

## **SETTLEMENT AGREEMENT AND RELEASES**

This Settlement Agreement and Releases (“Settlement” or “Agreement”)<sup>1</sup>, dated as of August \_\_, 2022, is entered into by Plaintiffs, Pedro Soto Meléndez (“Plaintiff Soto”), Sandra Janine Orama Caraballo (“Plaintiff Orama”), and Miguel Quiñones Acosta (“Plaintiff Quiñones”), individually and on behalf of the Settlement Class, and Defendant Banco Popular de Puerto Rico (“BPPR”). The Parties hereby agree to the following terms in full settlement of the actions styled *Soto v. Banco Popular de Puerto Rico*, No. 3:20-cv-01057 (D.P.R.) (the “Soto Action”) and *Orama Caraballo et al. v. Banco Popular de Puerto Rico*, No. 3:22-cv-01107 (D.P.R.) (the “Orama Action”) (hereinafter, referred to jointly as the “Actions”), subject to Final Approval by the United States District Court for the District of Puerto Rico (the “Court”).

### **I. Procedural History and Recitals**

1. Plaintiff Soto filed a putative class action Complaint in the Soto Action on January 31, 2020, alleging claims for breach of contract, breach of the implied covenant of good faith and fair dealing and/or unjust enrichment, on his behalf and on behalf of persons similarly situated.

2. The claims are based on BPPR’s standardized checking account agreement drafted by BPPR. Plaintiff Soto alleged that in breach of certain contractual promises in BPPR’s checking account agreement, BPPR assessed more than one non-sufficient fund (“NSF”) fee or both NSF and overdraft (“OD”) fees on the same “item” resubmitted for payment in connection with an ACH transaction.

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<sup>1</sup> All capitalized terms herein have the meanings ascribed to them in Section II or various places in the Agreement.

3. BPPR moved to dismiss the complaint on April 10, 2020. The Court denied the Motion to Dismiss in part on March 31, 2021. BPPR moved for partial reconsideration of that order, and the Court denied that motion on March 7, 2022.

4. Plaintiff Soto served extensive written discovery after the motion to dismiss was first denied. Discovery was ongoing at the time the Parties agreed to a mediation in this case.

5. Defendant produced, on a confidential basis and subject to the Stipulated Confidentiality Order issued at Docket No. 88 in the Soto Action, documents and a large quantity of transactional data regarding NSF and OD fees, which Plaintiff's expert analyzed.

6. Plaintiff Soto took a Rule 30(b)(6) corporate representative deposition and several more depositions were expected at the time of the mediation.

7. Plaintiffs Orama and Quiñones filed a separate complaint on March 2, 2022 in the Orama Action, also alleging claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and/or unjust enrichment. Like Plaintiff Soto's complaint, Orama's and Quiñones' claims are based on BPPR's standardized checking account agreement drafted by BPPR. Plaintiffs alleged that, in breach of certain contractual promises in BPPR's checking account agreement, BPPR assessed more than one NSF fee or both a NSF and an OD fee on "items" resubmitted for payment in connection with an ACH and/or a paper check transaction.

8. On April 5, 2022, the Parties participated in a full-day mediation session with Hon. Jose Fusté (Ret.), in San Juan, Puerto Rico. The Parties reached an agreement in principle and signed a Term Sheet that day.

9. On April 28, 2022, the Parties filed a Notice of Settlement, confirming their agreement in principle and requesting that the Court stay all deadlines in the Actions.

10. The Parties now agree to settle the Actions in their entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties. Defendant has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Actions, and to avoid the burden, risk, uncertainty, expense, and disruption to its business operations associated with further litigation. Defendant does not in any way acknowledge, admit to or concede any of the allegations made in the Complaints, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Actions. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to liquidate and recover on the claims asserted in the Complaints, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the Complaints lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class Members.

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

## **AGREEMENT**

### **1. DEFINITIONS**

**1.1.** “Account” means any consumer checking account available to customers of BPPR in Puerto Rico and the U.S. Virgin Islands during the Class Period.

**1.2.** “Accountholder” means any Person who has or had any interest, whether legal or equitable, in an Account during the Class Period. It includes Current Accountholders and Past Accountholders.

**1.3.** “Actions” refers jointly to the Soto Action and to the Orama Action.

**1.4.** “Attorneys’ Fees and Costs” means the attorneys’ fees and costs related to this Settlement Agreement that Class Counsel intend to seek under Section 10 of this Settlement Agreement, which will be paid out of the Settlement Amount.

**1.5.** “BPPR” or “Defendant” means Defendant Banco Popular de Puerto Rico.

**1.6.** “BPPR’s Counsel” or “Defendant’s Counsel” means counsel retained for the defense of each of the Actions, including the law firms of Weiner Brodsky Kider PC and Pietrantonio Méndez & Alvarez LLC.

**1.7.** “CAFA Notice” means notice of this proposed settlement to the appropriate Federal Official and appropriate State Official, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

**1.8.** “Complaint” or “Complaints” means the operative Complaints filed in the Soto and Orama Actions.

**1.9.** “Class Counsel” means Jeffrey Kaniel of KanielGold PLLC, Andrew Shamis of Shamis & Gentile, and Scott Edelsberg of Edelsberg, P.A.

**1.10.** “Class Fees” means the NSF Fees and/or OD Fees paid and not refunded in the Accounts during the Class Period in connection with: (a) an ACH entry that was submitted by a merchant or a merchant’s bank with a “RETRY” payment indicator after the initial request for payment was declined by BPPR for insufficient funds resulting in a NSF fee; (b) an ACH transaction in the same amount and from the same merchant as a previous ACH transaction that

was returned for non-sufficient funds and charged an NSF Fee within the preceding 10 calendar days; or (c) a paper check that was resubmitted for payment after the initial request for payment was returned by BPPR for insufficient funds resulting in a NSF fee.

**1.11.** “Class List” means the list of all Settlement Class members and their current or last known postal address and email address (if available), as they appear on BPPR’s existing records, to be provided by BPPR to the Settlement Administrator for the purpose of disseminating Notice, as updated by the Settlement Administrator.

**1.12.** “Class Notice” means the notice of this Settlement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement and approved by the Court, consistent with the requirements of Due Process and Rule 23, and substantially in the form of *Exhibit 1* (Email Notice and Postcard Notice), and *Exhibit 2* (Long Form Notice), attached hereto.

**1.13.** “Class Period” means the time period beginning on February 1, 2016 and ending on April 1, 2022.

**1.14.** “Class Representatives” means Plaintiffs Soto, Orama, and Quiñones.

**1.15.** “Court” means the United States District Court for the District of Puerto Rico.

**1.16.** “Current Accountholder” means a Settlement Class Member who is an Accountholder of Defendant as of the date that Class Notice is sent or a Settlement Class Member as of the date that the Net Settlement Fund is distributed pursuant to this Agreement.

**1.17.** “Effective Date” means the next business day following the last date on which a notice of appeal directed to the entry of the Final Approval Order and Final Judgment and Order of Dismissal could have been timely filed, despite the fact that no notice of appeal was filed; or, if a notice of appeal is filed, it shall mean the next business day after the Final Approval Order and

Final Judgment and Order of Dismissal is affirmed, all appeals are dismissed, and no further appeal is permitted.

**1.18.** “Email Notice” means the short form of notice that shall be sent by email to Current Accountholders who have agreed to receive communications from BPPR by email, substantially in the form attached as *Exhibit 1*.

**1.19.** “Fee and Cost Award” means the amount of Attorneys’ Fees and Costs, if any, awarded by the Court to Class Counsel pursuant to a motion made under Section 10 herein, which will be paid out of the Settlement Amount.

**1.20.** “Final Approval” means the approval of this Settlement by the Court at or following the Final Fairness Hearing, and entry of the Final Approval Order on the Court’s docket in each of the Actions.

**1.21.** “Final Approval Order” means a final order and judgment in which the Court gives Final Approval to the Settlement and dismisses with prejudice the Class Representatives’ and Settlement Class Members’ claims and enters a judgment according to the terms set forth herein in each of the Actions.

**1.22.** “Final Fairness Hearing” or “Final Approval Hearing” means the hearing at which the Court will consider and finally decide whether to approve this Settlement, enter the Final Approval Order, and make other such rulings contemplated by this Agreement in each of the Actions.

**1.23.** “Final Judgment and Order of Dismissal” means a final judgment that dismisses the Actions with prejudice following Final Approval of the Settlement pursuant to Fed. R. Civ. P. 58.

**1.24.** “Long Form Notice” means the form of notice that shall be posted on the Settlement Website and available to Settlement Class members by mail on request made to the Settlement Administrator, in substantially the form attached hereto as *Exhibit 2*.

**1.25.** “Motion for Final Approval” means the motion seeking Final Approval, the Fee and Cost Award, and Service Award.

