des caisses
Desjardins du Québec, MasterCard International Incorporated,
National Bank of Canada Inc., Royal Bank of Canada, Toronto-
Dominion Bank, and Visa Canada Corporation

Defendants

Brought pursuant to the *Class Proceedings Act*, RSC, 1996, c.50

ORDER MADE AFTER APPLICATION

(ROUND 1 – CERTIFICATION AND NOTICE APPROVAL)

BEFORE THE HONOURABLE MR. JUSTICE G.C. WEATHERILL)
)
) , 2020

ON THE APPLICATION of the Plaintiff, Maynard’s Southlands Stables Ltd. (“Maynard’s Stables”) in the within proceeding (the “BC Proceeding”) to certify this proceeding as a class proceeding and approval of the notice to Settlement Class Members of a proposed settlement of all claims against the defendants Bank of Montreal (mistakenly identified in these proceedings as “BMO Financial Group”), Canadian Imperial Bank of Commerce, The Toronto-Dominion Bank, The Bank of Nova Scotia, and Royal Bank of Canada (collectively, the “Settling Defendants”); and upon hearing <counsel names> for the plaintiff; <counsel names> for Royal Bank of Canada; <counsel names> for Bank of Montreal, <counsel names> for Canadian Imperial Bank of Commerce, <counsel names> for The Toronto-Dominion Bank, and <counsel names> for The Bank of Nova Scotia; and upon being advised that Maynard’s Stables and others have entered into an agreement with the Settling Defendants dated <date> (the

“Settlement Agreement”) attached hereto as **Schedule “A”**; and upon being advised that Maynard’s Stables and the Settling Defendants consent to this Order;

THIS COURT ORDERS that:

1. Except to the extent that they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order;

2. The BC Proceeding is certified as a class proceeding only as against the Settling Defendants, for settlement purposes only;

3. The BC Mastercard Settlement Class is defined as:

All Merchants resident in British Columbia who, during the Class Period, accepted payments for the supply of goods or services by way of Mastercard Credit Cards, except the Excluded Persons.

4. The BC Visa Settlement Class is defined as:

All Merchants resident in British Columbia who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards, except the Excluded Persons.

5. Maynard’s Stables is appointed as the representative plaintiff for the BC Mastercard Settlement Class and the BC Visa Settlement Class (collectively, the “BC Settlement Class”);

6. The BC Proceeding is certified on the basis that the following issue is common to the BC Settlement Class:

Did the Settling Defendants conspire with each other and others to fix, maintain, increase or control Merchant Discount Fees and/or Interchange Fees in Canada during the Class Period?

7. The period to opt-out of the BC Proceeding has already expired pursuant to this Court’s orders pronounced July 11, 2014 and December 6, 2017, except for BC Settlement Class members who began accepting Visa and/or Mastercard Credit Cards after May 31, 2018 (the “New Merchants”). Written elections to opt-out by New Merchants must be sent to Epiq Systems in the form attached hereto as

Schedule “B” at the address, by the means and within the time period specified in the Notice of Certification / Authorization and Settlement Hearing, and Epiq Systems will provide counsel for all parties with copies of all valid elections to opt-out received by Epiq Systems;

8. Any member of the BC Settlement Class who has validly opted-out of the BC Proceeding is not bound by the Settlement Agreement, and will not be entitled to receive any share of benefits payable in connection with the Settlement Agreement;
9. Any member of the BC Settlement Class who has not validly opted-out of the BC Proceeding is bound by this Order and the Settlement Agreement.
10. New Merchants who do not validly opt-out of the BC Proceeding will be bound by this Order, and the Settlement Agreement, as well as by the prior settlements that were approved by this Court on November 9, 2015, May 24, 2016, and July 13, 2018, including their Releases;
11. This Order is binding upon each member of the BC Settlement Class who has not validly opted out of the BC Proceeding, including those persons who are minors or mentally incapable.
12. The Publication and Long Forms of the Notice of Certification / Authorization and Settlement Hearing are hereby approved substantially in the forms attached hereto as **Schedules “C”** and **“D”**, respectively.
13. The plan of dissemination for the Notice of Certification / Authorization and Settlement Hearing (the “Plan of Dissemination”) is hereby approved in the form attached hereto as **Schedule “E”**.
14. The Notice of Certification / Authorization and Settlement Hearing shall be disseminated in accordance with the Plan of Dissemination approved as part of this Order and by any other additional means as may be ordered by any of the other Courts in the Canadian Proceedings; and

15. This Order may be executed in counterparts, electronically or by facsimile.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Luciana P. Brasil
Counsel for the Plaintiffs

Signature of
Counsel for BMO Financial Group

Signature of
Counsel for Royal Bank of Canada

Signature of
Counsel for The Toronto-Dominion Bank

Signature of
Counsel for The Bank of Nova Scotia

Signature of
Counsel for Canadian Imperial Bank of
Commerce

By the Court

Registrar

Schedule “B” to the Order Made After Application

Credit Cards Class Actions
BMO, BNS, CIBC, RBC and TD Opt-Out Form

For the purposes of this Opt-Out Form, the following definitions apply (additional definitions are found on the bottom of this form):

