

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into this \_\_\_th day of February, 2019, by and among (1) Plaintiff, Linda Robinson, individually, and on behalf of the Settlement Class, and (2) Defendant, First Hawaiian Bank (“FHB”), subject to Preliminary Approval and Final Approval as required by the Hawai’i Rules of Civil Procedure. As provided herein, Plaintiff, Class Counsel and FHB hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Approval Order and Final Judgment, all claims of the Settlement Class against FHB in the action titled *Robinson v. First Hawaiian Bank*, Civil No. 17-1-0167-01 (“Action”) shall be settled and compromised upon the terms and conditions contained herein.

**I. Recitals**

1. On January 27, 2017, Plaintiff filed her Complaint against FHB alleging improper assessment and collection of overdraft fees and seeking, *inter alia*, monetary damages, interest, attorneys’ fees, restitution, and equitable relief.
2. On November 6, 2017, Plaintiff filed her First Amended Complaint.
3. On November 16, 2017, FHB filed a Motion to Dismiss the First Amended Complaint (“MTD”), and on July 24, 2018 the MTD was withdrawn.
4. On July 23, 2018, Plaintiff filed her Second Amended Complaint.

5. On August 20, 2018, FHB filed its Motion to Dismiss the Second Amended Complaint.

6. On October 1, 2018, the Parties participated in a mediation with Jerry M. Hiatt, which resulted in the Parties agreeing on the material terms of a settlement.

7. During settlement discussions and prior to the mediation, FHB voluntarily disclosed anonymized sampling data concerning the estimated amount of overdraft fees at issue, which was analyzed by Plaintiff's expert to facilitate the mediation.

8. On or about October 2, 2018, the Parties notified the Court of the Settlement and requested a stay of all proceedings until the filing of this Settlement Agreement and a Stipulation for Preliminary Approval.

9. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Releasing Parties (definitions below). The Parties intend this Agreement to bind Plaintiff, FHB, 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.

**II. Definitions**

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

10. “Account” means any consumer checking account maintained by FHB in the United States and its territories.

11. “Account Holder” means any person who has or had any interest, whether legal or equitable, in an Account during the Class Period.

12. “Class Counsel” means Kaliel, PLLC and Perkin & Faria and such other counsel as are identified in Class Counsel’s request for attorneys’ fees and costs.

13. “Class Period” means the period from January 27, 2011, through the date of preliminary approval.

14. “Class Representative” means Plaintiff, Linda Robinson.

15. “Court” means the Circuit Court of the First Circuit, State of Hawai’i.

16. “Current Account Holder” means a Settlement Class Member who continues to maintain an Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

17. “Debit Card” means a card or similar device issued or provided by FHB, including a debit card, check card, or automated teller machine (“ATM”)

card that can or could be used to debit funds from an Account by Point of Sale and/or ATM transactions.

18. "Effective Date" means the third business day after which all of the following events have occurred:

a. The Court has entered without material change the Final Approval Order and Final Judgment; and

b. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

19. "Escrow Account" means the account into which FHB will deposit the Settlement Fund.

20. "Final Approval" means the date that the Court enters both an order granting final approval to the Settlement and final judgment, and determines the amount of attorneys' fees, costs, and expenses awarded to Class Counsel and the amount of any Service Award to the Class Representative. The proposed Final Approval Order shall be in a form agreed upon by Class Counsel and FHB. In the event that the Court issues separate orders addressing the foregoing matters, then

Final Approval means the date of the last of such orders or of the entry of the final judgment.

21. “Final Approval Order” means the order and final judgment that the Court enters upon Final Approval, which shall be substantially in the form attached as an exhibit to the Motion for Final Approval. The proposed Final Approval Order shall be in a form agreed to by Class Counsel and FHB.

22. “Net Settlement Fund” means the Settlement Fund, minus Court approved attorneys’ fees, costs and expenses, any Settlement Administration Costs incurred, and the Court approved Service Award to Plaintiff.

23. “Notice” means the notices that the Parties will ask the Court to approve in connection with the Stipulation for Preliminary Approval of the Settlement.

24. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Postcard Notice, Email Notice and Long Form Notice (all defined below), which shall be substantially in the forms as the exhibits attached to the Stipulation for Preliminary Approval.

25. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed, and that ends no later than 30 days before the Final Approval Hearing. The deadline for the Opt-Out Period will be specified in the Notice.

26. "Overdraft Fee" means any fee or fees assessed to a holder of an Account for items paid when the Account has insufficient funds at the time of settlement.

27. "Parties" means Plaintiff and FHB.

28. "Past Account Holder" means a Settlement Class Member who no longer maintains an Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

29. "Preliminary Approval" means the date that the Court enters, without material change, an order preliminarily approving the Settlement, substantially in the form of the exhibit attached to the Stipulation for Preliminary Approval.

30. The "Releases" means all of the releases contained in Section XIII hereof.

31. "Released Claims" means all claims to be released as specified in Section XIII hereof.

32. "Released Parties" means those persons released as specified in Section XIII hereof.

33. "Releasing Parties" means Plaintiff and all Settlement Class Members, and each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians,

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joint tenants, tenants in common, tenants by the entireties, agents, attorneys, and all those who claim through them or on their behalf.

34. “Relevant Overdraft Fee” means an Overdraft Fee on a transaction that was authorized and approved when sufficient funds were available to cover the amount of authorization.

35. “Service Award” means any Court-ordered payment to Plaintiff for serving as a Class Representative, which is in addition to any payment due to Plaintiff as a Settlement Class Member.

36. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.

37. “Settlement Administration Costs” means all costs of the Settlement Administrator regarding notice and settlement administration.

38. “Settlement Administrator” means Epiq Class Action & Claims Solutions, Inc. (“Epiq”).

39. “Settlement Class” means all current and former FHB members who were charged a Relevant Overdraft Fee during the Class Period. Excluded from the Settlement Class is FHB, its parents, subsidiaries, affiliates, officers and directors, all Settlement Class members who make a timely election to be

excluded, and all judges assigned to this litigation and their immediate family members.

40. "Settlement Class Member" means any person included in the Settlement Class who does not timely opt-out of the Settlement.

41. "Settlement Class Member Payment" means the cash distribution that will be made from the Net Settlement Fund to each Settlement Class Member, pursuant to the allocation terms of the Settlement.

42. "Settlement Fund" means the \$4,125,000.00 common cash fund that FHB has agreed to pay in full and complete satisfaction of its obligations under the Settlement. The Settlement Fund will be used to pay the "Settlement Class Member Payment," any attorneys' fees, costs and Service Awards ordered by the Court, any Settlement Administration Costs, and any *cy pres* payment required under this Agreement.

43. "Settlement Website" means the website that the Settlement Administrator will use as a means for Settlement Class members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, the order preliminarily approving this Settlement, and such other documents as Class Counsel and FHB agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement



Website shall be [www.FHBOverdraftLitigation.com](http://www.FHBOverdraftLitigation.com), or such other URL as Class Counsel and FHB agree upon in writing.

**III. Certification of the Settlement Class**

44. For Settlement purposes only, Plaintiff and FHB agree to ask the Court to certify the Settlement Class under Hawai'i Rules of Civil Procedure.

**IV. Settlement Consideration**

45. Subject to approval by the Court, the total cash consideration to be provided by FHB pursuant to the Settlement shall be \$4,125,000.00, inclusive of the amount paid to Settlement Class Members, any and all attorneys' fees, costs and expenses awarded to Class Counsel, any Service Award to the Class Representative, all Settlement Administration Costs, and any *cy pres* payment.

46. Within ten calendar days of Preliminary Approval, FHB shall deposit the Settlement Funds into an Escrow Account. The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed upon FHB, FHB's Counsel, Plaintiff and/or Class Counsel with respect to income earned by the Escrow Account for any period during which the Escrow Account does not qualify

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as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Escrow Account. FHB and FHB’s Counsel and Plaintiff and Class Counsel shall have no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold FHB and FHB’s Counsel and Plaintiffs and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

47. In addition, in consideration of this Agreement, FHB issued revised disclosures for consumer checking Account holders, effective February 1, 2019, reminding customers of FHB’s policy with respect to (1) the authorization/settlement procedures relating to debit transactions, and that policy’s potential impact on overdraft transactions; (2) the timing of FHB’s deduction of Overdraft Fees; and (3) the overdraft balances that are subject to continuous overdraft notification fees. FHB drafted these disclosures in consultation with Class Counsel and Plaintiff.

