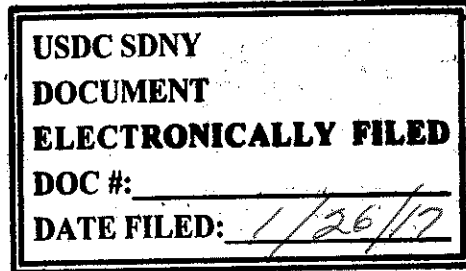


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GARY CRUZ, :
 :
 Plaintiff, :
 :
 - against - :
 :
 TD BANK, N.A., :
 :
 Defendant. :

Case No.: 10-CV-8026 (PKC)



ARTHEMIO PEREZ and WILFRED, :
BUCKNOR, :
 :
 Plaintiffs, :
 :
 - against - :
 :
 TD BANK, N.A., :
 :
 Defendant. :

Case No.: 16-cv-05375 (PKC) (KMK)

PRELIMINARY APPROVAL ORDER

On consideration of (1) Plaintiffs' Motion for Consolidation, (2) Plaintiffs' Motion For Preliminary Approval of the Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and (3) the Stipulation and Agreement of Settlement and Release ("*Settlement Agreement*"), there are substantial and sufficient grounds exist for entering this Order:

NOW, THEREFORE, IT IS ORDERED, this 26th day of January, 2017 that:

1. **Definitions.** For this Order, all defined terms in the Settlement Agreement are adopted. Any inconsistencies in terminology between the Settlement Agreement and the Settlement Notices or this Order will be controlled by the language of the Settlement Agreement.

2. **Consolidation of Civil Actions:** The civil actions of *Cruz v. TD Bank, N.A.*, pending in this Court at Case 1:10-cv-08026-PKC, and *Perez et al. v. TD Bank, N.A.*, pending in this Court at 7:16-cv-05375, are consolidated for all purposes.

3. **Preliminarily Certified Class.** The following class is preliminarily certified for settlement purposes only (“*Class*”), pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure:

from EIPA’s effective date to the date of the Preliminary Approval Order, all TD Bank Account Holders who are or were judgment debtors under New York law and whose accounts containing EIPA Exempt Funds were restrained, including those asserting claims that were or could have been asserted in the Actions for violations of EIPA, for example but unexclusively for: failure to receive, maintain or mail timely EIPA notices and forms, or improper charges or fees, or improper aggregation of account balances to determine the amount of EIPA Exempt Funds, or providing improper, incomplete, inadequate types or methods of less than completely unfettered access to EIPA Exempt Funds, or improper internal controls, policies or procedure for EIPA compliance.

4. **Preliminarily Satisfied Rule 23 Prerequisites.** The prerequisites to class action certification under Federal Rule of Civil Procedure 23(a) and 23(b)(3) preliminarily are satisfied for the defined Class because:

(a) the number of Class Members is so numerous that joinder of all Class Members is impracticable;

(b) there are questions of law and fact common to the Class Members;

(c) Plaintiffs’ claims are typical of the Class’s claims;

(d) Plaintiffs and Class Counsel (as appointed in this Order) have and will fairly and adequately represent and protect the interests of the Class;

(e) the questions of law and fact common to the Class Members predominate over any individual questions; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. **Adequacy of Class Representatives.** Plaintiffs Gary Cruz, Arthemio Perez and Wilfred Bucknor are found preliminarily to be adequate representatives of the Class and they preliminarily are certified as the Class Representatives for the Class.

6. **Adequacy of Class Counsel.** Proposed counsel for the Class Representatives, Law Offices of G. Oliver Koppell & Associates, by G. Oliver Koppell, Esquire and Daniel F. Schreck, Esquire 99 Park Ave., Suite 1100, New York, New York, 10016 and Charles Juntikka & Associates, LLP, by Charles Juntikka, Esquire, 30 Vesey St. Suite 100, New York, New York 10007, are found preliminarily to be adequate and they preliminarily are appointed to be Class Counsel for the Class.

7. **Other Settlement Preliminary Findings.** The Court preliminarily finds that:

(a) the proposed Settlement results from informed, extensive arm's length negotiations between the Parties;

(b) Class Counsel has concluded that the proposed Settlement reflected in the Settlement Agreement is fair, reasonable and adequate; and

(c) the proposed Settlement and the Settlement Agreement are sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Class.