“Canadian Proceedings” means the following five actions:

- *Watson v Bank of America Corporation et al*, SCBC No. VLC-S-S-112003 (Vancouver)
- *Bancroft-Snell et al v Visa Canada Corporation et al*, OSCJ No. CV-11-426591CP (Toronto)
- *9085-4886 Quebec Inc v Visa Canada Corporation et al*, Superior Court of Quebec No. 500-06-000549-101 (Montreal)
- *Macaronies Hair Club and Laser Center Inc operating as Fuze Salon v BofA Canada Bank et al*, Alberta QB File No. 1203-18531 (Edmonton); and
- *Hello Baby Equipment Inc. v. BofA Canada Bank and others*, SK QB No. 133 of 2013 (Regina).

“Class Period” means March 23, 2001 to the date of the last of the orders certifying or authorizing any of the Canadian Proceedings for purposes of this Settlement Agreement.

“Settlement Agreement” means the settlement agreement made as between the Plaintiffs in the Canadian Proceedings and the defendants Bank of Montreal (“**BMO**”), The Bank of Nova Scotia (“**BNS**”), Canadian Imperial Bank of Commerce (“**CIBC**”), Royal Bank of Canada (“**RBC**”), and The Toronto-Dominion Bank (“**TD**”).

A copy of this Settlement Agreement is available at www.creditcardclassaction.com.

“New Merchants” means Merchants who began accepting Visa Credit Cards or Mastercard Credit Cards during the Class Period and after May 31, 2018, and for clarity, does not include Merchants who had an opportunity to opt-out in any of the Previous Settlements.

“Opt-Out Administrator” means Epiq Systems, the address for which is below.

“Quebec Settlement Class” means all natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of

Mastercard Credit Cards or Visa Credit Cards, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment and any legal person established for a public interest resident in Quebec.

“Quebec Settlement Class Members” means a member of the Quebec Settlement Class who has not validly opted-out of the Canadian Proceedings in accordance with the orders of the Courts, as applicable, whether in connection with this Settlement Agreement or in connection with the Previous Settlements.

“Previous Settlements” means the BofA Settlement, Citi Settlement, Capital One Settlement, Desjardins Settlement, and, to the extent that their approval is not overturned on appeal, the National Bank Settlement, the Visa Settlement and the Mastercard Settlement.

Capitalized terms not otherwise defined in this Opt-Out Form have the meanings given to them in the Settlement Agreement.

BECAUSE OF DIFFERENCES IN THE ORDERS MADE BY THE COURTS, THE CONSEQUENCE OF **NOT OPTING OUT** VARIES DEPENDING ON WHETHER YOU ARE A QUEBEC SETTLEMENT CLASS MEMBER OR NOT. READ THIS FORM CAREFULLY FOR FURTHER INFORMATION.

Opting Out

Opting out is only available if you are a Quebec Settlement Class Member or a New Merchant.

CONSEQUENCES OF OPTING OUT

a) Quebec Settlement Class Members

By completing and returning this Opt-Out Form as set out below, you are choosing **not** to take part in this Settlement Agreement.

If you complete this Opt-Out Form you will not be bound by this Settlement Agreement, or the releases in this settlement, but you will also not be entitled to share in any of the proceeds that may become available to Merchants as part of same.

b) New Merchants:

By completing and returning this Opt-Out Form as set out below, you are choosing **not** to take part in any of the Previous Settlements or this Settlement Agreement.

New Merchants who opt out will not be bound by the Previous Settlements and this Settlement Agreement or the releases in those settlements, but will also not be entitled to share in any of the proceeds that may become available to Merchants as part of those settlements.

CONSEQUENCES OF NOT OPTING OUT

a) Quebec Settlement Class Members:

If you do **not** complete and return this Opt-Out Form, you will be bound by this Settlement Agreement, and the releases in it, and will be entitled to share in any of the proceeds that may become available to Merchants as part of this settlement.

b) New Merchants:

For New Merchants, if you do **not** complete and return this Opt-Out Form, you will be bound by this Settlement Agreement and the Previous Settlements, and the releases in them, and will be entitled to share in any of the proceeds that may become available to Merchants as part of those settlements. You will have no further opportunity to opt out of the Canadian Proceedings.

* * *

In order to be effective, this form must be fully completed and sent to the Opt-Out Administrator at the address set out below, and must be postmarked no later than DATE. Opt-Out Forms received after DATE will not be accepted.

For more information on this Settlement Agreement, or the Canadian Proceedings, please visit www.creditcardclassaction.com

Name of business*: _____ (required)

* Provide the name of the person or legal entity accepting Visa or MasterCard credit cards. This is probably the name listed on the statements you receive from your payment processor.