**1.26.** “Motion for Preliminary Approval” means the motion seeking Preliminary Approval.

**1.27.** “Net Settlement Fund” means the Settlement Fund, minus any Court-approved Fee and Cost Award awarded to Class Counsel, any Service Award, and the Settlement Administration Costs.

**1.28.** “Notice Plan” means the plan for sending Class Notice to Settlement Class members, as set forth in Section 5.

**1.29.** “NSF Fee” means non-sufficient funds fee assessed when a transaction is returned for non-sufficient funds.

**1.30.** “OD Fee” means an overdraft fee that is assessed when a transaction is paid against non-sufficient funds.

**1.31.** “Opt-Out Deadline” or “Objection Deadline” means 30 days before the Final Approval Hearing unless a different date is set by the Court.

**1.32.** “Party” means each of the Plaintiffs and Defendant, and “Parties” means all Plaintiffs and Defendant, collectively.

**1.33.** “Past Accountholder” means a Settlement Class member who is not a Current Accountholder of Defendant as of the date that Class Notice is sent or as of the date the Net Settlement Fund is distributed pursuant to the Agreement.

**1.34.** “Person” means a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

**1.35.** “Plaintiffs’ Counsel” refers to Jeffrey Kalief of KaliefGold PLLC, Andrew Shamis of Shamis & Gentile, Scott Edelsberg of Edelsberg, P.A., and David Indiano of Indiano Williams, P.S.C.

**1.36.** “Postcard Notice” means the short form of notice that shall be sent by mail to Current Accountholders who have not agreed to receive notices from BPPR by email, to Past Accountholders, or to those whom the Settlement Administrator is unable to send Email Notice using the email address provided by the Defendant, substantially in the form attached as *Exhibit I*.

**1.37.** “Preliminary Approval” means preliminary approval of the Settlement Agreement by the Court, conditional certification of the Settlement Class, and approval of the method and content of the Class Notice to the Settlement Class Members.

**1.38.** “Preliminary Approval Order” means the Order agreed upon by the Parties and attached to the Motion for Preliminary Approval.

**1.39.** “Released Claims” means any individual, class, representative, group or collective claim, liability, right, demand, suit, matter, obligation, damage, loss, action or cause of action, of every kind and description whether arising under federal, state, common or foreign law, that a Releasing Party, has or may have, asserted in the Actions, or that could have asserted or could assert, including assigned claims, whether known or Unknown Claims, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, accrued or un-accrued, latent or patent, contingent or non-contingent, liquidated or un-liquidated, at law or in equity, matured or un-matured, apparent or unapparent, arising out of or relating in any way to the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or



referred to in the Actions or with regards to the Class Fees, in all cases including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses.

**1.40.** “Released Parties” refers to BPPR and each of its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each Person or entity acting or purporting to act for them or on their behalf.

**1.41.** “Releasing Parties” means the Class Representatives, Settlement Class Members, and any Person claiming by or through the Class Representatives and each Settlement Class Member, including their respective past, present and future heirs, parents, affiliates, divisions, departments, trustees, shareholders, officers, directors, employees, administrators, managers, children, spouses, beneficiaries, predecessors, successors, conservators, executors, estates, administrators, assigns, assignees, attorneys, agents, consultants, and any other representatives of any of these Persons and entities or Persons purporting to act for them or on their behalf.

**1.42.** “Service Award” means the total of any monetary award, if any, ordered to be paid to the Class Representatives, to be paid out of the Settlement Amount, as set forth in Section 11 herein.

**1.43.** “Settlement Administrator” means the qualified third-party administrator and agent agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval Order to administer the Settlement and Notice Plan. The Parties agree to recommend that the Court appoint Kroll as the Settlement Administrator.

**1.44.** “Settlement Administration Costs” means the costs and expenses reasonably and actually incurred in obtaining the services of the Settlement Administrator to facilitate the Settlement, including but not limited to printing and mailing the Class Notice, and mailing settlement checks to Settlement Class Members, and related services.

**1.45.** “Settlement Agreement” or “Agreement” or “Settlement” means this Settlement Agreement and Release.

**1.46.** “Settlement Amount” or “Settlement Fund” means the amount of \$5,500,000.00, which BPPR will be obligated to pay on behalf of the Settlement Class as set forth in Section 6 and only if all other contingencies outlined in Section 6 are met.

**1.47.** “Settlement Class” means the class of Accountholders charged Class Fees as described more specifically in Paragraph 3.1 below.

**1.48.** “Settlement Class Member” means any Person who falls within the definition of the Settlement Class, as further set forth below, and who does not submit a valid request to opt-out from the Settlement Class and who is entitled to benefits of the Settlement, including a Settlement Class Member Payment.

**1.49.** “Settlement Class Member Payment” means the settlement payment amount attributable to each Settlement Class Member to be computed by the Settlement Administrator according to the payment allocation described below.

**1.50.** “Settlement Website” means the website to be created, launched, and maintained by the Settlement Administrator which shall provide access to case documents including the Notice, the operative complaint, and other relevant documents. The Settlement Website shall remain accessible until at least 30 days after the Effective Date.

**1.51.** “Successful Opt-Out(s)” means the Person(s) who timely and validly exercised his, her, or their right to be excluded from the Settlement Class by the Opt-out Deadline.

**1.52.** “Unknown Claims” means any claim arising out of or relating in any way to the allegations, transactions, facts, matters, occurrences, representations or omissions involved, set forth, or referred to in the Actions, including the Class Fees, that a Releasing Party does not know or suspect exists in their favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Settlement. The Settlement is intended to extinguish all Released Claims, and, consistent with such intentions, the Releasing Parties shall waive their rights to the extent permitted by state law, federal law, foreign law, or principle of civil or common law, which may have the effect of limiting the release set forth above. The Class Representatives, in their individual capacities only, expressly waive and release any and all provisions, rights, and benefits conferred by California Civil Code Section 1542, and by any law of any other jurisdiction, or principle of civil or common law, that is similar, comparable, or equivalent in effect to California Civil Code Section 1542 with respect to the release of claims. California Civil Code Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

In making this waiver of rights, the Class Representatives, on behalf of themselves, acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, in their individual capacities, to fully, finally and forever settle and release any and all claims

known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts for any potential claims arising out of or related to the Released Claims.

**1.53.** As used herein, the plural of any defined term includes the singular thereof and *vice versa*, except where the context requires otherwise. All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal holiday, state or federal, the deadline or date shall be extended to the next day that is not a weekend day or legal holiday.

**1.54.** Other terms that are defined in the text of this Settlement Agreement shall have the meaning given to those terms in the text. It is the intent of the Parties in connection with all documents related to the Settlement that defined terms as used in other documents shall have the meaning given to them in this Settlement Agreement.

## **2. SETTLEMENT CONSIDERATION**

**2.1.** BPPR shall pay the Settlement Amount in accordance with Paragraph 6.

**2.2.** For a period of at least five (5) years, BPPR will agree to the cessation of the assessment of NSF Fees on ACH entries labeled by the merchant as a “RETRY” payment, to be implemented within 180 days from the Effective Date. The Parties agree to discuss in good faith a way to determine the estimated value of this business practice change.

**2.3.** As a result of this litigation, BPPR is updating its accountholder disclosures to provide additional clarity with respect to overdraft fees and insufficient funds fees.

## **3. SETTLEMENT CLASS**

**3.1. Settlement Class Definition.** In order to effectuate the Settlement, the Parties agree and consent, for settlement purposes only, that the requirements of Fed. R. Civ. P. 23(a) and Fed.

R. Civ. P. 23(b)(3) are satisfied, and subject to Court approval, the following Settlement Class shall be certified:

All holders of Accounts who during the Class Period paid and were not refunded an NSF and/or OD Fee in connection with an ACH or check transaction that was presented for payment more than once, in the following instances:

- (1) for ACH transactions, if the ACH transaction was resubmitted by the merchant or the merchant's bank with a "RETRY" payment indicator after the initial request for payment was declined and it was either:
  - a) returned by BPPR again for insufficient funds resulting in a NSF fee; or,
  - b) paid by BPPR against insufficient funds resulting in an OD fee.
- (2) for ACH transactions, if the ACH transaction is preceded by a returned ACH entry submitted by the same merchant in the same amount within the last ten calendar days, even if the merchant did not use the "RETRY" payment indicator.
- (3) for paper check transactions, if the check was resubmitted for payment after the initial request for payment was declined and it was either:
  - a) returned by BPPR again for insufficient funds resulting in a NSF fee; or
  - b) paid by BPPR against insufficient funds resulting in an OD fee.

Excluded from the Settlement Class is Defendant, its parents, subsidiaries, affiliates, officers and directors, all Settlement Class members who make a timely election to opt-out, all judges assigned to this litigation and their immediate family members, and holders of accounts at a BPPR branch located in the British Virgin Islands who do not also have an account at a BPPR branch located in the United States.

