



payments, to create a common fund to benefit the Settlement Class, and to separately pay certain costs of class notice and settlement administration.<sup>1</sup>

The Settlement has been filed with the Court, and Plaintiff has filed a for Preliminary Approval of Settlement and for Certification of the Settlement Class which Defendant does not oppose. Upon considering Plaintiff's motion, the Settlement and all exhibits thereto, the record in these proceedings, the representations, argument and recommendations of counsel, and the requirements of law, the Court finds, based on representations of counsel for both parties, that: (1) for settlement purposes only, the proposed Settlement Class meets the requirements of Pennsylvania Rules of Civil Procedure 1702, 1708 and 1709 and should be certified; (2) the person and entities identified below should be appointed class representative and Class Counsel; (3) the Settlement is the result of informed, good-faith, arms'-length negotiations between the Parties and their capable and experienced counsel, was reached with the assistance of an experienced, highly-qualified mediator, and is not the result of collusion; (4) the Settlement is within the range of reasonableness and should be preliminarily approved; (5) the proposed Notice Program and proposed forms of Notice satisfy Pennsylvania Rule of Civil Procedure 1712 and constitutional due process requirements, and are reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel's ability to request an award of attorneys' fees and expenses ("Fee Application") and request a Service Award for Plaintiff, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's Fee Application, and/or the request for a Service Award for Plaintiff; (6) good cause exists to schedule and conduct a

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<sup>1</sup> All capitalized terms in this Order have the same meaning as defined in the Settlement, unless otherwise defined herein.

Final Approval Hearing, pursuant to Pennsylvania Rule of Civil Procedure 1714, to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether to grant Class Counsel's Fee Application and request for a Service Award for Plaintiff; and (7) the other related matters pertinent to the preliminary approval of the Settlement should also be approved.

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

**Conditional Class Certification and Appointment of Class Representative and Class Counsel**

1. The Court finds, for settlement purposes only, that the factors delineated in Pennsylvania Rules of Civil Procedure 1702, 1708 and 1709 are present and that certification of the proposed Settlement Class is appropriate under Rule 1710. The Court, therefore, certifies the following Settlement Class:

All Northwest Savings Bank customers who had one or more Accounts maintained in Pennsylvania and who, during the period from May 7, 2006 through, and including, June 30, 2011 (the "Class Period"), incurred one or more Overdraft Fees as a result of Northwest Savings Bank's High to Low posting.

2. The Court preliminary concludes that, for the purposes of approving this Settlement only and for no other effect on the Action, should the proposed Settlement not ultimately be approved or should the Effective Date not occur, the proposed Settlement Class likely meets the requirements for certification under Pennsylvania Rules of Civil Procedure 1702, 1708 and 1709: (a) the proposed Settlement Class is ascertainable and so numerous that joinder of all members of the class is impracticable; (b) there are questions of law or fact common to the proposed Settlement Class; (c) the claims of Plaintiff are typical of the claims of the members of the proposed Settlement Class; (d) Plaintiff will fairly and adequately represent the interests of the members of the proposed Settlement Class; (e) common issues will likely predominate over individual issues; (f) Class Counsel are qualified to serve as counsel for

Plaintiff in her own capacity as well as her representative capacity for the proposed Settlement Class.

3. The Court appoints Ashley Toth as class representative for the proposed Settlement Class.

4. The Court appoints the following firms as Class Counsel:

CARPENTER LAW GROUP  
Todd D. Carpenter  
402 West Broadway, 29<sup>th</sup> Floor  
San Diego, CA 92101

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP  
Michael W. Sobol  
Roger N. Heller  
Nicole D.  
Sugnet

275 Battery Street, 29<sup>th</sup> Floor  
San Francisco, CA 94111

Preliminary Approval of the Settlement.

5. The Court preliminarily approves the Settlement, together with all exhibits thereto, as fair, reasonable, and adequate. The Court finds, based on representations of counsel for both parties, that the Settlement was reached in the absence of collusion, is the product of informed, good-faith, arms'-length negotiations between the Parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator, retired U.S. Magistrate Judge Kenneth J. Benson. The Court further finds that the Settlement, including the exhibits thereto, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of preliminary settlement approval; and (b) it is appropriate to effectuate notice to the Settlement

Class, as set forth below and in the Settlement, and schedule a Final Approval Hearing to assist the Court in determining whether to grant final approval to the Settlement and enter Final Judgment.