Date business began accepting Visa and/or Mastercard credit cards: _____
_____ (required)

Name of payment processor: _____ (required)

Your name: _____ (required)

Your address: _____ (required)

Your telephone number: (____) ____ - _____ (required)

Your email address: _____ (optional)

Declaration:

I declare that I have legal authority to bind the business named above, which has decided to opt-out as set out above.

Signature

Date

Return completed Opt-Out Forms to:

<Epiq's info and designated recipient>

Schedule “C” to the Order Made After Application

PUBLICATION NOTICE

TO ALL MERCHANTS IN CANADA WHO ACCEPT VISA OR MASTERCARD CREDIT CARDS

Class action lawsuits were brought in BC, AB, ON, SK and QC against Visa, Mastercard and a number of banks that issue their credit cards (the “Issuing Banks”) on behalf of all merchants in Canada who accept those credit cards. The lawsuits allege a conspiracy in setting higher interchange fees paid by merchants to accept Visa and Mastercard credit cards, and other restrictions. The allegations are denied.

Settlements of class action lawsuits must be approved by the Courts before they are effective. To date, seven settlements with some of the Issuing Banks and with Visa and MasterCard have been approved. The net proceeds of those settlements were held for distribution after resolution of the remaining claims.

There is now a **proposed settlement** with the five remaining Issuing Banks, namely, ROYAL BANK OF CANADA, THE TORONTO-DOMINION BANK, CANADIAN IMPERIAL BANK OF COMMERCE, BANK OF MONTREAL, AND THE BANK OF NOVA SCOTIA (collectively, the “Settling Defendants”). This proposed settlement provides for a payment of \$120,000,000.00 (**one hundred and twenty million dollars**) for the benefit of the Settlement Class. In exchange, Settlement Class Members give the Settling Defendants and related entities a full release of claims arising from the alleged conduct at issue. If the proposed settlement is approved by the Courts, the net settlement funds generated in this proposed settlement, and in the previous approved settlements, will be distributed to Settlement Class Members in accordance with a distribution plan, also subject to approval by the Courts. A full copy of the proposed settlement agreement, including the full language of the release and the proposed distribution plan are available at www.creditcardsettlements.ca. The proposed settlement is not an admission of liability on the part of the Settling Defendants who deny the allegations, nor has there been any finding of liability by the Court against them.

Hearings to consider whether the proposed settlement should be approved, and if so, the amounts payable to class action lawyers will take place as follows:

AB	BC	ON	QC	SK
<date>	<date>	<date>	<date>	<date>

YOU ARE A SETTLEMENT CLASS MEMBER IF YOU ARE A MERCHANT WHO ACCEPTED VISA OR MASTERCARD CREDIT CARDS IN CANADA AFTER MARCH 23, 2001

YOU HAVE DIFFERENT OPTIONS IF YOU RESIDE IN QUEBEC AND IF YOU BEGAN ACCEPTING VISA OR MASTERCARD CREDIT CARDS AFTER MAY 31, 2018

- All Settlement Class Members can comment on the proposed settlement. You can do so by delivering comments to the court-appointed Administrator at <info> by <date>. There will subsequently be an opportunity to comment on the proposed distribution plan once presented to the Courts for approval.
- For most merchants in all provinces and territories outside Quebec, and merchants in Quebec which had 50 or more employees at any time between December 17, 2009 and December 17, 2010, the right to opt out was given with past settlements and has expired. This means those merchants will be automatically included in the Settlement Class and will be eligible to make a claim for benefits pursuant to the distribution plan approved by the Courts.
- Merchants in Quebec which did not have more than 50 employees as set out above, and “new merchants” anywhere in Canada (who only began accepting Visa or Mastercard credit cards after May 31, 2018), have a limited time to decide whether to opt out from the lawsuits (and from the settlements). Opt out requests must be received by <date>. Those who do not opt out will be automatically included in the Settlement Class.

This is just a summary. Full details of the proposed settlement and information about Settlement Class membership and options including how to attend hearings and opt out are posted on www.creditcardsettlements.ca, or are available from one of the Class Action Lawyers below.

**IF YOU WANT TO SPEAK WITH A LAWYER,
YOU MAY CALL ANY OF THE CLASS ACTION LAWYERS BELOW AT NO COST TO YOU:**

Camp Fiorante Matthews Mogerman

<name>
<phone>
<email>

Branch MacMaster

<name>
<phone>
<email>

Consumer Law Group

<name>
<phone>
<email>

Schedule “D” to the Order Made After Application

LONG FORM NOTICE

MERCHANT CREDIT CARD FEES SETTLEMENT NOTICE

Are you a merchant in Canada who accepted Visa or Mastercard credit cards?

