

SETTLEMENT AGREEMENT

Made as of August 17, 2023

Between:

Tyler Dufault

(the Plaintiff)

-and-

The Toronto-Dominion Bank and The Canada Trust Company

(the Defendants)

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RECITALS

- A. WHEREAS the Plaintiff Tyler Dufault commenced a class action in the Ontario Superior Court of Justice on February 2, 2021 bearing Court File No. CV-21-00656203-00CP as against the Defendants (the “**Class Action**”);
- B. WHEREAS the Class Action asserts claims against the Defendants on behalf of the Class in relation to the Defendants’ practice of charging multiple non-sufficient funds fees (“**NSF fees**”);
- C. WHEREAS the Defendants deny all the allegations asserted by the Plaintiff in the Class Action, and maintain that they have good and valid defences to the claims asserted therein;
- D. WHEREAS the Parties participated in a two-day mediation with Marty Scisizzi on May 10 and 30, 2023, and continued arm’s-length settlement discussions after the mediation, following which they agreed to an agreement in principle to settle the Class Action;
- E. WHEREAS the Parties have agreed to enter into this Settlement Agreement in order to reflect the agreement in principle and to achieve an early full and final resolution of the Class Action and to avoid the further expense, inconvenience and burdens of protracted litigation;
- F. WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on Class Counsel’s analyses of the facts and law applicable to the Plaintiff’s claims asserted in the Class Action, and having regard to the burdens and expense of prosecuting the Class Action, including, in particular, the risks and uncertainties associated with summary judgment, trials and appeals, and taking into account the likely maximum recovery for the Class weighed against those costs, risks, uncertainties and delays, the Plaintiff and Class Counsel both have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Class;
- G. WHEREAS the Plaintiff and Class Counsel agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Defendants, or evidence of the truth of any of the Plaintiff’s allegations against the Defendants, and the Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Plaintiff, or evidence of the truth or validity of any of the Defendants’ defences or arguments against the Plaintiff’s claims;
- H. WHEREAS there exists a proceeding in the Quebec Superior Court in *Vaillancourt-Thivierge v. BMO et al.*, Court File. No. 500-06-000808-168 in which it is alleged that all NSF fees, including multiple NSF fees, are contrary to Quebec law;
- I. WHEREAS TD intends to amend the NSF Fee disclosure provision in its Financial Services Terms and related Fee Schedule, in light of the allegations brought forward in this Class Action in order to clarify the scope of the existing NSF Fee (the “**Contract Amendment**”);

- J. WHEREAS TD has now changed its NSF fee reversal policy such that it now provides for discretion to permit a 100% reversal of the NSF fee for a first-time issue raised by a customer;
- K. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Action and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Ontario Superior Court of Justice;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Action shall be settled on the following terms and conditions:

ARTICLE I - DEFINITIONS

1.1 Definitions

The following terms, as used in this Agreement, including the Recitals, mean:

- (a) ***Account*** means a separate account with TD Bank under the control of the Defendants in which the Settlement Fund will be held in trust for the benefit of the Class Members until distributed pursuant to the Distribution Protocol (**Schedule G**).
- (b) ***Active Group*** or ***Active Group Member*** has the meaning provided in the Distribution Protocol (**Schedule G**);
- (c) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel and approved by the Court in relation to the approval, implementation and operation of this Settlement Agreement including the costs, if any, of distribution of the Settlement Fund and the costs of notices to the Class, except for: (i) internal expenses of the Defendants to identify members of the Active Group and related inquiries and to distribute the Settlement Amount as provided in the Distribution Protocol; (ii) internal expenses of the Defendants to provide information to Class Counsel to provide notices to the Class as provided in the Notice Plan; and (iii) Class Counsel Fees.
- (d) ***Contract Amendment*** has the meaning ascribed to it in Recital I.
- (e) ***Class*** means the members of the Class as defined in the First Order, but excludes any person who validly opts out following the First Order in accordance with the process provided under the First Order, and ***Class Member*** means any one thereof.
- (f) ***Class Action*** means the class proceeding commenced by the Plaintiff Tyler Dufault in the Ontario Superior Court of Justice bearing Court File No. CV-21-00656203-00CP.