**V. Settlement Approval**

48. Upon execution of this Agreement by all Parties, Class Counsel shall promptly request by stipulation an Order granting Preliminary Approval of this Settlement (“Preliminary Approval Order”). The proposed Preliminary Approval

Order that will be attached to the stipulation shall be in a form agreed upon by Class Counsel and FHB. The Stipulation for Preliminary Approval shall request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (2) provisionally certify the Settlement Class pursuant to the Hawai'i Rules of Civil Procedure for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth herein below for Settlement Class members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel and counsel for FHB, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs and expenses and for a Service Award to the Class Representative ("Final Approval Hearing").

**VI. Discovery and Settlement Data**

49. Class Counsel and FHB already have engaged in informal discovery related to liability and damages. Additionally, for purposes of effectuating this Settlement, FHB will make available to Class Counsel and its expert anonymized data for the entirety of the Class Period necessary for determination of class

membership and settlement payment allocation. Plaintiff's expert shall use that data to determine Settlement Class membership and the number of Relevant Overdraft Fees for each Settlement Class Member. Because Plaintiff's expert will not have access to Settlement Class member names or account numbers, Plaintiff's expert will provide results to FHB, which will then create a list of Settlement Class members and their electronic mail or postal addresses, which will be provided to the Settlement Administrator to provide Notice. Plaintiff's counsel and their expert shall be solely responsible for determining Settlement Class membership and the amount of payment to any Settlement Class Members, pursuant to Section XI, below.

**VII. Settlement Administrator**

50. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraphs hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing Postcard and Email Notice to Settlement Class members and distributing the Settlement Fund as provided herein.

51. FHB will take reasonable steps to cooperate with Plaintiff in keeping settlement administration expenses to a minimum, including by providing the following assistance and data without cost to Plaintiff: providing class member data sufficient to allow for email or mailed postcard notice; providing data

sufficient to allow Plaintiff's expert to determine the number of Relevant Overdraft Fees for each class member, and issuing account credits to current account holders.

52. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraphs and elsewhere in this Agreement, are as follows:

- a. Use the name and address information for Settlement Class members provided by FHB in connection with the Notice process approved by the Court, for the purpose of mailing the Postcard Notice and sending the Email Notice, and later mailing distribution checks to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for FHB to make the payment by a credit to the Settlement Class Members' Accounts;
- b. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- e. Respond to any mailed Settlement Class member inquiries;

- f. Process all requests for exclusion from the Settlement Class;
- g. Provide weekly reports to Class Counsel and FHB that summarizes the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;
- h. In advance of the Final Approval Hearing, prepare an affidavit to submit to the Court confirming that the Notice Program was completed, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly requested exclusion from the Settlement Class, and other information as may be necessary to allow the Parties to seek and obtain Final Approval.
- i. Pay invoices, expenses and costs upon approval by Class Counsel and FHB, as provided in this Agreement; and
- j. Any other Settlement-administration-related function at the instruction of Class Counsel and FHB, including, but not limited to, verifying that settlement funds have been distributed.

**VIII. Notice to Settlement Class members**

53. As soon as practicable after Preliminary Approval of the Settlement, at the direction of Class Counsel and FHB's Counsel, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall

include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class members may exclude themselves from or “opt-out” of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and FHB shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program shall not bear or include the FHB logo or trademarks or the return address of FHB, or otherwise be styled to appear to originate from FHB.

54. The Notice also shall include a procedure for Settlement Class Members to opt-out of the Settlement Class. A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period, provided the opt-out notice is postmarked no later than the last day of the Opt-Out Period. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

55. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel’s application for

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attorneys' fees, costs and expenses and/or a Service Award to the Class Representative. Objections to the Settlement, to the application for fees, costs, expenses, and/or to the Service Award must be mailed to the Clerk of the Court, Class Counsel, and FHB's counsel. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Hawai'i Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

56. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the Action;
- b. the objector's full name, address and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;



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e. the number of times in which 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;

f. 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;

g. 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 5 years;

h. 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;

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

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

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

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

Class Counsel and/or FHB may conduct limited discovery on any objector consistent with the Hawai'i Rules of Civil Procedure.