If you are a merchant in Canada who accepted Visa or Mastercard credit cards as payment for goods or services at any point in time after March 23, 2001, your rights could be affected by a proposed national class action settlement with:

Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Montreal and The Bank of Nova Scotia

The Credit Card Actions

Class action lawsuits were commenced in British Columbia (the “BC Action”), Alberta, Saskatchewan, Quebec (the “QC Action”) and Ontario (collectively, the “Credit Card Actions”) against Visa Canada Corporation (“Visa”), Mastercard International Incorporated (“Mastercard”) and certain banks which issue credit cards (“Issuing Banks”) alleging each of Visa and Mastercard conspired with their Issuing Banks and acquirers in setting the amount of interchange fees and imposing rules restricting merchants’ ability to surcharge or refuse higher cost Visa and Mastercard credit cards. The BC Action and the QC Action were certified/authorized as a class proceeding.

The Prior Settlements

There have been a number of partial settlements achieved to date. The Courts have previously approved settlement agreements with Bank of America, Citigroup, Capital One, Desjardins, National Bank, and each of Visa and Mastercard (the “Prior Settlements”). The Prior Settlements have a total value of \$68,530,000 plus accrued interest. Information about the Prior Settlements is available at www.creditcardsettlements.ca. The net proceeds from the Prior Settlements have been held by the Class Lawyers pending resolution of all remaining claims in the Credit Card Actions.

The New Settlement

Although each of Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Montreal and The Bank of Nova Scotia (collectively, the “Settling Defendants”) deny liability, they have collectively entered into a new national settlement with the plaintiffs (the “Proposed Settlement”), subject to approval of the Courts. The Settling Defendants will collectively pay a total of CAD \$120 million (the “Settlement Amount”) for the benefit of the Settlement Class Members in exchange for the dismissal of the Credit Card Actions and other related litigation, and a full release of all claims advanced against each of them and their related entities, including future claims relating to continuing acts or practices that occurred prior to or following the commencement of the Credit Card Actions. The Proposed Settlement is

not an admission of liability on the part of the Settling Defendants who deny the allegations, nor has there been any finding of liability by the Courts against them.

If the Proposed Settlement is approved, the Class Lawyers will ask the Courts to approve the deduction of certain amounts from the Settlement Amount, including costs incurred to distribute this notice and process opt-out requests, comments and objections, a counsel fee of up to 30% of the recovered amounts (subject to approval by the Courts), and disbursements.

Distribution of Net Settlement Proceeds

If the Proposed Settlement is approved, it will bring the Credit Card Actions to an end and will allow the distribution of the net settlement proceeds remaining after deduction of all court-approved fees, costs and expenses in respect of the Prior Settlements and the Proposed Settlement (collectively, the “Net Settlement Proceeds”). It is estimated that there will be approximately <amount> available for distribution to Settlement Class Members.

In consultation with the plaintiffs, the Class Lawyers will develop a Distribution Plan for the distribution of the Net Settlement Proceeds. The Distribution Plan is subject to court approval. If you would like to make sure that you receive direct notice of any later distribution, please register at www.creditcardsettlements.ca, or contact one of the Class Lawyers below.

Certification/Authorization as Class Proceedings for Settlement Purposes

The BC Action and the QC Action were already certified / authorized to proceed as class actions by the Courts, but with some limitations. In order to implement the Proposed Settlement, the Courts have, for settlement purposes only, certified / authorized all of the Credit Card Actions as class proceedings on broader terms against the Settling Defendants.

Who Are The Settlement Class Members?

The court-approved definition of “Settlement Class Member” sets out who can participate in and is bound by the Proposed Settlement, including the release of claims. You are a Settlement Class Member if you accept or accepted Visa credit cards and/or Mastercard credit cards as payment for goods or services and incurred merchant discount fees, including interchange fees, in Canada since March 23, 2001.

The Settlement Class includes **Quebec Settlement Class Members**. Quebec Settlement Class Members are Quebec resident persons and partnerships who accepted Visa and/or Mastercard credit cards as payment for goods or services and incurred merchant discount fees, including interchange fees, at any time since March 23, 2001. As noted below, Quebec Settlement Class Members have different participation options.

Any legal persons established for a private interest and any partnership resident in Quebec, which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal persons established for a public interest resident in Quebec are **not** Quebec Settlement Class Members, but **are** Settlement Class Members in Ontario.

All Settlement Class Members are affected by this notice.

Settlement Approval Hearings

Hearings to consider approval of the Proposed Settlement, a counsel fee of up to 30% of the recovered amounts, and disbursements and other expenses payable from the Settlement Amount will be heard on:

- [date], 2020 (British Columbia Supreme Court, Vancouver)
- [date], 2020 (Court of Queen's Bench of Alberta, Edmonton)
- [date], 2020 (Court of Queen's Bench for Saskatchewan, Regina)
- [date], 2020 (Quebec Superior Court, Montreal)
- [date], 2020 (Ontario Superior Court of Justice, Toronto).

Anyone can attend the hearings, but if you wish to speak to the Court at any of these hearings, please advise the Administrator (Epiq Systems)*.

