

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**MERCED IRRIGATION DISTRICT, on  
behalf of itself and all others similarly  
situated,**

**Plaintiff,**

**v.**

**BARCLAYS BANK PLC,**

**Defendant.**

**No. 1:15-cv-04878-VM-GWG**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Agreement”) is made and entered into as of this 12th day of April 2018 (the “Execution Date”), by and between defendant Barclays Bank PLC (“Barclays” or “Defendant”) and Plaintiff Merced Irrigation District (“Plaintiff”), both individually and on behalf of a Settlement Class (as defined below).

WHEREAS, Plaintiff is prosecuting the Action (as defined below) on its own behalf and on behalf of the Settlement Class;

WHEREAS, Plaintiff has alleged that Defendant unreasonably restrained trade in violation of Section 1 of the Sherman Act, unlawfully monopolized or attempted to monopolize markets in violation of Section 2 of the Sherman Act, engaged in acts and practices in violation of Cal. Bus. & Prof. Section 17200, and that Defendant was unjustly enriched as a result of its conduct;

WHEREAS, Defendant denies Plaintiff’s allegations, denies that it engaged in any wrongdoing of any kind, that it violated or breached any law or regulation, that it has liability as a result of any and all allegations made by Plaintiff, and has asserted a number of defenses to Plaintiff’s Claims (as defined below);

WHEREAS, Plaintiff and Defendant have engaged in extensive discovery regarding the facts pertaining to Plaintiff's allegations and Defendant's defenses;

WHEREAS, arm's-length settlement negotiations have taken place, with the assistance of an experienced mediator, between Settlement Class Counsel (as defined below) and Defendant's Counsel (as defined below), and this Agreement has been reached as a result of those negotiations, subject to approval of the Court;

WHEREAS, based on the discovery conducted by Plaintiff and its pre-filing investigation into the facts and the law regarding the Action, Plaintiff has concluded that a settlement with Defendant according to the terms set forth below is in the best interest of Plaintiff and the Settlement Class;

WHEREAS, Defendant, while continuing to deny its liability for the Claims asserted against it in the Action, has nevertheless agreed to enter into this Agreement to avoid the expense, inconvenience, and distraction of potentially burdensome and protracted litigation; and

WHEREAS, the Parties further agree that the Agreement, the fact of this settlement, any of the terms in the Agreement, any statement made in the negotiation thereof, and any documents filed in support of the settlement shall not constitute, or be offered, received, or construed as, an admission, finding, or evidence of (i) the truth of any of Plaintiff's Claims or allegations or lack thereof, (ii) wrongdoing or lack thereof, (iii) violation of any statute or law or lack thereof, (iv) liability on the Claims or allegations in the Action or lack thereof on the part of any Released Parties (as defined below), or (v) the propriety of certifying a litigation class in the Action or any other proceeding, and shall not be used by any person or entity for any purpose whatsoever in any legal proceeding, other than a proceeding to enforce the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and releases set forth herein and for other good and valuable consideration, and incorporating the above recitals herein, it is agreed by and among the undersigned that the Released Claims (as defined below) be settled and compromised as to Defendant and all other Released Parties, and the Action dismissed with prejudice as to Defendant, without costs as to Plaintiff, the Settlement Class, or Defendant, subject to the approval of the Court (as defined below), on the following terms and conditions.

**A. Definitions**

The following terms, as used in this Agreement have the following meanings:

1. “Action” means the action captioned *Merced Irrigation District, on behalf of itself and all others similarly situated v. Barclays Bank PLC*, No. 1:15-cv-04878-VM-GWG, which is currently pending in the United States District Court for the Southern District of New York.
2. “Claims” shall mean any and all actions, suits, claims, rights, demands, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, debts, liabilities, judgments, or remedies, whether equitable or legal.
3. “Claims Administrator” means KCC Class Action Services, LLC, subject to approval of the Court.
4. “Class Period” means the period from November 1, 2006 through December 31, 2008.
5. “Court” means the United States District Court for the Southern District of New York.

6. “Defendant’s Counsel” shall refer to Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036; or any firm later retained by Defendant to represent it in this Action.