- (g) ***Class Counsel*** means Koskie Minsky LLP.
- (h) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, HST and other applicable taxes or charges of Class Counsel in respect of the prosecution of the Class Action as approved by the Court.
- (i) ***Court*** means the Ontario Superior Court of Justice.
- (j) ***Defence Counsel*** means McCarthy Tétrault LLP.
- (k) ***Defendants*** means The Toronto-Dominion Bank and The Canada Trust.
- (l) ***Distribution Protocol*** means the plan for distributing the Settlement Fund and accrued interest to the Class as approved by the Court in **Schedule G**.
- (m) ***Effective Date*** means (i) the date upon which the ability to appeal from the anticipated Second Order expires; or (ii) if any appeal is taken from the Second Order, then the Effective Date shall be the date upon which any such appeal is concluded by way of a Final order.
- (n) ***Final*** when used in relation to a Court order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order.
- (o) ***First Order*** means the order of the Court amending the class definition for settlement purposes and granting the Court's approval of the Notice of Hearing which will be substantially in the form of the draft attached at **Schedule A** or as modified by the Court.
- (p) ***ACORN*** means ACORN Canada, a community organization that advocates on behalf of low- and moderate-income Canadians.
- (q) ***Notice of Hearing*** means the Notice of Hearing for Settlement Approval and Counsel Fee Approval, approved by the Court to inform the Class of (1) the amendment of the class definition for the purposes of the settlement; (2) the process by which Class Members may opt out; (3) the date of the hearing to approve this Settlement Agreement; (4) the key terms of this Settlement Agreement; (5) the process by which Class Members may object to this Settlement Agreement; and (6) Class Counsel Fees.
- (r) ***Notice of Court Order*** means the Notice of Settlement Approval and Class Counsel Fee Approval as approved by the Court to inform the Class Members of (1) the approval of this Settlement Agreement; (2) the approval of Class Counsel Fees; and (3) the process by which the Settlement Fund will be distributed, which will be substantially in the form of **Schedule C**, or as modified by the Court.

- (s) **Parties**, when capitalized, means the signatories to this Settlement Agreement, being the Plaintiff and the Defendants, and **Party** means any one thereof.
- (t) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, collective, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, statutory, punitive or other damages, declaratory relief, liabilities of any nature whatsoever, including claims for injunction, contribution, interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere in Canada, from the commencement of the Class Period through to the issuance of the Second Order, where such conduct was the subject matter of allegations or claims in the Class Action.
- (u) **Releasees** means the Defendants and their respective predecessors, successors, parents, subsidiaries, affiliates and past and current officers, directors, employees, agents, shareholders and beneficiaries of any kind.
- (v) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Class Members, and their respective successors, heirs, executors, administrators, trustees, assigns, devisees or representatives of any kind.
- (w) **Second Order** means the order of the Court which will be substantially in the form of the draft attached at **Schedule E**, approving the terms of this Settlement Agreement.
- (x) **Settlement Agreement** means this agreement, including the recitals and Schedules.
- (y) **Settlement Amount** means the all-inclusive amount of Fifteen Million Nine Hundred Thousand Canadian Dollars (CDN \$15,900,000.00), payable by the Defendants, plus any interest which may be earned on the Settlement Amount after it has been transferred to the Account pursuant to Article IV of this Settlement Agreement pending distribution of the Settlement Fund pursuant to the Distribution Protocol (**Schedule G**).
- (z) **Settlement Fund** means the Settlement Amount less the amount approved by the Court for Class Counsel Fees, Honourarium, and Litigation Funder fees.
- (aa) **TD or TD Bank** means the Defendants.
- (bb) **Third Order** means the draft order of the Court at **Schedule F** approving Class Counsel Fees, Honourarium and Litigation Funder fees.

ARTICLE II - BEST EFFORTS TO SECURE COURT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to effectuate this Settlement Agreement and shall cooperate to seek and obtain the Court's approval of this Settlement Agreement and all other matters addressed herein.

Class Counsel and the Plaintiff agree that the Contract Amendment adequately discloses to TD customers that TD may charge NSF fees on re-presented pre-authorized debits. Class Counsel will use their best efforts to draw the Contract Amendment to the attention of the Court at the settlement approval hearing.

If the Defendants intend to seek a sealing order in respect of commercially-sensitive information to be included in the materials submitted on any of the motions contemplated under this Settlement Agreement, they will notify the Plaintiff in advance and deliver a motion record which will include the evidentiary basis for the sealing order. The Plaintiff will not oppose the order, unless they believe it would result in prejudice to the Class, in which instance they will provide their concerns to Defence Counsel in advance.

The Defendants will cooperate to provide information in a timely manner to Class Counsel that is reasonable and necessary for the Plaintiff to seek and obtain court approval of this Settlement Agreement.