If you wish to provide comment on or objection to the Proposed Settlement, you must do so by delivering same in writing to the Administrator* by ●, **2020**. Comments or objections will be provided to the Court for consideration in whether to approve or reject the Proposed Settlement.

Participating in the Proposed Settlement or Credit Card Actions (No Action Needed)

Settlement Class Members who wish to participate in the approved settlements and in the Credit Card Actions do not need to do anything at this time, although we encourage them to identify themselves as a Settlement Class Member (subject to future verification of eligibility) so that that they receive **direct notice** of any important developments, including the approval of the Distribution Plan and the commencement of the time in which to make a claim for a share of the settlement benefits.

Opting Out of the Credit Card Actions or Proposed Settlement (Requires Action)

Merchants who do not wish to participate in the Proposed Settlement have to opt out (exclude themselves). The Courts in Quebec and in the common law provinces have approved different rules regarding opting out of the Credit Card Actions and settlements. In practice, Quebec Settlement Class Members have an opportunity to opt out in connection with each round of settlement approval, whereas other Settlement Class Members in the rest of Canada are given a single opportunity to elect whether to

opt out or not. In all cases, once a Settlement Class Member elects to opt out, they are out for good and cannot opt back into the Credit Card Actions.

For most Settlement Class Members, the right to opt out of the Credit Card Actions was previously provided in connection with the approval of some of the Prior Settlements and has now expired.

The only Settlement Class Members who can elect to opt out at this time are:

- Quebec Settlement Class Members; and
- Persons who only began accepting Visa and/or Mastercard credit cards after May 31, 2018 (the “New Merchants”).

The deadline for Quebec Settlement Class Members and New Merchants to opt out is ●, 2020. Regardless, all Settlement Class Members who do not opt out can still make their views known about the Proposed Settlement as set out above by delivery of a written comment or objection to the Administrator* by ●, 2020.

Consequences of Opting Out

a) for Quebec Settlement Class Members:

By opting out, you are choosing **not** to take part in the Proposed Settlement.

Quebec Settlement Class Members who opt out will not be bound by the Proposed Settlement or the release in that settlement, but will also not be entitled to share in any of the proceeds that will become available to merchants as part of that settlement.

Quebec Settlement Class Members who opt out of the Proposed Settlement will remain bound by the Prior Settlements and the releases given to other parties in those settlements, and will be entitled to share in the proceeds that may become available to merchants as part of those settlements.

b) for New Merchants:

By opting out, you are choosing **not** to take part in any of the Prior Settlements or in the Proposed Settlement.

New Merchants who opt out will not be bound by the Prior Settlements and the Proposed Settlement or the releases in those settlements, but will also not be entitled to share in any of the proceeds that will become available to merchants as part of those settlements.

Consequences of NOT Opting Out

a) for Quebec Settlement Class Members

Quebec Settlement Class Members who **do not opt out** will be bound by the Proposed Settlement and the release in same, and will be entitled to share in the proceeds that will become available to merchants as part of that settlement.

b) for New Merchants

New Merchants who **do not opt out** will be bound by the Prior Settlements and the Proposed Settlement, and the releases in them, and will be entitled to share in any of the proceeds that will become available to merchants as part of those settlements.

* * *

FOR MORE INFORMATION on the status of the approval hearings or on how to opt out of the Credit Card Actions, comment or object to the Proposed Settlement, or to view any of them and a list of other definitions that apply to this Notice, visit www.creditcardsettlements.ca, which will be periodically updated with information on the approval process of the Proposed Settlement and, subsequently, the Distribution Plan, and on the status of the Credit Card Actions.

*For communications with the Opt-Out Administrator, Epiq Systems call <>, email <>, fax <> or write to <address>.

CLASS LAWYERS can be reached at lawyers@creditcardsettlements.ca and are:

- Branch MacMaster LLP at (604) 654-2999 (Luciana P. Brasil)
- Camp Fiorante Mathews Mogerman LLP at (604) 689-7555 (David Jones)
- Consumer Law Group Inc. (for Quebec residents) at 1-888-909-7863 x2 (Jeff Orenstein)

This notice is approved by the Courts.

Schedule "E" to the Order Made After Application

PLAN OF DISSEMINATION

**Notice of Certification/Authorization and Settlement Approval Hearing
in the Matter of Credit Card Class Action Litigation**

The Plaintiffs propose that the Notice of Certification/Authorization and Settlement Approval Hearing (the "Pre-Approval Notice") shall be distributed in the following manner:

1. The Publication Notice will be published once in the following newspapers, in either English or French, as is appropriate for each newspaper, in a size no less than 1/2 page, and preferably in a business section (if available), subject to each having reasonable publication deadlines and costs:
 - (a) The Globe and Mail, national edition;
 - (b) National Post, national edition;
 - (c) Metro Canada, national edition;
 - (d) Montreal La Presse;
 - (e) Montreal The Gazette;
 - (f) Calgary Herald;
 - (g) Edmonton Journal;
 - (h) 24 Hours Toronto; and
 - (i) 24 Hours Vancouver.
2. The Publication Notice will be published once in the following four (4) industry magazines, in either English or French, as is appropriate for each magazine, subject to each having reasonable publication deadlines and costs:
 - (a) Retail Council of Canada's Canadian Retailer Magazine;
 - (b) Canadian Convenience Stores Association's C-Store Life;
 - (c) Canadian Restaurant and Foodservices News; and
 - (d) Grocery Business Magazine.
3. The Publication Notice will be published once in the following four (4) regional business publications, in either English or French, as is appropriate for each magazine, subject to each having reasonable publication deadlines and costs:
 - (a) Alberta Venture;

- (b) BC Business;
 - (c) Northern Ontario Business; and
 - (d) Ottawa Business Journal.
4. The Publication Notice will be published once in the following digital-only publication, subject to reasonable publication deadline and cost:
- (a) The Canadian Business Journal.
5. The Publication Notice and the Long Form Notice will be sent to the following twenty (20) industry associations whose members accept Visa or Mastercard credit cards as a means of payment for goods or services, in either English or French, as is appropriate for each association, requesting voluntary distribution to their membership, including:
- (a) Retail Council of Canada;
 - (b) Canadian Federation of Independent Businesses (CFIB);
 - (c) Retail Merchants Association of Canada (Ontario) Inc.;
 - (d) Canadian Restaurant and Foodservices Association;
 - (e) Canadian Convenience Stores Association;
 - (f) Canadian Federation of Independent Grocers (CFIG);
 - (g) Food and Consumer Products of Canada;
 - (h) Canadian Association of Chain Drug Stores;
 - (i) Tourism Industry Association of Canada;
 - (j) Canadian Independent Petroleum Marketers Association;
 - (k) Canadian Jewellers Association;
 - (l) Small Business Matters;
 - (m) Canadian Wireless Telecommunications Association (CWTA);
 - (n) Canadian Association of Home and Property Inspectors;
 - (o) Canadian Parking Association;
 - (p) Association of Universities and Colleges of Canada;
 - (q) Automotive Retailers Association;

- (r) Canadian Deals and Coupons Association;
 - (s) Canadian Cosmetic, Toiletry and Fragrance Association; and
 - (t) Canadian Franchise Association.
6. Online ads will be placed on the following websites, in either English or French as appropriate, targeting the general Canadian population:
 - (a) Facebook.
 7. Online ads will be placed on the following websites, in either English or French as appropriate, targeting Small Business Owners in Canada:
 - (a) Canadian Business's official websites (CanadianBusiness.com);
 - (b) Facebook; and
 - (c) Yahoo! Ad Network.
 8. Online sponsored search ads will be placed through Google, Bing and Yahoo!
 9. Copies of the Publication Notice and Long Form Notice will be posted in electronic format in English and in French on the websites of the Class Counsel.
 10. Copies of the Publication Notice and Long Form Notice will be provided to the CBA National Class Action Registry with a request that it be posted online.
 11. Copies of the Publication Notice and Long Form Notice will be sent to all persons who have contacted the Class Counsel and identified themselves as being potential class members.
 12. A press notice will be issued by the Plaintiff as a press release on Canada Newswire in both English and French.
 13. Copies of the Publication Notice and Long form Notice will be delivered to Babin Bessner Spry LLP and Affleck Greene McMurtry LLP, counsel for Wal-Mart Canada Corp. and Home Depot of Canada Inc., respectively.

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Coburn and Watson's Metropolitan Home dba
Metropolitan Home and Maynard's Southlands Stables Ltd.

Plaintiffs

and:

Bank of America Corporation, BMO Financial Group, Bank of
Nova Scotia, Canadian Imperial Bank of Commerce, Capital
One Bank (Canada Branch), Citigroup Inc., Fédération des
caisses Desjardins du Québec, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa Canada
Corporation

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c 50

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca

“SCHEDULE B” TO THE CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Coburn and Watson’s Metropolitan Home dba
Metropolitan Home and Maynard’s Southlands Stables Ltd.

Plaintiffs

and:

~~BMO Financial Group, Bank of Nova Scotia, Canadian
Imperial Bank of Commerce, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa-Canada
Corporation~~

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c 50

ORDER MADE AFTER APPLICATION
(Round 2 - Settlement Approval)

BEFORE THE HONOURABLE MR. JUSTICE)
G.C. WEATHERILL) , 2020
)

ON THE APPLICATION of the Plaintiff, Maynard’s Southlands Stables Ltd. (“Maynard’s Stables”), coming on for hearing at 800 Smithe Street, Vancouver, B.C. on **<date>**, for an order approving the agreement made between the Plaintiff and others and Bank of Montreal (mistakenly identified in these proceedings as “BMO Financial Group”), Canadian Imperial Bank of Commerce, The Toronto-Dominion Bank, The Bank of Nova Scotia, and Royal Bank of Canada (collectively, the “Settling Defendants”), dated **<date>** (the “Settlement Agreement”);