7. “Effective Date” means the first date by which all of the following have occurred: (a) all parties have executed this Agreement; (b) the Court has entered a final judgment approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Action as against Defendant with prejudice as to all Settlement Class Members and without costs; and (c) the time for appeal or to seek permission to appeal from the Court’s approval of this Agreement and entry of a final judgment as described in clause (b) above has expired or, if appealed, approval of this Agreement and the final judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. Neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

8. “Escrow Account” is the account referenced in Paragraph 32 to maintain the Settlement Fund (as defined below) established pursuant to the terms and conditions set forth in an escrow agreement to be entered into with the Escrow Agent (as defined below).

9. “Escrow Agent” means Presidio Bank, the third-party responsible for managing and administering the Escrow Account in accordance with this Agreement, any agreement establishing the Escrow Account itself, and any Order by the Court.

10. “Fairness Hearing” has the meaning attributed to it in Paragraph 24(f).

11. “Plaintiff” means Merced Irrigation District.

12. “Preliminary Approval Date” means the date on which the Court enters a Preliminary Approval Order.

13. “Preliminary Approval Order” means an order granting preliminary approval of this Agreement, including approval of the forms and method of notice to the Class.

14. “Released Claims” shall refer to the claims described in Paragraph 28 of this Agreement.

15. “Released Parties” shall refer jointly and severally, individually and collectively, to Defendant, its predecessors, successors, past, present and future parents, subsidiaries, affiliates, divisions, and departments, and each of its respective past, present and future officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. As used in this definition, “affiliates” means entities controlling, controlled by or under common control with any of the Released Parties.

16. “Releasing Parties” shall refer jointly and severally, individually and collectively, to the Plaintiff, the Settlement Class Members, their predecessors, successors, past, present and future parents, subsidiaries, affiliates, divisions, and departments, and each of their respective past, present and future officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns or transferees, immediate and remote, of each of the foregoing. As used in this definition, “affiliates” means entities controlling, controlled by, or under common control with, any of the Releasing Parties.

17. “Settlement Amount” means \$29,000,000 in United States dollars.

18. “Settlement Class” means, for purposes of settlement under this Agreement, any individual or entity that held any contract which settled against the ICE or Dow Jones published

daily index prices for peak or off-peak power at either Mid-Columbia, Palo Verde, South Path 15 or North Path 15 between November 1, 2006 and December 31, 2008, and was damaged by movements in such index prices allegedly caused by Barclays. Excluded from the Settlement Class are Barclays and any present or former parent, subsidiary, affiliate, agent or employee of Barclays.

19. “Settlement Class Counsel” shall refer to the law firms of Cera LLP, 595 Market Street, Suite 2300, San Francisco, CA 94105 and Klafter Olsen & Lesser LLP, 2 International Drive, Suite 350, Rye Brook, NY 10573.

20. “Settlement Class Member” means each member of the Settlement Class who does not timely and validly elect to be excluded from the Settlement Class.

21. “Settlement Fund” shall be the Settlement Amount to be paid by Defendant in settlement of the Action and any income earned on amounts in the fund.

**B. Stipulation to Certification of a Settlement-Only Class**

22. The parties to this Agreement hereby stipulate for purposes of this settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the following Settlement Class shall be certified solely for settlement purposes as to Defendant:

Any individual or entity that held any contract which settled against the ICE or Dow Jones published daily index prices for peak or off-peak power at either Mid-Columbia, Palo Verde, South Path 15 or North Path 15 between November 1, 2006 and December 31, 2008, and was damaged by movements in such index prices allegedly caused by Barclays. Excluded from the Plaintiff Class are Barclays and any present or former parent, subsidiary, affiliate, agent or employee of Barclays.

**C. Approval of this Agreement, Notice, and Dismissal of Claims**

23. Plaintiff and Defendant and their counsel shall use their reasonable best efforts to effectuate this Agreement, including cooperating in Plaintiff’s effort to obtain the Court’s approval

of procedures (including the giving of notice of this settlement under Rules 23(c) and 23(e) of the Federal Rules of Civil Procedure) and to secure certification of the Settlement Class for settlement purposes only and the prompt, complete, and final dismissal with prejudice of the Action as to Defendant.