**3.2. Certification for Settlement Purposes.** The Parties' agreement as to certification of the Settlement Class is solely for purposes of effectuating a settlement and for no other purpose. BPPR retains all of its objections, arguments, and defenses with respect to class certification, and reserves all rights to contest class certification if the Settlement set forth in this Settlement Agreement does not receive the Court's Final Approval, if the Court's approval is reversed or

vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any class or certification of any class for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement does not receive the Court's Final Approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void ab initio, and this Settlement Agreement or any other Settlement-related statement may not be cited regarding certification of the Settlement Class, or in support of an argument for certifying a class for any purpose related to this or any other proceeding.

#### **4. MOTION FOR PRELIMINARY APPROVAL**

**4.1. Filing of Motion for Preliminary Approval.** Prior to filing for preliminary approval of the Settlement Agreement, the Parties will jointly request the Court to consolidate the Actions into the Soto Action for settlement approval purposes only. As soon as reasonably practicable after the Court has granted the consolidation request, Class Counsel shall file this Settlement Agreement with the Court with a Motion for Preliminary Approval, which will seek to: (i) certify the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3); (ii) preliminarily approve the Settlement set forth in this Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23; (iii) appoint Plaintiff Soto, Plaintiff Orama, and Plaintiff Quiñones as Class Representatives of the Settlement Class; (iv) appoint Plaintiffs' counsel as Class Counsel; (v) approve the proposed Notice Plan and authorize the dissemination of Notice as set forth in Section 5; and (vi) approve of and appoint the Settlement Administrator.

**4.2. Preliminary Approval Order.** Class Counsel agrees that the proposed Preliminary Approval Order to be filed together with the Motion for Preliminary Approval in the Actions will be in substantially the same form as *Exhibit 3*. The Proposed Preliminary Approval Order shall (i) preliminarily approve the Settlement memorialized in this Agreement as fair, reasonable, and adequate, including the material terms of this Settlement; (ii) set a date for a Final Fairness Hearing; (iii) state that if Final Approval of the Settlement is not obtained, the Settlement is null and void, and the Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses; (iv) approve the proposed Class Notice in the forms attached hereto as *Exhibits 1 and 2*, and authorize their dissemination to the Settlement Class; (v) set deadlines consistent with this Settlement Agreement for emailing and/or mailing of the Class Notice, the filing of objections, the filing of motions, and the filing of papers in connection with the Final Fairness Hearing; (vi) appoint and approve the Class Representatives, Class Counsel, and the Settlement Administrator; (vii) set deadlines by which Plaintiffs and Class Counsel shall file their Motion for Final Approval, which shall be at least 45 days prior to the Final Fairness Hearing; (viii) state that any appeal of the Court's order on the motion for the Fee and Cost Award or the motion for a Service Award shall have no effect on the Court's Final Approval of the Settlement; and (ix) prohibit and preliminarily enjoin the Class Representatives, all Settlement Class Members (excepting those who are Successful Opt-Outs), and Class Counsel from commencing, prosecuting, or assisting in any lawsuit against the Released Parties that asserts or purports to assert matters within the scope of the Released Claims during the time between entry of the Preliminary Approval Order and final determination by the Court regarding whether to grant Final Approval of the Settlement. BPPR agrees that it will not oppose the entry of the Preliminary Approval Order, provided it is substantially in the form of *Exhibit 3* hereto and consistent with the material terms of the

Settlement. BPPR's agreement that it will not oppose the entry of the Preliminary Approval Order shall not be an admission or concession by it that a class was appropriate in the Actions (other than for purposes of this Settlement) or would be appropriate in any other matter, and/or that any relief was appropriate in the Actions, or would be appropriate in any other matter.

**4.3. Filing of Motion for Final Approval.** If Preliminary Approval of the Settlement is entered by the Court in the Actions, the Class Representatives shall seek, and BPPR shall not oppose, entry of a Final Approval Order and Final Judgment and Order of Dismissal that: (i) certifies the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purpose of the settlement; (ii) approves finally the Settlement set forth in this Settlement and its terms as being a fair, reasonable, and adequate settlement as to Settlement Class Members within the meaning of Fed. R. Civ. P. 23 and directing its consummation according to its terms; (iii) finds that the Notice Plan constitute due, adequate, and sufficient notice of the Settlement set forth in this Settlement Agreement and the Final Fairness Hearing and meets the requirements of Due Process and the Federal Rules of Civil Procedure; (iv) directs that, as to the Released Parties, the Actions shall be dismissed with prejudice and, except as provided for in this Settlement Agreement, without award of costs; (v) orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims against any Released Party; (vi) retains with the Court exclusive jurisdiction over this Settlement Agreement, including the administration and consummation of the Settlement; and (vii) determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to BPPR shall be final and entered forthwith.



## 5. NOTICE PLAN

**5.1. Preparation and Production of Settlement Class List.** BPPR or its agent shall compile the Class List, which shall consist of a list of all Settlement Class Members and provide the Class List to the Settlement Administrator within 21 days after the Preliminary Approval Order. The Class List shall include the total amount of Class Fees for each Settlement Class Member, whether the Settlement Class Member is a Current Accountholder with BPPR, as well as the current or last known postal addresses and email addresses (if available) in BPPR's possession for the Settlement Class Members. The Settlement Administrator shall use this information for the sole purpose of identifying the addresses for the Settlement Class Members, and shall promptly and securely destroy the information after it is no longer needed for that purpose. Within 21 calendar days after the Preliminary Approval Order, BPPR will also provide an anonymized version of the Class List to Class Counsel for Class Counsel's validation purposes, which will not include any personal identifying information related to Class Members.

**5.2. Dissemination of Class Notice.** For purposes of providing Court-approved class notices and establishing that the best practicable notice has been given, Class Notice will be provided as follows:

**5.2.1.** For those Settlement Class Members who are Current Accountholders of BPPR and have agreed to receive electronic communications from BPPR, the Settlement Administrator shall send the Email Notice to each such Settlement Class Member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Settlement Administrator shall send a Postcard Notice in the manner described below. The Email Notice shall inform Settlement Class Members how they may request a copy of the Long Form Notice.

**5.2.2.** For those Settlement Class Members who are Current Accountholders of BPPR who have not agreed to receive communications electronically, or who are Past Accountholders, the Postcard Notice shall be mailed by first class United States mail to the last known mailing address. The Postcard Notice shall inform Settlement Class Members how they may request a copy of the Long Form Notice.

**5.2.3.** The Settlement Administrator may obtain updates, if any, to the addresses contained therein to any of the following using information reasonably available from the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“Postal Service”), or such additional efforts as the Settlement Administrator reasonably believes are appropriate to identify updated addresses, if any, for each Settlement Class Member and/or as the Court may direct. Any resulting updates shall be made to the Class List.

**5.2.4.** Within 10 days after the Class List is finalized as set forth in Paragraph 5.1, the Settlement Administrator shall begin the process of sending the Class Notice(s) to each Settlement Class Member using the Class List, and shall complete that process as soon as is practicable. The Settlement Administrator shall format the Class Notice(s) and otherwise administer the Notice Plan in a reasonable manner to minimize costs.

**5.2.5.** For up to 45 days following the last date on which the Settlement Administrator mailed Class Notice under this Section 5, if a Class Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Class Notice immediately to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. For any Class Notice that is returned as undeliverable without a forwarding address, the Settlement Administrator will use commercially reasonable efforts to obtain updated addresses during the 45

days following the date the last Class Notice was mailed. Other than as set forth above, BPPR and the Settlement Administrator shall have no other obligation to re-mail Class Notice.

**5.2.6.** In support of the Motion for Final Approval, the Settlement Administrator shall prepare a declaration describing what it did to comply with the Notice Plan, as well as providing its opinion that the Notice Plan satisfied the requirements of Due Process.

**5.2.7.** Neither the Parties nor the Settlement Administrator shall have any further obligation to send notice of the Settlement to Settlement Class Members once these Class Notice provisions have been complied with.

**5.3. Settlement Website.**

**5.3.1.** The Settlement Administrator shall establish a website to assist in facilitating notice to the Settlement Class Members. This Settlement Website shall be accessible no later than 7 days prior to the Class Notice mailing described above. The Settlement Website shall set forth the following information: (i) the Complaint; (ii) the full text of this Agreement; (iii) the Long Form Notice; (iii) the Motion for Preliminary Approval and the Preliminary Approval Order; (iv) the method for opting-out of the Settlement; (v) contact information for the Settlement Administrator and Class Counsel, (vi) Motion for Final Approval and the Final Approval Order (once filed); (vii) if the Settlement is terminated, a notice of such termination, which language shall be approved by the Parties; and (viii) such other document(s) as the Parties or the Court determine to place on the Settlement Website.

**5.3.2.** The Settlement Website shall be dismantled 30 days after the completion of the distribution of remaining funds in accordance with Paragraph 6.7 or, if the Settlement is terminated, 30 days after such termination.