2.2 Court Approval Required for Enforceable Agreement

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless the terms of this Settlement Agreement are approved by the Court.

ARTICLE III - SETTLEMENT APPROVAL

Subject to the direction of the Court regarding the approval process, the Parties propose to seek the orders contemplated in this Settlement Agreement as follows. The Parties agree that the motions contemplated in this article may be conducted by videoconference, or by teleconference, as directed by the Court.

3.1 Motions for Approval of Notice of Hearing

After this Settlement Agreement is executed, the Parties shall attend a case conference and the Plaintiff shall bring a motion for the Court's approval of an order substantially in the form of the First Order at **Schedule A** (being the draft order amending the class definition for settlement purposes and approving the Notice of Hearing). The Defendants will consent to this motion.

3.2 Motions for Approval

- (a) As soon as practicable after an order substantially in the form of the First Order is made, and the Notice of Hearing published, the Plaintiff shall bring a motion for

the Court's approval of an order substantially in the form of the draft Second Order at **Schedule E** (being the draft order approving this Settlement). The Parties will cooperate in scheduling the motion for approval of this Settlement at a mutually convenient date which permits orderly resolution of the issues. The Defendants will consent to this motion. The Parties waive any rights of appeal if the Second Order is granted without amendment by the Court.

- (b) At the same time as the motion seeking an order substantially in the form of the Second Order at **Schedule E**, Class Counsel will bring a motion for the Court's approval of an order substantially in the form of the Draft Third Order at **Schedule F** (being the draft order approving Class Counsel Fees, Honorarium and Litigation Funder fees). The Defendants will not oppose this motion. The Parties waive any rights of appeal if the Third Order is granted without amendment by the Court.
- (c) The Plaintiff will provide draft copies of all motion materials to Defence Counsel before they are finalized. The Parties will work cooperatively to address any confidentiality or other reasonable concern raised by the Defendants prior to filing any motion materials. The Parties agree that the motion materials in support of the Second Order will include information from the Defendants regarding, *inter alia*, the quantum of the Class's claim consistent with the information provided by the Defendants in the context of the Parties' mediation process, the size of the Class, and the estimated number of Active Group Members.

ARTICLE IV- SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount and Settlement Fund

- (a) Within thirty (30) business days of the Second Order, the Defendants shall pay the Settlement Amount to the Account in trust, for the benefit of the Class.
- (b) The Defendants' payment of the Settlement Amount will be in full satisfaction of the Released Claims against the Releasees.
- (c) None of the Defendants shall have any obligation to pay to the Plaintiff, Class Counsel or the Class any amount in addition to the Settlement Amount unless otherwise expressly provided for in this Agreement.
- (d) The Defendants shall hold the Settlement Amount in trust in the Account and maintain the Account as provided for in this Settlement Agreement.
- (e) Within fourteen (14) days of the Effective Date: (i) the Defendants shall transfer to Class Counsel payment in the amount of the Class Counsel Fees, Honorarium and Litigation Funder fees approved by the Court, (ii) the Defendants shall commence the distribution of the Settlement Fund to the Class Members pursuant to the Distribution Protocol, and (iii) following distribution to the Class, the Defendants shall transfer any *cy-près* payment to ACORN.

4.2 Taxes and Interest

- (a) Except in the event of termination of this Settlement Agreement, any interest that may be earned on the Settlement Amount after it is transferred to the Account, shall accrue to the benefit of the Class and shall become and remain part of the Settlement Fund.
- (b) The Defendants shall have no responsibility to make any income tax filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Amount after it has been transferred to the Account, or on the Settlement Fund or pay any taxes on the monies in the Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount, including on the Settlement Fund, shall be paid to the Defendants, and in such case, each Defendant shall be responsible for the payment of all taxes on its proportionate share of such interest.

ARTICLE V - DISTRIBUTION OF THE SETTLEMENT FUND

5.1 Distribution Protocol

The Distribution Protocol is part of this Settlement Agreement and will be subject to approval as part of the motions seeking Court approval of the Second Order. The Distribution Protocol is set out at **Schedule G**.

5.2 No responsibility for External Administration Fees

The Defendants acknowledge that they may incur internal expenses to identify the Active Group Members and to distribute the Settlement Fund to Class Members pursuant to the Distribution Protocol and to deliver the notices to Class Members pursuant to the Notice Plan. However, the Defendants will not be required to incur any external Administration Fees in connection with the Distribution Protocol.