24. Within 20 business days after the Execution Date of this Agreement, Plaintiff shall submit to the Court a motion for entry of the Preliminary Approval Order. In that motion, Plaintiff shall seek:

- (a) preliminary approval of the settlement set forth in this Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23;
- (b) certification of the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);
- (c) the appointment of Plaintiff as the Settlement Class representative, and Settlement Class Counsel as counsel for the Settlement Class under Fed. R. Civ. P. 23(g);
- (d) approval of the class notice (“Notice”), claim form (“Claim Form”) and short-form notice (“Publication Notice”) (in forms agreed to by the Defendant, except for the plan of allocation described in the Notice (“Plan of Allocation”)), and method of dissemination of the Notice, Claim Form and Publication Notice;
- (e) preliminary approval of the Plan of Allocation, to be described in the Notice that will provide for the allocation of the Settlement Fund to Class members who submit timely and valid claims;
- (f) to set a hearing date for the Court to consider the fairness, adequacy and reasonableness of the proposed settlement (the “Fairness Hearing”); and
- (g) a stay of all proceedings in the Action against Defendant until the Court renders a final decision on approval of the settlement set forth in this Agreement, except as may be necessary to implement the settlement set forth in this Agreement or comply with the terms thereof.

25. Barclays shall notify federal and state officials of this settlement as specified in 28 U.S.C. §§ 1715(a) & (b).

26. Notice to the Settlement Class shall be given as follows, or as otherwise deemed sufficient by the Court:

- (a) After preliminary approval of this Agreement and the form of Notice and Claim Form, Settlement Class Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Court's order, cause the Claims Administrator to provide those members of the Settlement Class who have been identified by reasonable means with the Notice (which will advise them, *inter alia*, of the settlement and the date of the Fairness Hearing) and Claim Form by first class mail.
- (b) After preliminary approval of this Agreement and the form of Publication Notice, Settlement Class Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Court's order, cause the Claims Administrator to publish the summary notice of the settlement (which will include, *inter alia*, the date of the Fairness Hearing) one time in the national edition of *The Wall Street Journal* and in *Energy Central*, unless publication in either of the proposed publications is impracticable, in which case notice will be published in substitute publications as deemed appropriate by the Claims Administrator.

27. Plaintiff shall seek entry of a final judgment and order of dismissal ("Final Judgment"), the text of which shall be agreed upon by Plaintiff and Defendant before submission to the Court:

- (a) approving finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation according to its terms;
- (b) confirming certification of the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purposes of the settlement;
- (c) finding that the dissemination of the Notice and Publication Notice constituted due, adequate, and sufficient notice of the settlement set forth in this Agreement and that the Fairness Hearing meets the requirements of due process and the Federal Rules of Civil Procedure;
- (d) approving finally the Plan of Allocation set forth in the Notice;
- (e) reserving to the Court exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- (f) dismissing the Action with prejudice as to the Released Parties; and
- (g) permanently enjoining the Releasing Parties from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claim against any Released Party.

**D. Release and Discharge**

28. Upon the Effective Date and in consideration of payment of the Settlement Amount into the Escrow Account, Releasing Parties shall be deemed to and do completely remise, release, acquit, and forever discharge Released Parties from any and all claims, including Unknown Claims (as defined below), demands, actions, suits, injuries, and causes of action, *parens patriae* actions, cross-claims, counter-claims, charges, judgments, obligations, debts, setoffs, rights of recovery, liabilities, or damages of any nature, whenever or however incurred (whether actual, punitive, treble, compensatory, or otherwise), including claims for costs, fees, expenses, penalties, and attorneys' fees, whether class or individual, regardless of whether those claims currently exist, are known, or have matured, that the Releasing Parties, or any of them, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively, or in any other capacity against any of the Released Parties, whether in law or equity or otherwise, that was alleged or could have been alleged in the Action based on, arising out of or relating in any way to any conduct, act, or omission alleged in the Action, from the beginning of time until the Execution Date, including, without limitation, any such claim under any federal or state antitrust, anti-manipulation, unfair competition, unfair practices, fraud, racketeering, price discrimination, unjust enrichment, unitary pricing or trade practice law (the "Released Claims"). As used in the preceding sentence, "Unknown Claims" means any and all Released Claims against the Released Parties which Releasing Parties do not know or suspect to exist in his, her, or its favor as of the Effective Date, which if known by the Releasing Parties might have affected his, her or its decision(s) with respect to the settlement. The inclusion of Unknown Claims in the definition of Released Claims was separately bargained for and was a key element of this Agreement.