8. **Settlement Hearing.** A hearing ("**Settlement Hearing**") shall be held before the Court on April 28, 2017, at 3:00^{pm} am in Courtroom 11D of the Southern District of New York, 500 Pearl Street, New York, NY 10007, for the following purposes:

(a) to determine whether the proposed Settlement, as stated in the Settlement Agreement (including the procedures for submission of Proof of Claims, review and determination of the validity of such Proof of Claims and the distribution of Claim Payments to Authorized Claimants), is fair, reasonable, and adequate, and should be finally approved by the Court;

(b) to determine whether the Judgment, substantially in the form attached as Exhibit B to the Settlement Agreement, should be entered;

(c) to determine whether the Actions should be finally certified, for settlement purposes, as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure;

(d) to consider Class Counsel's application for an award of Class Counsel Fees;

(e) to consider the Class Representatives' request for a Service Award for the time and effort expended in prosecuting the Actions on behalf of the Class; and

(f) to rule upon such other matters as the Court may deem appropriate.

9. **Claims Administrator Approval.** RG2 Claim Administration LLC is approved as the Settlement Administrator.

10. **Settlement Notice Approval.** The form, substance and requirements of the ~~Class Notice Postcard~~ ⁹ ~~Class Notice / Publication Notice~~ (collectively, "**Settlement Notices**"), are each approved substantially in the form attached as Exhibits 1 to ~~3~~ ⁷ respectively. The procedures established for ~~publication~~, mailing and distribution of the Settlement Notices substantially in the manner and form stated in paragraph 12 of this Order constitute the best notice practicable under the circumstances, are in full

except that within 14 days plaintiffs counsel shall submit a revised notice (a) with blank spaces completed, and (b) a good faith estimate of the attorney fees and expenses that counsel seeks through the date of this Order and an estimate through final approval, including the method of calculation, e.g. percentage of recovery, hour rate multiplied by hours

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compliance with the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure and shall constitute due and sufficient notice to all persons entitled to notice.

11. **Proof of Claim Approval.** The form, substance and requirements of the Proof of Claim, are approved substantially in the form attached as Exhibit 4.

12. **Procedure Approval.** The procedures for ~~publication~~, mailing and distribution of the Settlement Notices and Proof of Claim shall be as follows:

(a) No later than thirty (30) days after the entry of this Order, TD Bank shall deliver to the Settlement Administrator the Class Members E-File and no later than twenty (20) days after delivery of the Class Members E-File, TD Bank shall deliver to Class Counsel a list of the name(s) of the Account Holder in a format acceptable to Class Counsel. TD Bank is ordered to provide such information to the Settlement Administrator and to Class Counsel under 15 U.S.C. § 6802(e)(1)(A), (5) and (8) of the Gramm-Leach-Bliley Act. Information concerning each Class Member, including names and other identifying information, is subject to the Stipulated Protective Order and may be used solely for the purpose of contacting Class Members, responding to inquiries from Class Members regarding their eligibility or concerning the award of a Claim Payment. The Settlement Administrator and Class Counsel shall use appropriate information security protocols to ensure the privacy of Class Members' information and otherwise comply with all applicable privacy laws;

(b) No later than thirty (30) days after receipt of the Class Members E-File, the Settlement Administrator shall mail by First Class Mail, postage prepaid, the ~~Class Notice Postcard~~ [Class Notice and Proof of Claim] to each Class Member at their Current Address or Revised Current Address;

(c) ~~[No Publication Notice is required / No later than thirty (30) days after receipt of the Class Members E-File, the Settlement Administrator shall cause the Publication Notice to be published once in _____];~~

(d) No later than thirty (30) days after receipt of the Class Members E-File, the Settlement Administrator shall create the Settlement Website, which shall contain the documents (including the Class Notice, the Settlement Agreement, the Proof of Claim, and this Preliminary Approval Order), information and functionality stated in Section 4.7 of the Settlement Agreement; and

(e) The Settlement Administrator or Class Counsel shall, at or before the Settlement Hearing, file with the Court proof of (i) mailing of the _____ [Class Notice Postcard / Class Notice]; ~~{(ii) publication of the Publication Notice}~~; and ~~(iii)~~ ⁱⁱ establishment of the Settlement Website consistent with the terms of the Settlement Agreement.