Approval of Notice and Notice Program and Direction to Effectuate Notice

6. The Court approves the form and content of Notice, substantially in the forms attached as Exhibits 1, 2, and 3 to the Settlement. The Court further finds that the Notice Program, described in section VIII of the Settlement, is the best practicable under the circumstances. The Notice Program is reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Actions, certification of the Settlement Class, the terms of the Settlement, Class Counsel's Fee Application and request for a Service Award for Plaintiff, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's Fee Application, and/or the request for a Service Award for Plaintiff. The Notice and Notice Program constitute sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Pennsylvania Rule of Civil Procedure 1712 and the Constitutional requirement of due process.

7. The Court directs that Gilardi & Co., LLC act as the Settlement Administrator.

8. The Settlement Administrator shall implement the Notice Program, as set forth below and in the Settlement, using substantially the forms of Notice attached as Exhibits 1, 2, and 3 to the Settlement and approved by this Order. Notice shall be provided to the Settlement Class Members pursuant to the Notice Program, as specified in section VIII of the Settlement and approved by this Order. The Notice Program shall include Mailed Notice, Published Notice, and Long-form Notice on the Settlement Website, as set forth in the Settlement and below.

*Mailed Notice Program*

9. The Settlement Administrator shall administer the Mailed Notice. Within 30 days from the date of this Preliminary Approval Order, Class Counsel will provide the data files (to the extent they are available) that identify the names and last known addresses of persons in the Settlement Class to the Settlement Administrator. Within 60 days from the date of this Preliminary Approval Order, the Settlement Administrator shall, to the extent necessary, run the addresses through the National Change of Address Database, and shall mail to all such persons in the Settlement Class a postcard containing the Mailed Notice (“Initial Mailed Notice”).

10. No later than 80 days from the date of this Preliminary Approval Order, the Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable and re-mail Notice to persons in the Settlement Class whose new addresses were identified through the trace (the “Notice Re-mailing Process”).

11. The Settlement Administrator shall provide Class Counsel and the Bank’s Counsel an affidavit that confirms that the Mailed Notice was completed in a timely manner. Class Counsel shall file such affidavit with the Court in conjunction with Plaintiff’s motion for Final Approval of the Settlement.

*Published Notice Program*

12. The Settlement Administrator shall administer the Published Notice, which shall be comprised exclusively of a one-time appropriate sized advertisement in the Pittsburgh Post-Gazette and Erie Times-News. The Published Notice shall be completed no later than 60 days after the date of this Preliminary Approval Order.

13. The Settlement Administrator shall provide Class Counsel and the Bank’s Counsel with one or more affidavits that confirm that Published Notice was given in accordance with this Order. Settlement Class Counsel shall file such affidavit(s) with the Court.

*Settlement Website and Toll-Free Settlement Line*

14. The Settlement Administrator shall establish a Settlement Website as a means for persons in the Settlement Class to obtain notice of, and information about, the Settlement. The Settlement Website shall be established as soon as practicable following Preliminary Approval, but no later than before commencement of the Notice Program. The Settlement Website shall include hyperlinks to the Settlement, the Long-form Notice, this Order, and such other documents as Class Counsel and the Bank's Counsel agree to post or that the Court orders posted on the Settlement Website. These documents shall remain on the Settlement Website at least until Final Approval.

15. The Settlement Administrator shall establish and maintain an automated toll-free telephone line for persons in the Settlement Class to call with Settlement-related inquiries, and answer the questions of persons in the Settlement Class who call with or otherwise communicate such inquiries (except that the Settlement Administrator shall not give, and shall not be expected to give, legal advice).

16. The Settlement Administrator is directed to perform all substantive responsibilities with respect to effectuating the Notice Program, as set forth in the Settlement.

Final Approval Hearing, Opt-Outs, and Objections

17. The Court directs that a Final Approval Hearing shall be scheduled for April 7, 2015, at 11:00 a.m., to assist the Court in determining whether to grant final approval of the Settlement and enter Final Judgment, and whether Class Counsel's Fee Application and request for a Service Award for Plaintiff should be granted.