57. Notice shall be provided to Settlement Class members in three different ways: Email notice to Current Account Holders for whom FHB has email addresses ("Email Notice") and who have agreed to accept their monthly account statements by email; postcard Notice ("Postcard Notice") to those Current Account Holders who have not agreed to accept their monthly account statements by email and to Past Account Holders; and Long-Form Notice with details regarding the Settlement ("Long Form Notice") on the Settlement Website. Email Notice and Postcard Notice shall collectively be referred to as "Mailed Notice." Not all Settlement Class members will receive all forms of Notice, as detailed herein.

58. FHB will take all reasonable steps to cooperate with Class Counsel and its expert to make available the necessary data to Class Counsel's expert to determine Settlement Class membership, consistent with Paragraph 49, above. The availability of the data necessary for Class Counsel's expert to compile the Settlement Class membership list shall be provided as soon as practicable. FHB will bear the expense of extracting the necessary data to make available to Class

Counsel's expert for analysis, while Class Counsel shall be responsible for paying Class Counsel's expert, who will analyze the data provided to determine Settlement Class membership as well as the amount of each Settlement Class member's damages. The Settlement Administrator shall run the physical addresses through the National Change of Address Database and shall mail to all such Settlement Class members Postcard Notice. The Settlement Administrator shall also send out Email Notice to all Settlement Class members receiving Notice by that method. The initial Mailed Postcard and Email Notice shall be referred to as "Initial Mailed Notice."

59. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. By way of example, a "reasonable" tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 60 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces ("Notice Re-mailing Process"). The Settlement Administrator shall send Postcard Notice to all Settlement Class members' whose emails were returned as undeliverable and complete such Notice pursuant to the deadlines described herein as they relate to the Notice Re-mailing Process.

60. The Notice Program (which is composed of both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than 60 days before the Final Approval Hearing.

61. Within the provisions set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and FHB.

**IX. Final Approval Order and Judgment**

62. Plaintiff's Stipulation for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall file the Motion for Final Approval of the Settlement, and application for attorneys' fees, costs and expenses and for Service Award for the Class Representative, no later than 45 days before the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiff' Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses and for the Service Award for the Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Member (or their counsel) who objects to the Settlement or to Class Counsel's application for attorneys' fees, costs, expenses or the Service Award application, provided the

objectors submitted timely objections that meet all of the requirements listed in the Agreement.

63. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and Service Awards. The proposed Final Approval Order shall be in a form agreed upon by Class Counsel and FHB. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfied Due Process requirements;
- d. Enter judgment dismissing the Action with prejudice;
- e. Bar and enjoin all Releasing Parties from pursuing any Released Claims against FHB or its affiliates at any time, including during any appeal from the Final Approval Order, and retain jurisdiction over the enforcement of the Court's injunctions;
- f. Release FHB and the Released Parties from the Released Claims; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including FHB, all Settlement Class Members, and all

objectors, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

**X. Distribution of Settlement Fund**

64. Within 10 days after the Effective Date, the Settlement Administrator shall send the aggregate amount of the Settlement Class Member Payments that are to be credited to Current Account Holders' Accounts to FHB.

65. Within 30 days of the Effective Date, FHB shall credit the Accounts of all Current Account Holders based on the calculations provided by Class Counsel's expert, or by mailing a standard size check if it is not feasible or reasonable to make the payment by a credit. Such payments to Current Account Holders will be accompanied by a description to be determined by FHB. FHB will bear any costs associated with implementing the Account credits discussed in this paragraph.

66. Within 30 days of the Effective Date, the Settlement Administrator shall send Settlement Class Member Payments to Past Account Holders.

**XI. Calculation of Automatic Distributions from Settlement Fund**

67. The calculation and implementation of allocations of the Settlement Fund contemplated by this Section shall be done by Class Counsel and its expert for the purpose of compensating Settlement Class Members. Neither FHB nor its counsel shall have any responsibility for the calculation, and Settlement Class

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Members shall have no recourse against FHB or its counsel with respect to the calculation. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations. Consistent with its contractual, statutory, and regulatory obligations to maintain security and protect FHB customers' private financial information, FHB shall make available such additional data and information as may reasonably be needed by Class Counsel and its expert to confirm and/or effectuate the calculations and allocations contemplated by this Agreement. Class Counsel shall confer with FHB's counsel concerning any such additional data and information. All such data and information produced by FHB for the purpose of confirming and/or effectuating the calculations and allocations contemplated by this Agreement shall be returned to FHB's counsel or destroyed.