ON HEARING the submissions of **<counsel name>**, counsel for the Plaintiff and **<counsel names>** for Royal Bank of Canada; **<counsel names>** for Bank of Montreal, **<counsel names>** for Canadian Imperial Bank of Commerce, **<counsel names>** for The Toronto-Dominion Bank, and **<counsel names>** for The Bank of Nova Scotia **<any others?>**;

AND ON READING the pleadings and materials filed;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order;

THIS COURT ORDERS that:

1. The Settlement Agreement, as attached at **Schedule "A"**, is incorporated into this Order in its entirety and forms part of this Order, and the definitions in the Settlement Agreement shall be applied in interpreting this Order;
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail;
3. The Settlement Agreement is fair, reasonable and in the best interests of the BC Mastercard Settlement Class and the BC Visa Settlement Class (collectively, the "BC Settlement Class");
4. The Settlement Agreement is hereby approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c 50 and shall be implemented in accordance with its terms and the terms of this Order;
5. This Order, including the Settlement Agreement, is binding upon the representative plaintiff and all members of the BC Settlement Class who have not validly opted-out (collectively, the "BC Settlement Class Members", each a "BC Settlement Class Member"), and the Settling Defendants;
6. This Order, including the Settlement Agreement, is binding upon each BC Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rule 20-2 of the *Supreme Court Civil Rules* are dispensed with in respect of the BC Proceeding;
7. Upon the Effective Date, each Releasor shall consent to and shall be deemed to have consented to the dismissal as against the Releasees of any other actions or proceedings in BC he, she or it has commenced, without costs and with prejudice;

8. Upon the Effective Date, each other action or proceeding commenced in British Columbia by any Releasor shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
9. Upon the Effective Date, each Releasor who has not validly opted-out of the BC Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasees from the Released Claims;
10. Upon the Effective Date, each Releasor (i) shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim, proceeding, complaint or demand against, or collect or seek to recover from, any Releasee or any other Person or Persons who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any Releasee in respect of any Released Claims, except, in the event of introduction of a Reinstated Rule, proceedings claiming damages, injunctive or declaratory relief as against Mastercard or Visa, and (ii) are permanently barred and enjoined from doing so;
11. The use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those BC Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors;
12. Instead of releasing the claims against the Releasees, upon the Effective Date, each Releasor who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to sue or make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

13. All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating directly or indirectly to the Released Claims, which were or could have been brought in the Canadian Proceedings or otherwise, and may or could be brought in respect of a Reinstated Rule, by any Settled Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of the BC Proceeding);
14. If, in the absence of paragraph 13 of this Order, any final adjudication determines that in respect of proceedings claiming damages, injunctive or declaratory relief as against Mastercard or Visa with respect to a Reinstated Rule, there is a right of contribution, indemnity or other claims over, whether in equity or in law, by contract, statute or otherwise:
 - (a) The BC Settlement Class Members shall reduce or limit their claims against Mastercard or Visa (and/or named or unnamed co-conspirators that are not Releasees) in respect of a Reinstated Rule to not be entitled to claim or recover from Mastercard or Visa and/or named or unnamed co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise; and

- (b) The court seized of any proceedings in respect of a Reinstated Rule shall have full authority to determine, on procedures it may specify, the Proportionate Liability of the Releasees at the trial or other disposition of the proceeding in respect of a Reinstated Rule, whether or not the Releasees are parties or appear at the trial or other disposition, and any determination in respect of the Proportionate Liability of the Releasees shall only apply in such proceedings and shall not be binding on the Releasees in any other proceedings;
15. If, in the absence of paragraph 13 of this Order, Mastercard or Visa would not have the right to make claims for contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise, in respect of damages or other awards with respect to a Reinstated Rule from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which Mastercard or Visa may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in a proceeding with respect to a Reinstated Rule;
16. For purposes of enforcement of this Order and the Settlement Agreement, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of this Court and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order subject to the terms and conditions set out in the Settlement Agreement and this Order;
17. No Releasee shall have any responsibility or liability relating to the administration of the Settlement Agreement or the Distribution Protocol or the administration, investment, or distribution of the Trust Account;
18. Subject to the provisions of the Settlement Agreement, the Settlement Amount, plus accrued interest less any monies paid out pursuant to the Settlement Agreement, shall be held in trust for the benefit of the Settlement Class, pending further order of the Courts;