29. The Releasing Parties hereby covenant and agree that they shall not, hereafter, sue or otherwise seek to establish liability against any of the Released Parties based, in whole or in part, upon any of the Released Claims.

30. The Releasing Parties waive and relinquish the provisions, rights, and benefits of any state, federal, or foreign law or principle of common law, which may have the effect of limiting any of the releases herein. The Releasing Parties waive Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Releasing Parties waive any and all provisions, rights and benefits conferred by statute, regulation, rule, or principle of law or equity of any other state or applicable jurisdiction, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542. The Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release and settle fully, finally, and forever any and all claims released in Paragraph 28, and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. The parties acknowledge that the foregoing waiver was separately bargained for and is a key and integral element of the Agreement of which the release is a part.

31. Upon the Effective Date, the Defendant shall be deemed to have fully released Plaintiff, and its directors, officers, employees, and its counsel from any claims relating to the

institution, prosecution or settlement of the Action, except for claims to enforce any of the terms of this Agreement.

**E. Payments**

32. Defendant shall pay or cause to be paid the Settlement Amount in United States dollars by wire transfer into the Escrow Account. The Settlement Amount shall be wire transferred by Defendant or its designee within ten (10) business days after the Preliminary Approval Date and receipt of payment instructions. The Settlement Amount is an “all in” number that includes, without limitation, all monetary benefits and payments to the Settlement Class, and any incentive award, attorneys’ fees and expenses, escrow fees, taxes, tax expenses, and all other costs and expenses relating to the settlement (including, but not limited to, administration costs and expenses, notice costs and expenses, and settlement costs and expenses). Under no circumstances will the Defendant be required to pay anything more than the Settlement Amount in connection with this settlement. This is not a claims made settlement and, except in the event the settlement is rescinded or terminated pursuant to Paragraphs 40-41 below or the Effective Date fails to occur for any reason, no settlement funds will be returned to Barclays.

33. From the Settlement Amount, the sum of \$100,000 in United States dollars may be used for reasonable costs of disseminating mail and publication notice of this Agreement, including the cost of administration and if paid or incurred shall not be returned to the Settlement Fund if the settlement is not approved by the Court or Court approval of the settlement is overturned on appeal.

34. Upon the Effective Date, Defendant shall have no further interest in the Settlement Fund.

35. Settlement Class Counsel may at an appropriate time, determined in their sole discretion, submit a motion seeking approval of the payment of attorneys' fees and expenses to the undersigned Plaintiff's counsel and an incentive award from the Settlement Fund. Defendant shall not oppose any motion by Settlement Class Counsel seeking approval of payment of attorneys' fees, past and current expenses or an incentive award from the Settlement Fund. Defendant shall have no obligation to pay any amount of Plaintiff's counsel's attorneys' fees or the costs or expenses of litigation for the Settlement Class or the incentive award.

**F. Settlement Fund**

36. Each Settlement Class Member shall look solely to the Settlement Fund for full, final, and complete settlement and satisfaction, as provided herein, of all Released Claims by the Releasing Parties. Except and until as provided by order of the Court finally approving and giving effect to this Agreement, no Settlement Class Member shall have any interest in the Settlement Fund or any portion thereof. Neither Defendant nor Defendant's Counsel shall have any responsibility, financial obligation, or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Plan of Allocation, including but not limited to the costs and expense of its administration; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

37. The Settlement Fund is intended by the parties to this Agreement to be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1,

and to that end the parties to this Agreement shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. A “relation back election,” as described in Treas. Reg. § 1.468B-1(j), shall be made so as to enable the Settlement Fund to be treated as a qualified settlement fund from the earliest date possible, and the parties shall take all actions as may be necessary or appropriate to this end.