68. The amount of the Settlement Class Member Payment from the Settlement Fund to which each Settlement Class Member is entitled for the Class Period (subject to the availability of data) is to be determined using the following methodology or such other methodology as would have an equivalent result:

a. All accounts held by Settlement Class Members will be identified at which, on one or more calendar days during the Class Period, FHB assessed Relevant Overdraft Fees.

b. Relevant Overdraft Fees will be totaled for each Account.

c. The Net Settlement Fund will be allocated *pro rata* to the Settlement Class Members based on their number of Relevant Overdraft Fees.

69. The Parties agree the foregoing allocation formula is exclusively for purposes of computing, in a reasonable and efficient fashion, the amount of any Settlement Class Member Payment each Settlement Class Member should receive from the Net Settlement Fund. The fact that this allocation formula will be used is not intended and shall not be used for any other purpose or objective whatsoever.

70. The Settlement Administrator shall divide the total amount of the Net Settlement Fund by the total amount of all Settlement Class Members' Relevant Overdraft Fees. This calculation shall yield the "*Pro Rata Percentage*."

71. Each Settlement Class Member's *Pro Rata Percentage* will be multiplied by the amount of the Net Settlement Fund, which yields a Pre-Adjustment Payment Amount for each Settlement Class Member.

72. If any Settlement Class Member's Pre-Adjustment Amount is less than \$5.00, the Settlement Class Member's Payment amount shall be adjusted to \$5.00. The remainder of the Net Settlement Fund shall then be apportioned *pro rata* to all other Settlement Class Members by multiplying those Settlement Class Members' *Pro Rata Percentage* by the remaining amount of the Net Settlement Fund.



**XII. Disposition of Residual Funds**

73. Within 1 year after the date the Settlement Administrator mails the first Settlement Class Member Payment, any remaining amounts resulting from uncashed checks (“Residual Funds”) shall be distributed as follows:

a. First, the amount of the Net Settlement Fund attributable to uncashed or returned checks sent by the Settlement Administrator shall be held by the Settlement Administrator one year from the date that the first distribution check is mailed by the Settlement Administrator. During this time the Settlement Administrator shall make a reasonable effort to locate intended recipients of settlement funds whose checks were returned (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose) to effectuate delivery of such checks. The Settlement Administrator shall make only one such additional attempt to identify updated addresses and re-mail or re-issue a distribution check to those for whom an updated address was obtained.

b. Second, any Residual Funds remaining after distribution shall be distributed on a *pro rata* basis to participating Settlement Class Members who received Settlement Class Member Payments, to the extent feasible and practical in light of the costs of administering such subsequent payments unless the amounts involved are too small to make individual distributions economically viable or

other specific reasons exist that would make such further distributions impossible or unfair.

c. Third, in the event the costs of preparing, transmitting and administering such subsequent payments pursuant to this Section are not feasible and practical to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair, Class Counsel and FHB shall seek the Court's approval to distribute the Residual Funds, if any, to agreed-upon *cy pres* recipients in Hawai'i. In this event, the Residual Funds will be paid to the following 26 U.S.C. § 501(c)(3) non-profit organizations: Hawaii Foodbank and Aloha Harvest.

d. All costs of any second distribution, including FHB's internal costs of crediting Settlement Class Member Accounts, will come from the Residual Funds, and FHB is not required to pay these costs.

### **XIII. Release**

74. As of the Effective Date, Plaintiff and each Settlement Class Member, each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries and successors ("Releasing Parties"), shall automatically be deemed to have fully and irrevocably released and forever discharged FHB and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors,

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officers, employees, agents, insurers, members, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them (“Released Parties”), of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, concerning or relating to any claims or conduct alleged in the complaint, including claims that were or could have been brought in the Action (“Released Claims”).

75. Except for Settlement Class members who have validly and timely elected to exclude themselves from or opt-out of the Settlement Class, each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against FHB in any forum, action, or proceeding of any kind.

76. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees

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that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

77. In addition to the releases given by Plaintiff and the members of the Settlement Class above, Plaintiff Linda Robinson, and each and every one of her respective agents, representatives, attorneys, heirs, assigns, or any other person acting on her behalf or for her benefit, and any person claiming through her, provides the additional following general release of all claims, in exchange and consideration of the Settlement set forth in this Agreement. This named Plaintiff releases the Released Parties from all claims, demands, rights, liabilities, grievances, demands for arbitration, and causes of action of every nature and

description whatsoever, known or unknown, pending or threatened, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law.

78. Nothing in this Agreement shall operate or be construed to release any claims or rights that FHB has to recover any past, present or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans or any other debts with FHB, pursuant to the terms and conditions of such accounts, loans, or any other debts. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiff or any Settlement Class Member has, other than with respect to the claims expressly Released by this Agreement, in the event FHB and/or its assigns seeks to recover any past, present or future amounts that may be owed by Plaintiff or by any Settlement Class Member on his/her accounts, loans or any other debts with FHB, pursuant to the terms and conditions of such accounts, loans, or any other debts.

**XIV. Payment of Attorneys' Fees, Costs, and Service Awards**

79. Class Counsel may request attorneys' fees of up to 33% of the Settlement Fund and reimbursement of reasonable costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The Parties agree that the Court's failure to approve, in

whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

80. Within seven (7) days of the Court's entry of the Final Approval Order, all Court-approved attorneys' fees, costs, and expenses shall be paid from the escrow account. In the event the award of attorneys' fees is reduced on appeal, or if the Effective Date does not occur (either because approval of the Settlement is overturned or the Agreement is terminated for any reason), Class Counsel shall reimburse the escrow account, within five business days of the entry of the order reducing the fees, overturning the approval of the Settlement on appeal, or the termination of the Agreement, the difference between the amount distributed and the reduced amount (in the event of a reduction) or the entirety of the amount (in the event approval is overturned or the Agreement is terminated).

81. The payment of attorneys' fees, costs and expenses of Class Counsel shall be made as designated by Class Counsel. After the fees, costs and expenses have been paid, Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees, costs and expenses to that firm. FHB shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed for payment of attorneys' fees, costs, or expenses or any other payments from the Settlement Fund not specifically described herein.

82. In the event the Effective Date does not occur, or the attorneys' fees or the cost award is reduced following an appeal, each counsel and their law firms who have received any payment of such fees or costs shall be jointly and severally liable for the entirety. Further, each counsel and their law firms consents to the jurisdiction of the Court for the enforcement of this provision.

83. Class Counsel will ask the Court to approve a Service Award to the Plaintiff in the amount of \$10,000.00. The Service Award is to be paid within 10 days of the Effective Date. The Service Award shall be paid to the Class Representative in addition to the Class Representative's Settlement Class Member Payment. The Parties agree that the Court's failure to approve the Service Award, in whole or in part, shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

84. The Parties negotiated and reached agreement regarding attorneys' fees and costs, and the Service Award, only after reaching agreement on all other material terms of this Settlement.

**XV. Termination of Settlement**

85. This Settlement may be terminated by either Class Counsel or FHB by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 15 days (or such longer time as may be agreed in writing between Class Counsel and FHB) after any of the following occurrences:

- a. Class Counsel and FHB agree to termination;
- b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 360 days after such reversal;
- d. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Class Counsel or FHB seeking to terminate the Settlement reasonably considers material;
- e. the Effective Date does not occur; or
- f. any other ground for termination provided for elsewhere in this Agreement.

86. FHB also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within 14 days after its receipt from the Settlement Administrator of any report indicating that the number of Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with this Settlement by Class Counsel and



FHB. The number or percentage shall be confidential except to the Court, which shall upon request be provided with a copy of the letter for *in camera* review.

**XVI. Effect of a Termination**

87. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiff's, Class Counsel's, and FHB's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

88. In the event of termination, FHB shall have no right to seek reimbursement from Plaintiff, Class Counsel, or the Settlement Administrator for Settlement Administration Costs paid by FHB.

89. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions hereof.

90. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all

Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

**XVII. No Admission of Liability**

91. FHB continues to dispute its liability for the claims alleged in the Action, and maintains that its transaction processing practices and disclosures concerning those practices complied, at all times, with applicable laws and regulations and the terms of the account agreements with its members. FHB does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. FHB has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

92. Class Counsel believes that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant informal discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set

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forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class members.

93. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.

94. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Settlement Class members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

95. In addition to any other defenses FHB may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against,

any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

**XIX. Miscellaneous Provisions**

96. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

97. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

98. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

99. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

100. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

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101. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

102. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Hawai'i, without regard to the principles thereof regarding choice of law.

103. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

104. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice

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program and the Settlement Administrator. As part of their agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against FHB or its affiliates at any time, including during any appeal from the Final Approval Order.

105. Notices. All notices to Class Counsel or counsel for FHB provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

**KALIEL PLLC**

Jeffrey D. Kaliel, Esq.  
jkaliel@kalielpllc.com  
1875 Connecticut Avenue NW, 10th Floor  
Washington, DC 20009  
Telephone: 202-350-4783

**PERKIN & FARIA**

Brandee Faria, Esq.  
841 Bishop Street Suite 1000  
Washington, DC 20009  
Honolulu, Hawai'i 96813  
Telephone: 808-523-2300

**MORRISON & FOERSTER LLP**

Jessica Kaufman  
250 W. 55<sup>th</sup> St.  
New York, New York 10019  
Telephone: 212.336.4257

James R. McGuire

425 Market Street  
San Francisco, CA 94105  
Telephone: 415.268.7000

**KOBAYASHI, SUGITA & GODA LLP**

Craig Shikuma  
999 Bishop Street, Suite 2600  
Honolulu, Hawai'i 96813  
Telephone: 808-535-5706

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

106. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for FHB and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

107. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

108. Authority. Class Counsel (for the Plaintiff and the Settlement Class Members), and counsel for FHB (for FHB), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of

Plaintiff and FHB to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

109. Agreement Mutually Prepared. Neither FHB nor Plaintiff, nor any of them, 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.

110. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter 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 the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. FHB has provided and is providing information that Plaintiff reasonably request to identify Settlement Class members and the alleged damages they incurred. Both Parties recognize and acknowledge that they and their experts reviewed and analyzed data for a subset of the time at issue and that they and their experts used extrapolation to make certain

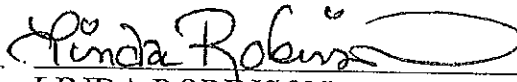


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determinations, arguments and settlement positions. The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

111. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Release contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Release and the legal effects of this Agreement and the Release, and fully understands the effect of this Agreement and the Release.

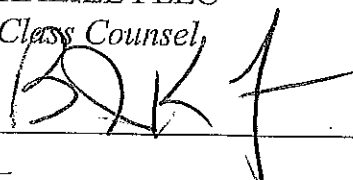
Dated: 2/26/2019



LINDA ROBINSON  
*Plaintiff*

Dated: \_\_\_\_\_

Jeff Kaliel, Esq.  
KALIEL PLLC  
*Class Counsel,*



Dated: \_\_\_\_\_

Brandee Faria, Esq.  
PERKIN & FARIA  
*Class Counsel*

Dated: \_\_\_\_\_

FIRST HAWAIIAN BANK

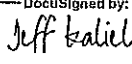
By: \_\_\_\_\_  
ITS \_\_\_\_\_

Dated: \_\_\_\_\_

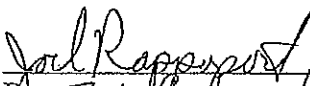
Jessica Kaufman, Esq.  
MORRISON & FOERESTER  
*Counsel for FHB*

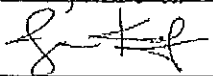
FOR EXECUTION

Dated: \_\_\_\_\_  
LINDA ROBINSON  
*Plaintiff*

Dated: 3/7/2019  
DocuSigned by:  
  
FB17E468E0B1427  
Jeff Kaliel, Esq.  
KALIEL PLLC  
*Class Counsel*

Dated: \_\_\_\_\_  
Brandee Faria, Esq.  
PERKIN & FARIA  
*Class Counsel*

Dated: 03-07-2019  
FIRST HAWAIIAN BANK  
  
By: Joel Rappaport  
ITS *V.P., General Counsel and Secretary*

Dated: 03-07-2019  
  
Jessica Kaufman, Esq.  
MORRISON & FOERESTER  
*Counsel for FHB*