**5.4. CAFA Notice.** BPPR shall send CAFA Notice to the appropriate Federal Official and appropriate State Official in accordance with 28 U.S.C. § 1715(a) no later than 10 days after this Agreement is filed with the Court in the Actions. BPPR shall file with the Court certification of the date on which the CAFA Notice was served.

## **6. PAYMENT OF THE SETTLEMENT AMOUNT**

**6.1. Payments to Settlement Administrator.** Within 5 days following the completion of the Class List, the Settlement Administrator shall provide an estimate of the Settlement Administration Costs to BPPR and Class Counsel. BPPR will pay all Settlement Administration Costs within 30 days following its receipt of an invoice from the Settlement Administrator, but not until BPPR has received a properly completed W-9 Form from the Settlement Administrator and subject to any and all applicable tax withholdings or treatment. All Settlement Administration Costs shall be payable out of the Settlement Amount. The Settlement Amount represents the total extent of BPPR's monetary obligations under this Settlement Agreement and includes all sums to be paid under this Settlement as the consideration to eligible Settlement Class Members, including a Service Award, if any, the Fee and Cost Award, if any, and any all Settlement Administration Costs.

**6.2. Escrow Account.** Within 30 days after the date of entry of the Preliminary Approval Order, the Settlement Administrator shall establish and BPPR shall fund an escrow account with funds sufficient for the payment of the Settlement Amount, less any funds previously provided to the Settlement Administrator for the Settlement Administration Costs, as set forth in Paragraph 6.1. BPPR shall have the right to impose any reasonable terms and conditions on the operation and maintenance of the fund, and of any funds that it pays in connection with the Settlement that it deems appropriate, including ensuring compliance with any and all applicable state and/or

federal tax laws, and taking advantage of the Qualified Settlement Fund (“QSF”) provisions of the tax code or to protect the moneys from intentional or unintentional diversion, expenditure, forfeiture, escheat, or other dispersion that is inconsistent with the express terms of the Settlement. In the event that BPPR desires to have the Settlement Administrator enter into an agreement or undertaking to take advantage of the QSF provisions of the tax code or to protect the moneys in accordance with this paragraph, or to obtain any order from the Court in connection with this paragraph, the Class Representatives agree not to object to such requested agreement or order other than on the grounds that the terms or relief sought, in whole or in part, are inconsistent with the express terms of the Settlement. BPPR shall pay no portion of the Settlement Amount until it has received a properly completed W-9 Form from the Settlement Administrator.

**6.3. Application of Settlement Amount.** The Settlement Amount shall be applied as follows: to pay all Settlement Administration Costs; to pay any other Court-approved fees and expenses; to distribute the Net Settlement Fund to Settlement Class Members; to pay the Fee and Cost Award; and to pay the Service Award.

**6.4. No Other Payments from BPPR.** As set forth above, BPPR shall be responsible for paying the total Settlement Amount. BPPR shall have no responsibility for any other costs, including, as further detailed in this Settlement Agreement, any Attorneys’ Fees and Costs, including any taxes or tax-related costs relating to the Settlement Amount, but all such fees, expenses, and costs shall be paid out of the Settlement Amount as approved by the Court.

**6.5. Interest on Settlement Amount.** Any interest earned on the Settlement Amount, once it has been delivered to the Settlement Administrator, shall be for the benefit of the Settlement Class, unless the Settlement is terminated.

## **6.6. Use and Disbursal of Settlement Amount**

**6.6.1. Purpose and Use.** The Settlement Amount shall be used only in the manner and for the purposes set forth in this Settlement. No portion of the Settlement Amount shall be disbursed except as expressly set forth herein. The Settlement Amount shall be used only for payments to Settlement Class Members, Settlement Administration Costs, Attorneys' Fees and Costs (described in Section 10), and the Service Award (described in Section 11).

### **6.6.2. Settlement Class Member Payments.**

**6.6.2.1.** Within 14 days after the Effective Date, BPPR shall determine whether the Class List needs to be updated with respect to which Settlement Class Members are Current Accountholders with BPPR and if necessary, will provide an updated Class List to the Settlement Administrator. The Settlement Administrator will use the Class List to determine which Settlement Class Members are to receive their Settlement Class Member Payment via a credit to a BPPR Account.

**6.6.2.2.** Within 28 days of the Effective Date, the Settlement Administrator shall (i) provide to Class Counsel and to BPPR's Counsel the sum total of all Settlement Class Member Payments for Settlement Class Members, including the breakdown of Settlement Class Members who are Current Accountholders that will receive their Settlement Class Member Payments in the form of a credit to a Current Accountholder BPPR account ("Credit Settlement Class Member Payment Amount") and Settlement Class Members who are Past Accountholders that will receive their Settlement Class Member Payment in the form of a check; (ii) provide to BPPR the Class List with the applicable Credit Settlement Class Member Payment Amount owed to each Settlement Class Member; and (iii) transmit to BPPR the total Credit Settlement Class Member

Payment Amount for deposit by BPPR into Current Accountholder Settlement Class Members' BPPR accounts.

**6.6.2.3.** Within 60 days after the Effective Date, contingent upon receipt of the funds for same from the Settlement Administrator, BPPR shall: (i) directly deposit the Credit Settlement Class Member Payment Amount to each Settlement Class Member who is a Current Accountholder with BPPR as of the Effective Date, as further described in Section 6.6.2.6 regarding jointly held accounts, into a Settlement Class Member's BPPR account; and (2) send payment notices to primary Current Accountholders that receive the direct deposit of the Credit Settlement Class Member Payment including the appropriate release text identified in Section 7.3.

**6.6.2.4.** Within 60 days after the Effective Date, the Settlement Administrator shall mail payment notices and Settlement Class Member Payments, in the form of checks, as determined in the payment allocation, for Settlement Class Members described herein who are Past Accountholders as of the Effective Date. Checks and payment notices shall also be issued to Settlement Class Members for whom BPPR was unable to complete an account credit per the process described in Section 6.6.2.3, above. The Settlement checks and payment notices shall include the appropriate release text identified in Section 7.3.

**6.6.2.5.** The payment notices accompanying the Settlement checks shall notify the recipients that the checks must be cashed within 180 days from the date on the payment notice and that the enclosed check shall not be valid after that date.

**6.6.2.6.** For a jointly held Account of one or more Current Accountholders, payment will be made as described in Section 6.6.2.3, above, and may be deposited into an account of the primary Accountholder, whether or not such account is jointly held. For a jointly held Account of a Past Accountholder, payment will be made by means of a check that will be payable to the

primary Accountholder named on the Account, and mailed to the last known address for that primary Accountholder.

**6.6.2.7.** The Settlement Administrator will make reasonable efforts to locate the proper address for any check returned undeliverable and will re-mail it once to the updated address or, in the case of a jointly held Account, and in the Settlement Administrator's discretion, to an Accountholder other than the one listed first.

**6.7. Remaining Funds.** After 240 calendar days from the Effective Date, any excess funds remaining from the Settlement Amount that have not been distributed in accordance with other provisions of this Settlement Agreement shall, if economically feasible, be distributed to the Settlement Class Members who successfully cashed checks or received their Settlement Class Member Payment as a credit. The payment notices accompanying the Settlement checks for a second distribution shall notify the recipients that the checks must be cashed within 90 days from the date on the payment notice and that the enclosed check shall not be valid after that date. If a second distribution of remaining funds costs more than the amount to be distributed or is otherwise economically unfeasible, or if additional funds remain after a second distribution, Class Counsel shall petition the Court to distribute any remaining funds to a *cy pres* recipient agreed upon by the Parties.

## **7. SETTLEMENT BENEFITS**

**7.1. Amounts of Settlement Class Member Payments.** Settlement Class Members are entitled to payment by distributing the proceeds from the Settlement Amount to the Settlement Class Members depending on the total number of Class Fees the Settlement Class Member was assessed during the Class Period. Payments from the Settlement Amount to each Settlement Class Member shall be distributed on a *pro rata* basis and calculated as follows:



(Net Settlement Amount divided by the total number of Class Fees the Settlement Class Members collectively were assessed in connection with the transactions at issue);

Multiplied by;

Total number of Class Fees the Settlement Class Member was charged and paid in connection with the transactions at issue.