38. To the extent practicable, the Settlement Fund shall be (i) invested in United States Government Treasury obligations, (ii) deposited in a United States Treasury Money Market Fund or (iii) deposited in a federally insured account in an amount not exceeding \$250,000 or the limits of federal insurance, whichever is greater. All income earned on the Settlement Fund shall become and remain part of the Settlement Fund.

39. Subject to Court approval, Plaintiff and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses and Claims including, but not limited to, attorneys’ fees and past or current litigation expenses or an incentive award. Attorneys’ fees and expenses and an incentive award approved by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely-filed objections thereto, or potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel’s obligation to make appropriate refunds or repayments to the Settlement Fund, plus interest, if and when the settlement is not approved (or the approval is reversed or overturned on appeal or remand), or as a result of any appeal and/or further proceedings on remand, or successful collateral attack, whereby the fee or cost award is reduced or reversed. Except as provided in Paragraph 32, Defendant shall not be liable for any costs, fees, or expenses of any of Plaintiff’s respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court may be paid out of the Settlement Fund.

**G. Rescission of the Agreement**

40. If the Court refuses to approve this Agreement or any part hereof, or with respect to court approval if such approval is modified or set aside on or following appeal, remand, or other proceedings, or if the Court does not enter the Final Judgment provided for in Paragraph 27 of this Agreement, or if the Court enters the Final Judgment but on or following appeal, remand, or other proceedings, such Final Judgment is modified or reversed, then Defendant and the Plaintiff shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. A modification or reversal on or following appeal, remand, or other proceedings, of any amount of Settlement Class Counsel's fees and expenses awarded by the Court or any plan of allocation of the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such Final Judgment.

41. (a) Within five (5) business days of the conclusion of the opt-out period established by the Court, Plaintiff shall provide Defendant a written list of all potential Settlement Class Members who have exercised their right to request exclusion from the Settlement Class, along with each Settlement Class Member's request for exclusion together with all documents and information provided in connection with such requests, which shall be treated as "Confidential" pursuant to the protective order in the Action, entered on July 25, 2016 (ECF No. 34). Plaintiff also shall, in good faith, provide Defendant with information in Plaintiff's possession relevant to determining what portion of the available distributions from the Settlement Fund calculated net of payment of all Court-awarded attorneys' fees, reimbursed expenses, incentive awards, costs of notice and other appropriate administrative costs ("Available Distributions") that each potential Settlement Class Member would have been eligible to receive (but for its exclusion).

(b) This Agreement may be terminated by Barclays if Barclays and Plaintiff agree that potential Settlement Class members who validly excluded themselves from the Settlement Class (“Excluded Members”) would have been eligible to receive collectively (but for their exclusion) a material portion of the Available Distributions. Barclays may request termination of this Agreement pursuant to this Paragraph in writing to Settlement Class Counsel within ten (10) business days after Settlement Class Counsel provides Barclays with all the information set forth in Paragraph 41(a). If Settlement Class Counsel disputes the materiality of the amounts the opt-outs in the aggregate would have been entitled to receive from the Settlement Fund, Settlement Class Counsel and counsel for Barclays shall attempt to resolve that issue over the following three (3) business days. Absent agreement, the parties shall promptly submit their dispute as to the materiality of the portion of the Available Distributions that Excluded Members in the aggregate would have been entitled to receive (but for their exclusion) from the Settlement Fund, to Kenneth R. Feinberg for resolution. If Mr. Feinberg determines that the portion of the Available Distributions of Excluded Members is, in the aggregate, material, then Barclays may terminate this Agreement over Plaintiff’s objections. Barclays agrees to refrain from communicating with any person or entity known to be a Settlement Class member, including but not limited to the entities listed on Exhibit B to Plaintiff’s Objections and Responses to Defendant’s Interrogatories to Plaintiff, dated April 12, 2017, regarding any aspect of this case or this Settlement from October 27, 2017, until after the Fairness Hearing, except to refer any such Settlement Class member to Settlement Class Counsel. If contacted, Barclays shall refer any such Settlement Class member to Settlement Class Counsel and shall make no statement to such Settlement Class member about any aspect of the Action except to refer the Settlement Class

member to the Court file and to Settlement Class Counsel. Barclays shall promptly inform Settlement Class Counsel if any such contact is received.