5.3 Rendering of Account and Closing Judgment

- (a) The Defendants will provide monthly progress reports by e-mail to Class Counsel regarding the number of payments completed in the context of the distribution of the Settlement Fund.
- (b) Within sixty (60) days following the completion of the distribution of the Settlement Fund in accordance with the Distribution Protocol, the Defendants will confirm the following (the “**Rendering of Account**”) in a report to the Court:
 - (i) The number of Class Members in the Class Action who were paid out of the Settlement Fund;
 - (ii) The rough proportion of payments made to Class Members in each province;

- (iii) The total amount distributed to Class Members; and
 - (iv) The balance, if any, remaining from the Settlement Fund.
- (c) If any balance pursuant to article 5.3(b)(iv) remains, it will be distributed entirely to ACORN.

ARTICLE VI- TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

- (a) The Defendants shall have the option to terminate this Settlement Agreement in the event that:
 - (i) The Plaintiff breaches any material terms of this Settlement Agreement;
 - (ii) A Court declines to issue either a First Order and/or Second Order substantially in the form attached as **Schedule A** and **Schedule E** or requires a material change to the Settlement Agreement as a pre-condition to approval;
 - (iii) 10% or more of the estimated Class opts out of the Settlement Agreement.
- (b) The Plaintiff and Class Counsel, collectively but not separately, shall have the option to terminate the Settlement Agreement in the event that:
 - (i) The Defendants breach any material terms of this Settlement Agreement; and
 - (ii) A Court declines to issue a First Order and/or Second Order substantially in the form attached as **Schedule A** and **Schedule E**, or requires a material change to the Settlement Agreement as a pre-condition to approval.
- (c) If the Defendants elect to terminate the Settlement Agreement pursuant to Article 6.1(a), or the Plaintiff together with Class Counsel elect to terminate the Settlement Agreement pursuant to Article 6.1(b), a written notice of termination shall be provided by the terminating Party(s) to the other Party(s) forthwith, and, in any event, no later than 10 business days after the event upon which the terminating Party relies. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in 6.2 and 6.3, and the related Definitions in Article I, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any Released Claims, including but not limited to any motion for certification or authorization of the class or trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.

- (d) Any order, ruling or determination made by a Court with respect to the Class Counsel's Fees shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

If this Settlement Agreement is terminated:

- (a) Any step taken by the Defendants or the Plaintiff in the Class Action in relation to this Settlement Agreement shall be without prejudice to any position that the Parties may later take in respect of any procedural or substantive issues in the Class Action; and
- (b) Any order made by a Court pursuant to this Settlement Agreement shall be set aside or vacated on the consent of the Parties, except to the limited extent of the provisions of the First Order dealing with the publication of the Notice of Hearing, if the Notice of Hearing has already been published.

6.3 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated after the Settlement Amount has been transferred to the Account, the Settlement Amount shall be returned to the Defendants, including accrued interest, but less:

- (a) The amount of any income taxes paid or owing in respect of any interest earned on the Settlement Amount while on deposit in the Account; and
- (b) Any Administration Expenses that have been actually incurred as at the date of termination, including costs associated with any Notices, including translation expenses, and the estimated costs of Administration Expenses to be incurred to provide notice to the Class that the Settlement Agreement has been terminated, if such notice is required by the Court.

ARTICLE VII - RELEASES AND DISMISSALS

7.1 Release of Releasees

Subject to termination of this Settlement Agreement, upon the transfer of the Settlement Amount into the Account pursuant to article 4.1(a), and in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors shall forever and absolutely release the Releasees from the Released Claims.

7.2 No Further Claims

The Releasors shall not now, nor hereafter institute, continue, maintain, or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any Released Claim against any Releasees or any other person who may claim contribution or indemnity from any Releasees in respect of any Released Claim.

Class Counsel shall not now nor hereafter institute a Class Action against the Defendants in respect of the same subject matter as the Class Action.

ARTICLE VIII - EFFECT OF SETTLEMENT

8.1 No Admission of Liability

Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, they will defend the Class Action.

8.2 Agreement Not Evidence

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or other proceeding, except in a proceeding to approve or enforce this Settlement Agreement or in connection with the other motions contemplated in this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law, or with the written consent of all Parties.

ARTICLE IX - NOTICE TO CLASS

9.1 Notice Required

The Class shall be given the following notices, subject to approval by the Court:

- (a) Notice of Hearing (**Schedule B**);
- (b) Notice of Court Order (**Schedule C**); and
- (c) Notice of termination of this Settlement Agreement if it is terminated pursuant to this Settlement Agreement, or as otherwise ordered by a Court in a form to be agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notice of termination of the Settlement Agreement, then in the form ordered by the Court.