18. The Court directs that any person within the Settlement Class definition who wishes to be excluded from the Settlement Class may exercise the right to opt-out of the

Settlement Class by following the opt-out procedures set forth in the Long-form Notice at any time before the Opt-Out Deadline. To be valid and timely, opt-out requests must be postmarked on or before the Opt-Out Deadline and mailed to the address indicated in the Long-form Notice, and must include:

- (a) the full name, telephone number and address of the person seeking to be excluded from the Settlement Class;
- (b) a statement that such person wishes to be excluded from the Northwest Savings Bank Settlement in *Toth v. Northwest Savings Bank*; and
- (c) the signature of the person seeking to be excluded from the Settlement Class.

The Opt-Out Deadline shall be 105 days after the date of this Preliminary Approval Order (i.e., 45 days after the Notice Date), and shall be specified in the Mailed Notice, Published Notice, and Long-form Notice. All persons within the Settlement Class definition who do not timely and validly opt-out of the Settlement Class shall be bound by the terms of the Settlement.

19. The Court further directs that any person in the Settlement Class who does not timely and validly opt-out of the Settlement Class may object to the Settlement, Class Counsel's Fee Application and/or the request for a Service Award for Plaintiff. Objections to the Settlement and/or to the Fee Application and/or the request for a Service Award must be mailed to the Clerk of the Court, Settlement Administrator, Class Counsel and the Bank's Counsel. For an objection to be considered by the Court, the objection must be postmarked no later than the Objection Deadline, which shall be 105 days after the date of this Preliminary Approval Order (i.e., 45 days



after the Notice Date), as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- (a) The name of the case, *Toth v. Northwest Savings Bank*;
- (b) the objector's full name, address and telephone number;
- (c) an explanation of the basis upon which the objector claims to be a

Settlement Class Member;

- (d) a summary of the grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel; and

- (e) if the objector is represented by counsel, the identity of the counsel shall be disclosed.

#### Further Papers In Support Of Settlement and Fee Application

20. Plaintiff shall file her Motion for Final Approval of the Settlement, and Class Counsel shall file their Fee Application and request for a Service Award for Plaintiff, no later than twenty (20) days prior to the Final Approval Hearing. If the Bank chooses to file any papers in support of the Settlement, it also must do so no later than twenty (20) days prior to the Final Approval Hearing.

#### Effect of Failure to Approve the Settlement

21. In the event the Settlement is not approved by the Court, the Effective Date fails to occur, or for any reason the parties fail to obtain a final judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the following shall apply:

(a) All orders and findings entered in connection with the Settlement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

(b) Nothing contained in this Order is, or may be construed as, any admission or concession by or against the Bank or Plaintiff on any point of fact or law; and

(c) The certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action based on the Settlement and/or certification of the Settlement Class. The Bank shall not be precluded from challenging class certification in further proceedings in the Action or in any other action. No agreements made by or entered into by the Bank in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other action.

#### Stay/Bar Of Other Proceedings

22. All proceedings in this Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiff, all persons in the Settlement Class, and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

23. Based on the foregoing, the Court sets the following schedule for the Final Approval Hearing and the actions which must precede it:

(a) The Settlement Administrator shall establish the Settlement Website and toll-free telephone line as soon as practicable following Preliminary Approval and prior to the commencement of the Notice Program;

(b) The Settlement Administrator shall complete the Mailed Notice Program and the Notice Program (which includes both the Mailed Notice Program and the Published Notice Program) no later than 60 days from the date of this Order; [February 4, 2015];

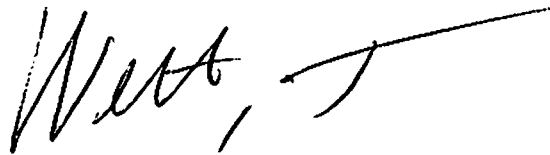
(c) Class Counsel's Fee Application and the request for a Service Award shall be filed no later than 75 days from the date of this Order [February 19, 2015]; Settlement Class Members must file any objections to the Settlement no later than 105 days from the date of this Order, [March 19, 2015];

(d) Settlement Class Members must file requests for exclusion from the Settlement by no later than 105 days from the date of this Order [March 19, 2015];

(e) Plaintiff shall file her Motion for Final Approval of the Settlement no later than 20 days before the Final Approval Hearing [March 18, 2015]; and

(f) The Final Approval Hearing will be held on April 7, 2015 at, 11:00 a.m. in 815 City-County Building, Court of Common Pleas of Allegheny County, located at 414 Grant Street, Pittsburgh, Pennsylvania 15219.

Dated: December 4, 2014



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Hon. R. Stanton Wettick

cc: All Counsel of Record