42. In the event that this Agreement is rescinded or terminated, any and all amounts then constituting the Settlement Fund and any portions thereof (including all income earned thereon but excluding any taxes already paid on such income and up to \$100,000 in expenses that have been paid or incurred associated with providing notice to the Settlement Class or administering the Settlement Fund) shall be returned to Defendant within five (5) business days of such rescission or termination.

43. Defendant and Plaintiff expressly reserve all of their rights if this Agreement is rescinded or terminated. In the event that this Agreement is rescinded or terminated, 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 statuses in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the parties shall proceed in all respects as if the Agreement and any related orders had not been entered. In addition, if for any reason (including a party's exercise of a valid right to rescind or terminate this Agreement), this Agreement does not receive final Court approval or that approval is reversed on appeal or remand, then the certification of the Settlement Class shall become null and void without further Court action, and shall not be used or referred to for any further purpose in the Action or in any other action or proceeding, and shall not prejudice any party in arguing for or against contested class certification in this Action or in any other proceeding. Further, Plaintiff and Defendant agree that this Agreement, whether or not it is finally approved and whether or not Defendant or Plaintiff elect to rescind or terminate it under Paragraphs 40 or 41 of this Agreement, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation

of any statute or law, or of any liability or wrongdoing by Defendant, or of the truth of any of the Claims or allegations in the Action, or waiver or invalidity of any defense, and evidence thereof shall neither be discoverable, admissible, nor used directly or indirectly except in a proceeding to enforce or interpret the Agreement.

**H. Taxes**

44. Plaintiff shall be solely responsible for filing all income, informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund, and all expenses incurred in connection with filing tax returns, shall be paid from the Settlement Fund. Defendant shall have no responsibility to make any filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund or to pay any taxes on the Settlement Fund unless the settlement is not consummated and until the Settlement Fund is returned to Defendant. In the event the Settlement Fund is returned to Defendant because the settlement is not consummated, Defendant shall be responsible for the payment of all taxes on income earned by the Settlement Fund (including any interest or penalties, except to the extent that interest and penalties result from the failure of Plaintiff to file any necessary tax returns or make tax payments, in which case Plaintiff shall be responsible for the payment of interest and/or penalties), except to the extent such taxes have been previously paid from the Settlement Fund. Defendant makes no representation to Plaintiff

regarding the appropriate tax treatment of the Settlement Fund, income earned on the Settlement Fund, or any distribution taken from the Settlement Fund.

**I. Miscellaneous**

45. The parties will stipulate to a stay of the proceedings in the Action, except with regard to proceedings in connection with approval of the settlement set forth in this Agreement.

46. This Agreement does not settle or compromise any claim by Plaintiff or any Settlement Class Member against any other person or entity other than the Released Parties.

47. In addition to the matters discussed in Paragraph 41 hereof, Defendant and its present and future directors, officers, and employees, and Plaintiff shall endeavor to resolve any controversy, claim or dispute arising out of, relating to, or in connection with, the matters under this Agreement by first submitting the issue to Kenneth R. Feinberg (or if Mr. Feinberg is not available, such mediator upon whom the parties shall mutually agree) for non-binding mediation. The parties participating in such dispute resolution shall pay an equal share of the mediator's fees. Once reasonable, good faith efforts have been made to engage in such non-binding mediation, the parties may seek resolution by the Court for any remaining controversy, claim or dispute arising out of, relating to, or in connection with, the matters under this Agreement.

48. This Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the parties hereto with respect to the subject matter of this Agreement.