13. **Claim Payment Conditions.** To be entitled to receive a Claim Payment, in the event the Effective Date occurs, each Settlement Class Member must take the following actions and shall be subject to the following conditions:

(a) Fully complete and timely submit a valid Proof of Claim in accordance with the approved instructions in the Proof of Claim. All Proof of Claims must be postmarked or transmitted no later than sixty (60) days after the Settlement Administrator mails the Class Notice, subject to further extension for Claimants who timely submit a Revised Proof of Claim in response to a Notice of Rejected Claim; and

(b) The determination of whether a Proof of Claim or Revised Proof of Claim was fully completed, valid and timely submitted and should be approved or rejected shall be

made pursuant to the criteria and procedures stated in Sections 5 and 6 of the Settlement Agreement.

14. **Claim Bar.** Any Settlement Class Member who fails to submit a timely, fully completed, valid Proof of Claim, executed under penalty of perjury shall not be deemed an Authorized Claimant and shall not be entitled to receive a Claim Payment but shall otherwise be bound by all of the terms of the Settlement Agreement, including the terms of the Judgment to be entered in the Actions and the releases provided for in the Settlement Agreement, and **shall be permanently barred and enjoined** from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Settled Claims.

15. **Jurisdiction Over Claimants.** All Claimants who submit a Proof of Claim or Revised Proof of Claim, shall be deemed to have submitted to the jurisdiction of the Court concerning all issues concerning the Claimant's Proof of Claim or Revised Proof of Claim, including whether the Claimant is a Settlement Class Member and is entitled to a Claim Payment under the terms of the Settlement Agreement.

16. **Binding Settlement Unless Excluded.** Class Members shall be bound by the Settlement Agreement and all determinations and judgments in these Actions concerning the Settlement, including the releases, whether favorable or unfavorable, unless they request exclusion from the Class in a timely and proper manner.

17. **Exclusion Request Process.** On or before the Claim Period Close Date, any Class Member may request to be excluded from the Class and not be a member of the Settlement Class. A Class Member wishing to make a request for exclusion must submit a written request, by First Class Mail, postage prepaid, to the address designated in the Class Notice and clearly provide all of the following information:

(a) the name and current mailing address of the person and/or entity seeking exclusion ("*Requestor*"); and

(b) a signed statement that the Requestor wishes to be excluded from the Class and the Settlement in *Cruz v. TD Bank, N.A.*, Case 1:10-cv-08026-PKC (S.D.N.Y.) and *Perez et al. v. TD Bank, N.A.*, Case 7:16-cv-05375 (S.D.N.Y.).

If the exclusion request is made by someone other than the Class Member directly, then the Requestor must provide documentation evidencing authority to submit the exclusion request on behalf of the Class Member.

18. **Effect of Valid Exclusion.** Putative Class Members who make a proper request for exclusion will not receive a Claim Payment from the Settlement, cannot object to the proposed Settlement, and will not be legally bound by any judgments that may be entered in the Actions or by the terms of the proposed Settlement, if approved by the Court.

19. **Class Counsel Fees / Service Award Procedure.** Class Counsel shall submit (a) a brief in support of final approval of the Settlement, (b) an application for an award of Class Counsel Fees, (c) and application for Class Representatives' requests for a Service Award on or before twenty-one (21) days before the Settlement Hearing. TD Bank shall submit any response, if necessary, one week before the Settlement Hearing.

20. **Objections.** Objections by any Class Member to the Settlement Agreement will be considered only if (a) the Class Member has not requested exclusion from the Class and (b) such objections and any supporting papers are filed in writing with the Clerk's Office of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007, no later than thirty (30) days before the Settlement Hearing and copies of all such papers and briefs are served by hand, mail or overnight delivery, such that they are received no later than thirty (30) days before the Settlement Hearing, by each of the following: (i) G. Oliver Koppell, Esquire and Daniel F. Schreck, Esquire of the law firm Law Offices of G. Oliver

Koppell & Associates, 99 Park Ave., Suite 1100, New York, New York, 10016, on behalf of the Class Representatives and the Class; and (ii) Alexander D. Bono, Duane Morris LLP, 30 South 17th Street, Philadelphia, PA 19103, on behalf of TD Bank. Class Counsel and TD Bank's Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

21. **Objection Requirements.** Any Class Members who intend to object must include in their filing all the following information:

(a) the Class Member's name and current mailing address; and

(b) a signed statement that the Class Member objects to the Settlement in *Cruz v. TD Bank, N.A.*, No. 10-CV-8026 (PKC) (S.D.N.Y.) and *Perez et al. v. TD Bank, N.A.*, No. 16-CV-05375 (KMK) (S.D.N.Y.) and that states with detailed specificity the reason(s) for such objection.