19. The approval of the Settlement Agreement is contingent upon approval by the Alberta Court, the Saskatchewan Court, the Ontario Court and the Quebec Court and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Alberta Court, the Saskatchewan Court, the Quebec Court and the Ontario Court and the Alberta Proceeding, the Saskatchewan Proceeding, and the Ontario Proceeding have been dismissed with prejudice and without costs and the Quebec Proceeding has been declared settled out of court as against the Settling Defendants in the relevant proceeding by the Courts. If such orders are not secured in Alberta, Saskatchewan, Ontario and Quebec, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the BC Proceeding and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice;
20. In the event that the Settlement Agreement is terminated in accordance with its terms, on motion made on notice to the Plaintiff or the Settling Defendants, as appropriate:
 - (a) This Order shall be declared null and void and be without prejudice to any party; and
 - (b) Each party to the BC Proceeding shall be restored to his, her or its respective position in the BC Proceeding as it existed immediately prior to the execution of the Settlement Agreement.
21. On notice to the Court, but without further order of the Court, the Parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Settlement Agreement;
22. The determination of the form of any additional notice to the Settlement Class Members and/or claims filing process, and the approval of the Distribution Protocol will be dealt with by further orders of the Courts;
23. Except as aforesaid, the BC Proceeding be and is hereby dismissed against the Settling Defendants without costs and with prejudice.

Endorsement of this Order

24. This Order may be endorsed in counterpart, electronically or by facsimile.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Luciana P. Brasil
Counsel for the Plaintiffs

Signature of
Counsel for BMO Financial Group

Signature of
Counsel for Royal Bank of Canada

Signature of
Counsel for The Toronto-Dominion Bank

Signature of
Counsel for The Bank of Nova Scotia

Signature of
Counsel for Canadian Imperial Bank of
Commerce

By the Court

Registrar

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Coburn and Watson's Metropolitan Home dba
Metropolitan Home and Maynard's Southlands Stables Ltd.

Plaintiffs

and:

BMO Financial Group, Bank of Nova Scotia, Canadian
Imperial Bank of Commerce, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa Canada
Corporation

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c 50

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca

CONFIDENTIAL

**“SCHEDULE C” TO THE CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Confidential Opt-Out Threshold

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

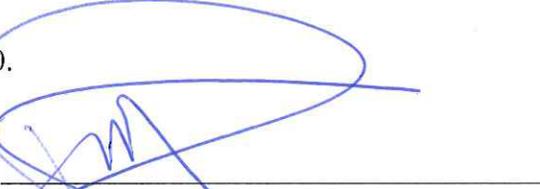
[REDACTED]

[REDACTED]

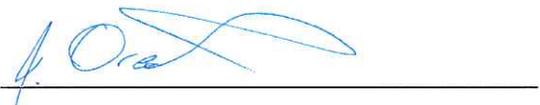
Executed in counterparts on October 28, 2020.


by permission

LUCIANA P. BRASIL for Branch
MacMaster LLP and the Plaintiffs



REIDAR M. MOGERMAN QC for
Camp Fiorante Matthews Mogerman and
the Plaintiffs



JEFF ORENSTEIN for Consumer Law
Group and the Plaintiffs

CONFIDENTIAL

BANK OF MONTREAL

THE BANK OF NOVA SCOTIA

By: 
Name: Adrian Lang
Title: Head, Operations and Small Business Solutions

By: _____
Name: _____
Title: _____

CANADIAN IMPERIAL BANK OF
COMMERCE

ROYAL BANK OF CANADA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

THE TORONTO-DOMINION BANK

By: _____
Name: _____
Title: _____

CONFIDENTIAL

BANK OF MONTREAL

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA

By:  _____
Name: Anya Schnoor
Title: Executive Vice President

CANADIAN IMPERIAL BANK OF
COMMERCE

By: _____
Name:
Title:

ROYAL BANK OF CANADA

By: _____
Name:
Title:

THE TORONTO-DOMINION BANK

By: _____
Name:
Title:

CONFIDENTIAL

BANK OF MONTREAL

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA

By: _____
Name:
Title:

CANADIAN IMPERIAL BANK OF
COMMERCE

By:  _____
Name: Stephen Scholtz
Title: Senior Vice-President & General
Counsel (Canada)

ROYAL BANK OF CANADA

By: _____
Name:
Title:

THE TORONTO-DOMINION BANK

By: _____
Name:
Title:

CONFIDENTIAL

BANK OF MONTREAL

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA

By: _____
Name:
Title:

CANADIAN IMPERIAL BANK OF
COMMERCE

By: _____
Name:
Title:

ROYAL BANK OF CANADA

By:  _____
Name: Sean Amato-Gauci
Title: EVP, Cards, Payments & Banking

THE TORONTO-DOMINION BANK

By: _____
Name:
Title:

CONFIDENTIAL

BANK OF MONTREAL

By: _____
Name:
Title:

THE BANK OF NOVA SCOTIA

By: _____
Name:
Title:

CANADIAN IMPERIAL BANK OF
COMMERCE

By: _____
Name:
Title:

ROYAL BANK OF CANADA

By: _____
Name:
Title:

THE TORONTO-DOMINION BANK

By: *Katharine Boshart*
Name: Katy Boshart
Title: Senior Vice President, Canadian Credit Cards