**7.2. All Settlement Class Member Payments Come From Settlement Amount.** All payments to Settlement Class Members shall be funded by the Settlement Amount only after the Effective Date. All proceedings with respect to the notice, administration, and processing of payments to Settlement Class Members and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court. The Class Representatives and Settlement Class Members shall look solely to the Settlement Amount as full, final, and complete satisfaction of all Released Claims. Except as set forth herein, BPPR shall have no obligation under this Agreement or the Settlement to pay or cause to be paid any amount of money, and BPPR shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, taxes, or damages whatsoever alleged or incurred by the Class Representatives, by any Settlement Class Member, or by any Releasing Parties, including but not limited to their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. The Class Representatives and Settlement Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

**7.3. Settlement Payment Notice Language.** A payment notice shall be sent with the payments to Settlement Class Members, including payments made in the form of an account credit or made by check. The payment notice to be sent for payments made in the form of an account credit shall state: "As a Settlement Class Member in the Settlement approved by the United States

District Court for the District of Puerto Rico on [Month, Day, Year] in the actions styled *Soto v. Banco Popular de Puerto Rico*, No. 3:20-cv-01057 (D.P.R.) and *Orama Caraballo et al. v. Banco Popular de Puerto Rico*, No. 3:22-cv-01107 (D.P.R.), you received a credit in your account that was made by BPPR on or about [Month, Day, Year], which was made in consideration for your release from liability of Defendant and other Released Parties as set forth in the Settlement Agreement and Release. This payment that you received in the form of a credit to your account is final and conclusive. The payment notice for payments made by check shall state: “This payment is tendered to you as a Settlement Class Member in consideration for your release from liability of Defendant and other Released Parties as set forth in the Settlement Agreement and Release. This payment is final and conclusive.” Each Settlement check will also disclose that it is invalid if it is not cashed within 180 days. Payment pursuant to this Settlement shall be deemed final and conclusive as against all Settlement Class Members. If any Settlement check is returned as undeliverable, the Settlement Administrator will attempt to notify the Settlement Class Member, including by attempting to obtain a new mailing address as practical in the same manner as set forth in Paragraph 5.2.3 (with any costs incurred treated as Settlement Administration Costs). If, after a second attempt, such Settlement check is again returned as undeliverable, no further effort needs to be taken by the Settlement Administrator. All Settlement Class Members, including those who do not cash their Settlement checks within 180 days, shall be bound by all of the terms of this Agreement and the Settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.

**7.4. No Reversion.** BPPR shall not have a reversionary interest in the Settlement Amount. If there is a balance remaining of the Settlement Amount after 240 calendar days from the date of

distribution of the Settlement Amount (whether by reason of tax refunds, uncashed checks or otherwise), or reasonably soon thereafter, the Settlement Administrator shall distribute the remaining balance as ordered by the Court and as further set forth in Paragraph 6.7.

## **8. TERMINATION OF THE SETTLEMENT**

**8.1.** This Settlement is contingent upon Court approval. If the Court fails to grant Final Approval of the Settlement in any material respect, the Settlement will be subject to termination by either Party. Notwithstanding this paragraph, the Court's determination as to the motion for Fee and Cost Award and Service Award and/or any plan of distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Settlement Agreement or Settlement.

**8.2.** If this Settlement is terminated, then the Settlement and the relevant portions of this Settlement shall be canceled and terminated without prejudice, and this Agreement shall be null and void and shall have no further force or effect.

**8.3.** Except as otherwise provided herein, in the event the Agreement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties to this Agreement shall be deemed to have reverted to their respective status prior to the Settlement. In such circumstances, the Parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming the Actions, which would no longer be consolidated.

**8.4.** Except as otherwise expressly provided herein, in the event the Agreement is terminated in accordance herewith, is vacated, not approved, or the Effective Date fails to occur for any reason, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Amount previously paid by or on behalf of BPPR, together with any interest earned thereon (and, if applicable, re-payment of any

Fee and Cost Award, or Service Award) shall be returned to BPPR within 10 days from the date of the event causing such termination. However, BPPR agrees to cover any Settlement Administration Costs incurred or charged by the Settlement Administrator prior to the termination of this Agreement.

**8.5.** No Party hereto or its counsel shall directly or indirectly solicit or encourage any Person to opt-out from the Settlement Class.

## **9. PROCEDURES FOR OPT-OUTS AND OBJECTIONS**

### **9.1. Out-Out Procedures.**

**9.1.1.** The Class Notice shall inform proposed Settlement Class members how they may opt-out of the Settlement and shall explain the implications of doing so.

**9.1.2.** A proposed Settlement Class member may request to opt-out from the Settlement Class by sending a written request for exclusion, addressed to “Opt-Out Requests: BPPR Fee Class Action” at the Settlement Administrator’s address as shown in the Class Notice. The proposed Settlement Class Member’s opt-out request must contain his or her original signature, current postal address, sufficient information to identify the relevant bank account(s) owned by the proposed Settlement Class Member, and a specific affirmative statement that the proposed Settlement Class Member wishes to be excluded from the Settlement Class. If an Account has more than one Accountholder, and if one Accountholder excludes himself or herself from the Settlement Class, then all Accountholders on that Account shall be deemed to have opted-out of the Settlement with respect to that Account, and no Accountholder shall be entitled to a payment under the Settlement. Opt-Out requests must be postmarked no later than the last day of the Opt-Out Deadline.

**9.1.3.** Persons who purport to opt-out of the Settlement Class as a group, aggregate, or class involving more than one purported class member shall **not** be considered to have validly opted-out. This paragraph does not apply to a request to opt-out for one specific joint Account pursuant to paragraph 9.1.2.

**9.2. List of Successful Opt-Outs.** Not later than 5 days following the Opt-Out Deadline, the Settlement Administrator shall provide Class Counsel and BPPR's Counsel a complete list of the Successful Opt-Outs, together with all opt-out requests.

**9.3. Representation of Opt-Outs.** Class Counsel agrees that this Settlement is fair, reasonable, and in the Settlement Class Members' best interests. Class Counsel furthermore agrees that potential Settlement Class members who seek to opt-out should be represented by counsel who believe the Settlement is not fair, reasonable, and not in the Settlement Class Members' best interests. Accordingly, Class Counsel shall not solicit Settlement Class Members who opt-out for purposes of legal representation and, if contacted, shall refer any such Persons to the applicable referral service maintained by the bar association in those Persons' respective jurisdictions for any subsequent representation, if a referral request is made to Class Counsel.

**9.4. Objections from Settlement Class Members.**

**9.4.1.** Any Settlement Class Member who does not opt-out but instead wishes to object to the Settlement or any matters described in the Class Notice may do so by filing with the Court a timely notice of their intention to object. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including evidence that the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing or

assisting the objector, if any; (v) the identity of all counsel representing the objector who will appear at the Final Fairness Hearing, if any; (vi) a list of all Persons who will be called to testify at the Final Fairness Hearing in support of the objection, if any; (vii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation), if any; (ix) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action settlement within the last 3 years; (x) a list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any Person) has filed an objection to any proposed class action settlement within the last 3 years; and (xi) a list, by case name, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative. To be timely, written notice of an objection in the appropriate form must be filed with the Court by the Objection Deadline as ordered by the Court in the Preliminary Approval Order and served concurrently therewith upon Class Counsel and BPPR's Counsel.

**9.4.2.** If the objection is made by or through an attorney, the written objection must also include: (a) the identity and number of the Settlement Class Members represented by objector's counsel; (b) the identity and number of such represented Settlement Class members who have opted out of the Settlement Class; and (c) the identity and number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected. If the attorney intends to seek fees and expenses from anyone other than the objectors he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BPPR's Counsel, not later than 15 days before the Final Fairness Hearing or as the Court may otherwise direct, a document

containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney's hourly rate.

**9.4.3.** Any Settlement Class Member who fails to comply with the requirements for objecting set forth herein shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement and shall be bound by all the terms of the Agreement and by all proceedings, orders, and judgments in the Actions. The exclusive means for any challenge to the Settlement shall be through the provisions set forth herein. Without limiting the foregoing, any challenge to the Settlement, the Final Approval Order, and Final Judgment and Order of Dismissal to be entered upon Final Approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

**9.4.4.** The Parties shall file their responses to objections, if any, no later than 10 days prior to the Final Fairness Hearing.

**9.4.5.** By filing an objection, objectors and their counsel submit to the jurisdiction of the Court for all purposes, including but not limited to, subpoenas and discovery.

**9.4.6.** Objectors must also make themselves available for deposition by counsel for the Parties between the time the objection is filed and a date no later than 5 days before the Final Fairness Hearing, and the objection must include the dates when the objector is available for deposition.

**9.4.7.** Any Settlement Class Member who, before the Objection Deadline, files and serves a written objection satisfying the requirements of this section may appear at the Final Fairness

Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of the Settlement. Settlement Class Members, or their attorneys, intending to make an appearance at the Final Fairness Hearing must deliver to Class Counsel and BPPR's Counsel and have file-marked by the Court, no later than the Objection Deadline, or as the Court otherwise may direct, a "Notice of Intent to Appear." The Notice of Intent to Appear must: (i) state how much time the Settlement Class Member anticipates needing to present the objection; (ii) identify, by name, address, and telephone number all witnesses the Settlement Class Member proposes to have testify; (iii) summarize in detail the anticipated testimony of all such witnesses; (iv) identify all exhibits the Settlement Class Member intends to offer in support of the objection; and (v) attach complete copies of all such exhibits.