49. This Agreement may be modified or amended only by a writing executed by Plaintiff and Defendant and, after the Preliminary Approval Date, with approval by the Court.

50. Neither this Agreement nor any negotiations or proceedings connected with it shall be deemed or construed to be an admission by any party to this Agreement or any Released Party

or evidence of any fact or matter in this Action or in any related actions or proceedings, and evidence thereof shall not be discoverable, admissible, or used, directly or indirectly, in any way, except in a proceeding to interpret or enforce this Agreement.

51. Neither Defendant nor Plaintiff shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

52. This Agreement shall be construed and interpreted to effectuate the intent of the parties which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to the Released Parties.

53. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Settlement Class Members, Releasing Parties, and Released Parties any right or remedy under or by reason of this Agreement.

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

55. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, the remainder of this Agreement will not be affected, and, in lieu of each provision that is found illegal, invalid or unenforceable, a provision will be added as a part of this Agreement that is as similar to the illegal, invalid or unenforceable provision as may be legal, valid and enforceable.

56. All terms of this Agreement shall be governed and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

57. This Agreement may be executed in counterparts by counsel for Plaintiff and Defendant, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

58. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of and to execute this Agreement, subject to Court approval.

**J. Notices**

59. Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered by two means of delivery (either by hand, by registered mail, by courier or express delivery service, or by electronic mail) to each of the individuals set forth beneath the name of such party at their referenced addresses, or electronic mail addresses (or to such other address, or electronic mail address, as such party shall have specified in a written notice given to the other parties):

If to Defendant:

Name: Boris Bershteyn, Esq.  
Address: Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036-6522  
Telephone: (212) 735-3834  
Email: boris.bershteyn@skadden.com

Name: William Barksdale, Esq.  
Address: Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Ave. N.W.  
Washington, DC 20005  
Telephone: (202) 371-7171  
Email: william.barksdale@skadden.com

If to Settlement Class  
Counsel:

Name: Solomon B. Cera, Esq.  
Address: Cera LLP

595 Market Street, Suite 2300  
San Francisco, CA 94105

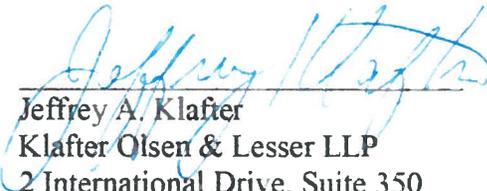
Telephone: (415) 977-2230  
Email: scera@cerallp.com

Name: Jeffrey A. Klafter, Esq.  
Address: Klafter Olsen & Lesser LLP  
2 International Drive, Suite 350  
Rye Brook, NY 10573

Telephone: (914) 934-9200  
Email: jak@klafterolsen.com

Dated: April 12, 2018

  
\_\_\_\_\_  
Solomon B. Cera  
Cera LLP  
595 Market Street, Suite 2300  
San Francisco, CA 94105-2835  
Telephone: (415) 977-2230

  
\_\_\_\_\_  
Jeffrey A. Klafter  
Klafter Olsen & Lesser LLP  
2 International Drive, Suite 350  
Rye Brook, NY 10573  
Telephone: (914) 934-9200

\_\_\_\_\_  
Daniel Sponseller  
Law Office Of Daniel J. Sponseller  
409 Broad Street, Suite 200  
Sewickley, PA 15143  
Telephone: (412) 741-4422

\_\_\_\_\_  
Eric Christensen  
Cairncross & Hempelman  
524 Second Avenue, Suite 500  
Seattle, WA 98104-2323  
Telephone: (206) 254-4451

*Attorneys for Plaintiff and the Settlement Class*

\_\_\_\_\_  
Boris Bershteyn  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036-6522  
Telephone: (212) 735-3834

*Attorneys for Defendant  
Barclays Bank PLC*

595 Market Street, Suite 2300  
San Francisco, CA 94105  
Telephone: (415) 977-2230  
Email: scera@cerallp.com

Name: Jeffrey A. Klafter, Esq.  
Address: Klafter Olsen & Lesser LLP  
2 International Drive, Suite 350  
Rye Brook, NY 10573  
Telephone: (914) 934-9200  
Email: jak@klafterolsen.com