22. **Settlement Hearing Attendance / Participation.** Attendance at the Settlement Hearing is not necessary for Class Members to object to any matters to be presented at the Settlement Hearing. Class Members wishing to appear, however, to be heard orally to oppose any matters to be presented at the Settlement Hearing (including the approval of the Settlement) or present evidence at the Settlement Hearing, must submit with their written filing a notice of their intention to appear at the Settlement Hearing and the identity of any witnesses they may seek to call to testify and exhibits they may seek to introduce into evidence at the Settlement Hearing.

23. **Prerequisites for Objections / Hearing Presentation.** Unless the Court orders otherwise, no member of the Class or other person shall be entitled to object to any matters to be presented at the Settlement Hearing, or otherwise be heard at the Settlement Hearing, except by serving and filing written objections as described above. Any person who does not object in the manner prescribed above shall be deemed to have waived such objection and shall be bound by

all the terms and provisions of the Settlement Agreement and by all proceedings, orders and judgments in the Actions.

24. **No Hearing Attendance Required.** Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval of any matters to be presented at the Settlement Hearing (including the approval of the Settlement).

25. **Stay of Actions.** All proceedings in the Actions are **stayed** until further order of the Court, except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreement.

26. **Injunction Pending Final Hearing.** Pending final determination of whether the Settlement should be approved, the Class Representatives, all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence, maintain or prosecute, and are **barred and enjoined** from instituting, commencing, maintaining or prosecuting, any action in any court or tribunal that asserts Settled Claims against any Released Party.

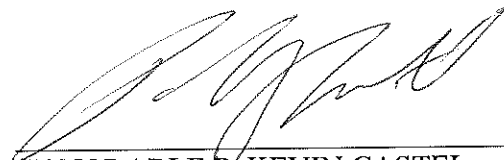
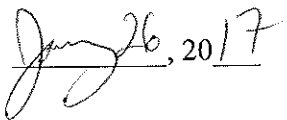
27. **Failure of Effective Date.** If the Effective Date fails to occur for any reason, then the Settlement Agreement shall be null and void, and without prejudice to any party, and none of its terms shall be effective or enforceable and the Settlement Agreement shall not be admissible in any trial of these Actions for any purpose, and all parties to these Actions shall be deemed to have reverted to their respective status in these Actions immediately before July 12, 2016, and, except as otherwise expressly provided in the Settlement Agreement, the parties shall proceed in all respects as if the Settlement Agreement, this Preliminary Approval Order and any related orders had not been entered.

28. **Separation of Counsel Fees and Service Award.** Any application for an award of Class Counsel Fees to Class Counsel or the award of a Service Award to each of the Class Representatives shall be considered separately from the fairness, reasonableness and adequacy of the Settlement as stated in the Settlement Agreement, the approval of the Settlement and the final certification of the Class as a class action. The approval and entry of the Judgment is not dependent on, and may proceed separately from, the award, if any, of Class Counsel Fees to Class Counsel and of a Service Award to each of the Class Representatives.

29. **Court's Discretion.** The Court expressly retains discretion to do the following without further notice to members of the Class: (a) reschedule the Settlement Hearing; (b) approve the Settlement Agreement with modification(s) approved by the Parties; (c) award such Class Counsel Fees as the Court finds fair and reasonable, subject to such limitations as are stated in the Settlement Agreement; and (d) award a Service Award to each of the Class Representatives, subject to such limitations as are stated in the Settlement Agreement.

30. **Court's Jurisdiction.** The Court retains exclusive jurisdiction over the Actions to consider all further matters arising out of or connected with the Settlement and the terms of the Settlement Agreement.

Dated: January 26, 2017



HONORABLE P. KEVIN CASTEL
UNITED STATES DISTRICT JUDGE