**9.4.8.** Any Settlement Class Member who fails to timely file such a written statement of his or her intention to object shall be foreclosed from making any objection to the Settlement and shall waive and forfeit any and all rights he or she may have to appear separately and/or object and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments, including but not limited to, the releases contained in this Agreement.

## **10. ATTORNEYS' FEES AND COSTS**

**10.1. Application for Fee and Cost Award.** As part of the Motion for Final Approval, Class Counsel will move for approval of a Fee and Cost Award. Class Counsel agrees that it will not seek in excess of 33.0% of the Settlement Amount for attorneys' fees. BPPR agrees not to oppose such request.

**10.2. Source of Payment.** The Fee and Cost Award shall be paid from the Settlement Amount, with no further obligation by BPPR.



**10.3. No Additional Obligation by BPPR.** Any Fee and Cost Award shall be available to be distributed from the Settlement Amount for distribution by the Settlement Administrator to Class Counsel in accordance with this Agreement, within 14 days after the Effective Date.

## **11. SERVICE AWARD TO CLASS REPRESENTATIVE**

**11.1. Application for Service Award.** As part of the Motion for Final Approval, Class Counsel shall apply to the Court for a Service Award to be paid from the Settlement Amount to the Class Representatives for serving as class representative in support of the Settlement, subject to any and all applicable tax withholdings. BPPR will not oppose such a request of up to \$10,000.00 for each of the Class Representatives.

**11.2. No Additional Obligation by BPPR.** BPPR shall have no other responsibility for or liability with respect to the payment of a Service Award to the Class Representatives beyond the amount stated above for resolution of the Released Claims herein.

**11.3. Source of Payment.** Any Service Award shall be available to be distributed from the Settlement Amount for distribution to the Class Representatives by the Settlement Administrator in accordance with this Agreement, within 14 days after the Effective Date.

## **12. FINAL FAIRNESS HEARING AND FINAL APPROVAL**

**12.1. Final Fairness Hearing.** Plaintiffs will request (and Defendant will not oppose) that the Court hold the Final Fairness Hearing to consider approval of the Settlement of the Actions as provided for herein approximately 120 days after Preliminary Approval but in no event fewer than 90 days after the CAFA Notice is served. At least 45 days before the Final Fairness Hearing, Class Counsel shall file the Motion for Final Approval seeking entry of the Final Approval Order. The Parties agree that the Final Approval Order should be accompanied by entry of a final judgment dismissing the Actions with prejudice.

**12.2. Final Approval.** All relief contemplated by this Settlement is expressly contingent upon the Court's Final Approval.

### **13. RELEASE OF CLAIMS**

**13.1. Release of BPPR and Released Parties.** Upon the Effective Date, in exchange for the relief described herein, the Releasing Parties, Class Representatives and each Settlement Class Member, and each of their respective heirs, executors, administrators, trustees, guardians, agents, successors, and assigns, and all those acting or purporting to act on their behalf, fully and finally release and discharge the Released Parties of and from the Released Claims. This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion. Subject to the Court's approval, this Agreement shall bind all Settlement Class Members and all the Releasing Parties, and all Released Claims shall be dismissed with prejudice and released as against the Released Parties. The Released Claims are released regardless of whether these claims are known or Unknown Claims, actual or contingent, liquidated, or unliquidated.

### **14. DISPUTES RELATING TO THE SETTLEMENT**

**14.1. Good Faith.** The Parties shall work in good faith to resolve any disputes that may arise in connection with the Settlement.

**14.2. Best Efforts.** Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, the Class Representatives, BPPR, Class Counsel, and BPPR's Counsel represent and warrant that they shall take all appropriate steps in the Actions necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement

as promptly as possible, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement.

## **15. MISCELLANEOUS PROVISIONS**

**15.1. Non-Disparagement.** The Class Representatives, Class Counsel and Plaintiffs' Counsel, BPPR, and BPPR's Counsel shall not issue, or otherwise cause to be issued, any press release, advertisement, or Internet posting which (i) disparages the Class Representatives, Class Counsel, Plaintiffs' Counsel, BPPR, or BPPR's Counsel with respect to any matters or issues alleged or asserted in the Action or relating to this Settlement; or (ii) includes evidence or information protected from disclosure by the agreement of the Parties and the protective order in the Soto Action.

**15.2. No Admission.** Nothing herein shall constitute any admission as to any assertion, claim, or allegation made by any Party, or as to the scope of liability. BPPR specifically denies any wrongdoing or liability and specifically denies that a class could or should be certified in the Actions for litigation purposes. This Agreement is entered into to resolve all claims amicably, to avoid the risk and expense of additional litigation, and does not imply or suggest in any way fault or wrongdoing. The Parties agree that this Agreement and its Exhibits, and any and all associated negotiations, documents, discussions, shall not be deemed or construed by anyone to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by BPPR.

**15.3. Admissibility of Settlement Agreement.** This Agreement shall not be offered nor shall it be admissible as evidence in any action or proceeding except (i) the hearings necessary to obtain and implement Court approval of this Settlement; and (ii) any hearing to enforce the terms of this Settlement Agreement or related order by the Court. This Agreement, whether or not

consummated, any proceedings relating to the Settlement, and any of the terms of the Settlement, whether or not consummated, shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of BPPR with respect to any fact or matter alleged in the Actions, or any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any defense that has been or could have been asserted.

**15.4. Successors and Assigns.** This Settlement's terms shall apply to and bind the Parties, the Releasing Parties and their heirs, successors, and assigns.

**15.5. No Assignments.** The Releasing Parties, the Class Representatives and Class Counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any Released Claim except as set forth herein, and that there are no Persons having any interest in any award of attorneys' fees, expenses, or litigation costs in connection with the Action. Class Counsel agrees to indemnify and hold BPPR and its counsel harmless as to (a) any breach of the representation and warranty contained in the prior sentence; and (b) any claim by any other Person against BPPR or its counsel for such an award of attorneys' fees, expenses, or litigation costs.

**15.6. No Tax Advice.** No representations or advice regarding the tax consequences of this Settlement Agreement and/or the payments to be made by BPPR and/or the Settlement Administrator hereunder have been made by BPPR or its counsel. The Parties understand that the payment of the corresponding amount of the Settlement Amount to each Settlement Class Member shall be made free of income tax withholding pursuant to the Parties' understanding that the amount to be received by each Settlement Class Member hereunder is not considered taxable income for tax purposes based on the nature of the payments to be received by the Settlement Class Members. The Settlement Class Members hereby release, hold harmless and agree to indemnify

BPPR and/or the Released Parties from any and all liability of any kind on account of any and all taxes related to the payment that each Settlement Class Member will receive hereunder and/or their representations hereunder. The Parties further understand and agree that the payments to be received pursuant to this Settlement Agreement by each Class Representative and each Class Counsel, as ordered by the Court, shall be subject to any and all applicable tax withholdings required under applicable state and/or federal laws or regulations, including, without limitation, the Puerto Rico income tax withholding required under Section 1062.03 of the Puerto Rico Internal Revenue Code of 2011, as amended. Each Settlement Class Member, each Class Representative and each Class Counsel shall be responsible for his, her, its, or their own taxes, if any, resulting from this Settlement Agreement and any payments made pursuant to this Settlement Agreement, and agree that BPPR will not assume any tax liability and that, should there be any tax liability, it will be assumed by each Settlement Class Member, Class Representative and/or Class Counsel, as appropriate. The Parties and their counsel further recognize that BPPR and/or the Settlement Administrator will comply with any reporting obligations as required by law or regulation in connection with any payment made hereunder, including the payments to each Settlement Class Member, each Class Representative and each Class Counsel, which may include the filing of certain tax forms or other information or reports with state or federal tax authorities, including the United States Internal Revenue Service, the Puerto Rico Department of the Treasury, or other government agencies indicating its payments to the Settlement Class Members, the Class Representatives and/or Class Counsel.

**15.7. Communications with Parties Relating to Settlement Agreement.** All notices, requests for consent, and other formal communications among the Parties under this Settlement Agreement shall be in writing and sent by U.S. Mail (or a reliable parcel or courier service with

confirmation of delivery) and also e-mail to counsel for the Party to whom notice is directed at all of the addresses below. Any Party may change its designated recipient(s) or notice address(es) by written notice to all other Parties. This provision does not apply to notices given to members of the Settlement Class.

**If to Class Representatives:**

Jeffrey Kaliel  
KALIELGOLD PLLC  
1100 15<sup>th</sup> Street N.W., 4<sup>th</sup> Floor  
Washington, D.C. 20005  
(202) 350-4783  
jkaliel@kalielllc.com

**If to Defendants:**

Maria D. Trelles Hernandez  
PIETRANTONI MÉNDEZ &  
ÁLVAREZ LLC  
Popular Center, 19th Floor  
208 Ponce de León Ave.  
San Juan, Puerto Rico, 00918  
Tel: (787) 274-1212  
Fax: (787) 274-1470  
mtrelles@pmaalaw.com

Mitchel H. Kider  
Michael Y. Kieval  
WEINER BRODSKY KIDER PC  
1300 19th Street NW, 5th Floor  
Washington, DC 20036  
Tel: (202) 628-2000  
Fax: (202) 628-2011  
kider@thewbkfirm.com  
kieval@thewbkfirm.com

**15.8. Entire and Voluntary Agreement.**

**15.8.1. Knowing and Voluntary Assent.** The Parties agree that the Settlement is voluntary and that its terms were negotiated at arm's length. The Parties agree that they were represented by competent and experienced counsel.