Dated: April 12, 2018

---

Solomon B. Cera  
Cera LLP  
595 Market Street, Suite 2300  
San Francisco, CA 94105-2835  
Telephone: (415) 977-2230



---

Daniel Sponseller  
Law Office Of Daniel J. Sponseller  
409 Broad Street, Suite 200  
Sewickley, PA 15143  
Telephone: (412) 741-4422

---

Jeffrey A. Klafter  
Klafter Olsen & Lesser LLP  
2 International Drive, Suite 350  
Rye Brook, NY 10573  
Telephone: (914) 934-9200

---

Eric Christensen  
Cairncross & Hempelman  
524 Second Avenue, Suite 500  
Seattle, WA 98104-2323  
Telephone: (206) 254-4451

*Attorneys for Plaintiff and the Settlement Class*

---

Boris Bershteyn  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036-6522  
Telephone: (212) 735-3834

*Attorneys for Defendant  
Barclays Bank PLC*

595 Market Street, Suite 2300  
San Francisco, CA 94105  
Telephone: (415) 977-2230  
Email: scera@cerallp.com

Name: Jeffrey A. Klafter, Esq.  
Address: Klafter Olsen & Lesser LLP  
2 International Drive, Suite 350  
Rye Brook, NY 10573  
Telephone: (914) 934-9200  
Email: jak@klafterolsen.com

Dated: April 12, 2018

---

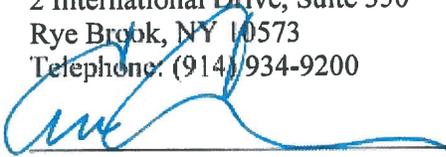
Solomon B. Cera  
Cera LLP  
595 Market Street, Suite 2300  
San Francisco, CA 94105-2835  
Telephone: (415) 977-2230

---

Daniel Sponseller  
Law Office Of Daniel J. Sponseller  
409 Broad Street, Suite 200  
Sewickley, PA 15143  
Telephone: (412) 741-4422

---

Jeffrey A. Klafter  
Klafter Olsen & Lesser LLP  
2 International Drive, Suite 350  
Rye Brook, NY 10573  
Telephone: (914) 934-9200



---

Eric Christensen  
Cairncross & Hempelman  
524 Second Avenue, Suite 500  
Seattle, WA 98104-2323  
Telephone: (206) 254-4451

*Attorneys for Plaintiff and the Settlement Class*

---

Boris Bershteyn  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036-6522  
Telephone: (212) 735-3834

*Attorneys for Defendant  
Barclays Bank PLC*

595 Market Street, Suite 2300  
San Francisco, CA 94105  
Telephone: (415) 977-2230  
Email: scera@cerallp.com

Name: Jeffrey A. Klafter, Esq.  
Address: Klafter Olsen & Lesser LLP  
2 International Drive, Suite 350  
Rye Brook, NY 10573  
Telephone: (914) 934-9200  
Email: jak@klafterolsen.com

Dated: April 12, 2018

---

Solomon B. Cera  
Cera LLP  
595 Market Street, Suite 2300  
San Francisco, CA 94105-2835  
Telephone: (415) 977-2230

---

Jeffrey A. Klafter  
Klafter Olsen & Lesser LLP  
2 International Drive, Suite 350  
Rye Brook, NY 10573  
Telephone: (914) 934-9200

---

Daniel Sponseller  
Law Office Of Daniel J. Sponseller  
409 Broad Street, Suite 200  
Sewickley, PA 15143  
Telephone: (412) 741-4422

---

Eric Christensen  
Cairncross & Hempelman  
524 Second Avenue, Suite 500  
Seattle, WA 98104-2323  
Telephone: (206) 254-4451

*Attorneys for Plaintiff and the Settlement Class*



---

Boris Bershteyn  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036-6522  
Telephone: (212) 735-3834

*Attorneys for Defendant  
Barclays Bank PLC*