**15.8.2. Entire Agreement.** The Parties intend the Settlement to be a complete and final resolution to the Actions. This Settlement contains the Parties' entire agreement and understanding of the subject-matter at issue in the Actions. This Agreement merges with and supersedes all prior negotiations and proposals, whether written or oral.

**15.9. Headings and Titles.** The headings and titles in this Agreement are for the reader's convenience only and shall not affect or alter the meaning of the Agreement's terms.

**15.10. Settlement Agreement Controls Over Exhibits.** All exhibits attached to this Agreement are hereby incorporated into this Agreement as though fully set forth herein. If there is any conflict between the terms of the Agreement and the attached exhibits, the Agreement shall control.

**15.11. Amendments and Modifications.** This Agreement may be amended or modified only by a written instrument signed by the Parties or by the respective attorneys, or their respective successors-in-interest.

**15.12. Authorization of Counsel.** Class Representatives and Settlement Class Members expressly authorize Class Counsel to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Settlement to effectuate its terms. Class Counsel are furthermore expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Settlement Class Members that they deem necessary or appropriate. Each attorney or other Person executing the Agreement on behalf of a Party hereto warrants that such attorney or other Person has full authority to do so. The undersigned representatives of BPPR represent that they are fully authorized to enter into and execute this Settlement on behalf of BPPR. Class Counsel represent that they are fully authorized to conduct settlement negotiations with BPPR's Counsel on behalf of the Class Representatives and to enter into and execute this Settlement Agreement on behalf of Class Representatives and the putative Settlement Class Members, subject to approval by the Court.

**15.13. Computation of Time.** Except as expressly set forth herein, in computing any period of time prescribed or allowed by this Settlement Agreement, the provisions of Fed. R. Civ. P. 6 and the Civil Rules of Practice and Procedure for the Court shall govern.

**15.14. Continuing Jurisdiction and Exclusive Venue.** Each of the Parties, each Settlement Class Member, and each of the Releasing Parties hereby irrevocably submits to the exclusive jurisdiction and venue of the Court for any suit, action, proceeding, case, controversy, or dispute arising from or related to this Agreement and/or Exhibits hereto and the negotiation, performance, or breach of same.

**15.15. Construction and Interpretation of Terms.** The Parties have cooperated in drafting and preparing this Agreement. There shall therefore be no presumption for or against any Party because that Party initially drafted a particular section or subsection. Before declaring any provision invalid, a court should first attempt to construe the provision as valid, consistent with the Agreement's purposes, and consistent with applicable precedent.

**15.16. No Claims Arising from this Settlement Agreement.** No Person shall have any claim against any of the Released Parties, against Class Representatives, or against counsel for any Party, based on the distribution of benefits made substantially in accordance with this Agreement or related order(s) of the Court.

**15.17. Standing of Released Parties.** The Released Parties who are not signatories hereto shall be third-party beneficiaries under this Agreement and shall be entitled to enforce this Settlement in accordance with its terms. Aside from the Released Parties, it is not the intention of the Parties to confer third-party beneficiary rights or remedies upon any other Person.

**15.18. Applicable Law.** This Agreement shall be interpreted under and governed by federal law. To the extent state law applies, the laws of Puerto Rico shall apply, without regard to



choice of law principles. All judicial proceedings regarding this Settlement shall be brought only in the Court.

**15.19. Counterparts.** This Agreement may be executed in one or more counterparts and by facsimile or email of PDF, both of which shall be deemed an original. Original signatures are not required. All executed counterparts shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts. A complete set of executed Counterparts shall be filed with the Court.

IN WITNESS THEREOF, the Parties have caused this Settlement Agreement and Release to be executed by their duly authorized representatives.

APPROVED BY PLAINTIFFS AND CLASS COUNSEL

Pedro Soto-Melendez  
Pedro Soto-Melendez

Date: 08 / 09 / 2022

DocuSigned by:  
Sandra J. Orma  
Sandra Jannie Orma Caraballo

Date: 8/11/2022

Miguel Quiñones Acosta  
Miguel Quiñones Acosta

Date: 08 / 08 / 2022

DocuSigned by:  
Jeffrey Kaliel  
Jeff Kaliel  
KALIELGOLD PLLC

Date: 8/11/2022

APPROVED BY DEFENDANT AND COUNSEL FOR DEFENDANT

\_\_\_\_\_  
Javier D. Ferrer  
Senior Executive Vice President,  
Chief Operating Officer and Head of  
Business Strategy, BPPR

Date: \_\_\_\_\_

\_\_\_\_\_  
María D. Trelles Hernández  
PIETRANTONI MÉNDEZ & ALVAREZ LLC

Date: \_\_\_\_\_

\_\_\_\_\_  
Mitchel H. Kider  
WEINER BRODSKY KIDER PC

Date: \_\_\_\_\_

IN WITNESS THEREOF, the Parties have caused this Settlement Agreement and Release to be executed by their duly authorized representatives.

APPROVED BY PLAINTIFFS AND CLASS COUNSEL

\_\_\_\_\_  
Pedro Soto-Melendez Date: \_\_\_\_\_

\_\_\_\_\_  
Sandra Janine Orama Caraballo Date: \_\_\_\_\_

\_\_\_\_\_  
Miguel Quiñones Acosta Date: \_\_\_\_\_

\_\_\_\_\_  
Jeff Kaliel  
KALIELGOLD PLLC Date: \_\_\_\_\_

APPROVED BY DEFENDANT AND COUNSEL FOR DEFENDANT

  
\_\_\_\_\_  
Javier D. Ferrer  
Senior Executive Vice President,  
Chief Operating Officer and Head of  
Business Strategy, BPPR Date: 8/12/2022

  
\_\_\_\_\_  
María D. Trelles Hernández  
PIETRANTONI MÉNDEZ & ALVAREZ LLC Date: 8/12/2022

  
\_\_\_\_\_  
Mitchel H. Kider  
WEINER BRODSKY KIDER PC Date: 08/12/2022

## Exhibit 1 – Email and Postcard Notice

Soto, et al., v. Banco Popular de Puerto Rico, No. 3:20-cv-01057 (D.P.R.)  
Orama Caraballo et al. v. Banco Popular de Puerto Rico, No. 3:22-cv-01107 (D.P.R.)

**NOTICE OF PENDING CLASS ACTIONS AND PROPOSED SETTLEMENT**  
**READ THIS NOTICE FULLY AND CAREFULLY;**  
**THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS!**  
**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH BANCO**  
**POPULAR DE PUERTO RICO AND YOU WERE CHARGED CERTAIN**  
**OVERDRAFT OR NSF FEES BETWEEN FEBRUARY 1, 2016 AND APRIL**  
**1, 2022, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A**  
**CLASS ACTION SETTLEMENT**

The United States District Court for the District of Puerto Rico has authorized this Notice; it is not a solicitation from a lawyer.

You may be a member of the Settlement Class in *Soto, et al. v. Banco Popular de Puerto Rico* and *Orama Caraballo et al. v. Banco Popular de Puerto Rico* in which the plaintiffs allege that defendant Banco Popular de Puerto Rico (“Defendant” or “BPPR”) unlawfully assessed certain Class Fees between February 1, 2016 and April 1, 2022. If you are a member of the Settlement Class and if the Settlement is approved, you may be entitled to receive a payment from the \$5,500,000.00 Settlement Fund, established by the Settlement, so long as you do not opt out of or exclude yourself from the Settlement. **You do not have to do anything to be entitled to a payment from the Settlement Fund.**

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on \_\_\_\_\_. At that hearing, the Court will consider whether to grant Final Approval to the Settlement, and whether to approve payment from the Settlement Fund of up to \$10,000.00 in a Service Award to each Class Representative; up to 33% of the Value of the Settlement as attorneys’ fees; and reimbursement of costs to the attorneys and the Settlement Administrator. If the Court grants Final Approval of the Settlement and you do not request to be excluded from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your Account or to make a payment to you by check if you are no longer a customer of BPPR.

**To obtain a Long Form Notice and other important documents please visit [www.\\_\\_\\_\\_\\_](#).  
Alternatively, you may call \_\_\_\_\_.**

*If you do not want to participate in this Settlement—you do not want to receive a cash payment and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than \_\_\_\_\_. If you want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than \_\_\_\_\_. You may learn more about the opt-out and objection procedures by visiting [www.\\_\\_\\_\\_\\_](#) or by calling \_\_\_\_\_.*

**Esta notificación está disponible en español en la siguiente página web:  
[www.\\_\\_\\_\\_\\_](#).com o puede llamar a 888-XXX-XXXX para pedir una copia por correo.**

## Exhibit 2 – Long Form Notice

*Soto v. Banco Popular de Puerto Rico, No. 3:20-cv-01057 (D.P.R.)*  
*Orama Caraballo et al. v. Banco Popular de Puerto Rico, No. 3:22-cv-01107*  
*(D.P.R.)*

### NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

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

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH BANCO  
POPULAR DE PUERTO RICO (“DEFENDANT” OR “BPPR”) AND YOU  
WERE CHARGED CERTAIN OVERDRAFT OR NSF FEES BETWEEN  
FEBRUARY 1, 2016 AND APRIL 1, 2022, THEN YOU MAY BE ENTITLED  
TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

The United States District Court for the District of Puerto Rico has authorized this  
Notice; it is not a solicitation from a lawyer.

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

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

## **BASIC INFORMATION**

### **1. What are these lawsuits about?**

The lawsuits that are being settled are named *Soto et al. v. Banco Popular de Puerto Rico*, and *Orama Caraballo et al. v. Banco Popular de Puerto Rico*. They are pending in the United States District Court for the District of Puerto Rico, Case Nos. 3:20-cv-01057 and 3:22-cv-01107. The cases are “class actions.” That means that the “Class Representatives” are individuals who are acting on behalf of current and former customers who were assessed certain Class Fees between February 1, 2016 and April 1, 2022. The Class Representatives have asserted a claim for breach of BPPR’s consumer checking account agreement based on overdraft and insufficient funds fees charged in connection with retried ACH payments and checks.

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

### **2. Why did I receive this Notice of these lawsuits?**

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

### **3. Why did the parties settle?**

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

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

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

## **WHO IS IN THE SETTLEMENT**

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

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

## **YOUR OPTIONS**

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

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

### **6. What are the critical deadlines?**

There is no deadline to receive a payment. If you do nothing, then you will get a payment if the Settlement is finally approved.

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

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

### **7. How do I decide which option to choose?**

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

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

If you want to participate in the Settlement, then you do not have to do anything; you will receive a payment if the Settlement is approved by the Court and becomes final.

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

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

## THE SETTLEMENT PAYMENT

### **9. How much is the Settlement?**

Defendant has agreed to create a Settlement Fund of \$5,500,000.00.

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

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

Class Counsel will request the Court to approve attorneys' fees of not more than 33% of the Settlement Fund, and will request that it be reimbursed for litigation costs incurred in prosecuting the case. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

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

Class Counsel will request that the Class Representatives be paid a service award in the amount of \$10,000.00 each for their work in connection with this case. The Service Awards must be approved by the Court.

### **12. How much will my payment be?**

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

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

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

### **14. When will I receive my payment?**

The Court will hold a Final Approval Hearing on \_\_\_\_\_, at \_\_\_\_\_ to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made or credits should be issued approximately 90 days later. Checks must be cashed within 90 days from the date on the payment notice. However, if someone objects to the Settlement, and the objection is sustained, then there is no Settlement. Even if all objections are overruled and the Court approves the Settlement, an objector could appeal, and it might take months or even years



to have the appeal resolved, which would delay any payment.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

#### **15. How do I exclude myself from the settlement?**

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

To opt-out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Soto et al. v. Banco Popular de Puerto Rico* class action. The request must include your signature, address, the last four digits of your account number(s) or former account number(s) or other information to identify the relevant bank account, and current contact information such as your address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by \_\_\_\_\_, and sent to:

Soto et al. v. Banco Popular de Puerto Rico  
Attn: Opt-Out Requests: BPPR Fee Class Action  
**ADDRESS OF THE SETTLEMENT ADMINISTRATOR”**

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

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

### **OBJECTING TO THE SETTLEMENT**

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

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

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

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

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

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

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

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

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

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

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

l. If the objection is made by or through an attorney, the written objection must also include: (a) the identity and number of the Settlement Class Members represented by objector's counsel; (b) the identity and number of such represented Settlement Class members who have opted out of the Settlement Class; and (c) the identity and number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected. If the attorney intends to seek fees and expenses from anyone other than the objectors he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BPPR's Counsel, not later than 15 days before the Final Fairness Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney's hourly rate.

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

**ADDRESS OF THE SETTLEMENT ADMINISTRATOR**

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

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

**19. What happens if I object to the Settlement?**

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

**THE COURT'S FINAL APPROVAL HEARING****20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval or Fairness Hearing at \_\_\_ on \_\_\_\_, 2022 at the United States District Court for the District of Puerto Rico, which is located at \_\_\_\_\_. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys' fees and litigation costs and the amount of the Service Awards to the Class Representatives. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at [www.\\_\\_\\_\\_\\_](http://www._____).

**21. Do I have to come to the hearing?**

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

**22. May I speak at the hearing?**

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 17, above, the statement, "I hereby give notice that I intend to appear at the Final Approval Hearing."

**THE LAWYERS REPRESENTING YOU****23. Do I have a lawyer in this case?**

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

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

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

**25. Who determines what the attorneys' fees will be?**

The Court will be asked to approve the amount of attorneys' fees at the Fairness Hearing. Class Counsel will file an application for attorneys' fees and costs and will specify the amount being sought as discussed above. You may review a copy of the fee application at the website established by the Settlement Administrator, or by requesting the court record online from the United States District Court for the District of Puerto Rico at \_\_\_\_\_.

### **GETTING MORE INFORMATION**

This Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [www.\\_\\_\\_\\_\\_](http://www._____) or at the Office of the Clerk of the United States District Court for the District of Puerto Rico, which is located at \_\_\_\_\_, by asking for the Court file containing the Motion For Preliminary Approval of Class Settlement (the settlement agreement is attached to the motion) or obtaining a copy online at <https://eservices.archives.gov/orderonline>.

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

Soto et al. v. Banco Popular de Puerto Rico  
Settlement Administrator  
Attn:

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

David Indiano  
Indiano & Williams, P.S.C.  
207 Del Parque St.; 3<sup>rd</sup> Floor  
San Juan, Puerto Rico 00912  
787-641-4544  
[david.indiano@indianowilliams.com](mailto:david.indiano@indianowilliams.com)

Jeffrey Kaliel  
Sophia Goren Gold  
KalielGold PLLC  
1100 15<sup>th</sup> St. NW  
4th Floor  
Washington, DC 20005  
202-350-4783  
[jkaliel@kalielpllc.com](mailto:jkaliel@kalielpllc.com)  
[sgold@kalielgoldpllc.com](mailto:sgold@kalielgoldpllc.com)

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

**Esta notificación está disponible en español en la siguiente página web: [www.\\_\\_\\_\\_\\_](http://www._____).com o puede llamar a 888-XXX-XXXX para pedir una copia por correo.**



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<b>TITLE</b>	Settlement Agreement for Banco Popular
<b>FILE NAME</b>	content, content, content
<b>DOCUMENT ID</b>	c9c1cc58ccf526223cc5e65026b717f38382e618
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	● Signed

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This document was requested from [sflinjuryattorneys.lightning.force.com](https://sflinjuryattorneys.lightning.force.com)

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## Document History



SENT

**08 / 08 / 2022**

14:47:53 UTC

Sent for signature to Pedro Soto Melendez (psx3458@gmail.com) and Miguel Angel Quinones (miguelangelquinones2801@gmail.com) from gpalacios@shamisgentile.com  
IP: 162.17.100.209



VIEWED

**08 / 08 / 2022**

15:20:01 UTC

Viewed by Miguel Angel Quinones (miguelangelquinones2801@gmail.com)  
IP: 172.58.152.247



SIGNED

**08 / 08 / 2022**

18:47:40 UTC

Signed by Miguel Angel Quinones (miguelangelquinones2801@gmail.com)  
IP: 172.58.153.105



VIEWED

**08 / 09 / 2022**

11:11:43 UTC

Viewed by Pedro Soto Melendez (psx3458@gmail.com)  
IP: 74.213.81.201



# Audit Trail

<b>TITLE</b>	Settlement Agreement for Banco Popular
<b>FILE NAME</b>	content, content, content
<b>DOCUMENT ID</b>	c9c1cc58ccf526223cc5e65026b717f38382e618
<b>AUDIT TRAIL DATE FORMAT</b>	MM / DD / YYYY
<b>STATUS</b>	● Signed

This document was requested from [sflinjuryattorneys.lightning.force.com](https://sflinjuryattorneys.lightning.force.com)

## Document History



**08 / 09 / 2022**  
14:13:19 UTC

Signed by Pedro Soto Melendez (psx3458@gmail.com)  
IP: 74.213.81.201



COMPLETED

**08 / 09 / 2022**  
14:13:19 UTC

The document has been completed.