9.2 Costs of Disseminating Notice

The costs of disseminating each Notice shall be paid from the Settlement Amount, regardless of whether the Settlement is approved by the Court or the Settlement Agreement is terminated.

9.3 Method of Disseminating Notices

The Notices required under Article 9.1 shall be disseminated pursuant to the Notice Plan attached as **Schedule D** as approved by the Court or in a manner otherwise ordered by the Court.

ARTICLE X – CLASS COUNSEL, HONORARIUM, FUNDER AND ADMINISTRATION FEES

10.1 Class Counsel, Honorarium and Litigation Funder Fees

Class Counsel will seek the Court’s approval of Class Counsel Fees, Honorarium and Litigation Funder fees and that these fees, Administration Expenses, and payment to ACORN shall be paid from the Settlement Amount as outlined in Article 4.1(e). The Defendants will take no position on Class Counsel’s motion for approval of the fees set out within this section.

10.2 Administration Expenses

The Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives of Class Counsel, the Plaintiff or the Class, in respect of the administration of this settlement, all of which shall be paid from the Settlement Amount, as approved by the Court.

ARTICLE XI - MISCELLANEOUS

11.1 Motions for Directions

- (a) The Plaintiff or the Defendants may bring motions to the Court for directions in respect of the implementation and administration of this Settlement Agreement at any time.
- (b) All motions contemplated by this Settlement Agreement shall be on reasonable notice to the Parties.

11.2 Headings, *etc.*

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) The terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein”, and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

11.3 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) Only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

11.4 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and Canada.

11.5 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding or agreement in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

11.6 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and the Defendants, subject approval by the Court where required.

11.7 No Waiver

No waiver of any provision of this Settlement Agreement will be binding unless consented to in writing by the Parties. No waiver of any provision of this Settlement Agreement will constitute a waiver of any other provision.

11.8 Binding Effect

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Class, the Defendants, the Releasors, and the Releasees once it is approved by a Final order of the Court, except that the Parties are required to perform their obligations under this Settlement Agreement prior to the motions for approval of this Settlement Agreement. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors, once it is approved by Final order of the Court.

11.9 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

11.10 Negotiated Agreement

This Settlement Agreement has been reached following two days of mediation and the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that 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 Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.11 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English.

11.12 Recitals

The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

11.13 Schedules

The Schedules annexed form part of this Settlement Agreement and are:

Schedule A – Draft First Order (the draft order re-certifying the class action for settlement purposes and approving the Notice of Hearing).

Schedule B – Notice of Hearing

Schedule C – Notice of Court Order

Schedule D – Notice Plan

Schedule E – Draft Second Order (the draft order approving this Settlement Agreement)

Schedule F – Draft Third Order (the draft order approving Class Counsel Fees, Honorarium and Litigation Funder fees)

Schedule G – Distribution Protocol and Administrator’s Guidelines

11.14 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
- (c) He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

11.15 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

11.16 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

Koskie Minsky LLP
20 Queen St W
Toronto, ON M5H 3R3

Celeste Poltak
Telephone: 416-595-2701
Facsimile: 416-204-2909
Email: **cpoltak@kmlaw.ca**

For the Defendants and Defence Counsel:

McCarthy Tétrault LLP

Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Christine L. Lonsdale

Telephone: 416-601-8019
Facsimile: 416-868-0673
Email: clonsdale@mccarthy.ca

- and -

TD Bank Group

Attn: Legal Department
66 Wellington Street West,
15th Floor, Toronto, Ontario,
M5K 1A2

Daniel Wolski

Email: daniel.wolski@td.com

David Braunstein


Email: david.braunstein@td.com

Canadian Disputes and Investigations

Date of Execution

The Parties have executed this Settlement Agreement effective as of the date on the cover page.

Dated at Toronto this 10th day of November, 2023


Tyler Dufault (Nov 10, 2023 14:05 EST)

TYLER DUFAULT

Plaintiff

Dated at Toronto this 10th day of November, 2023



KOSKIE MINSKY LLP

Lawyers for the Plaintiff, Tyler Dufault

Dated at Toronto this _____ day of _____, 2023



Luke Gee
Vice President

“I have authority to bind the corporations.”

**The Toronto-Dominion Bank and
The Canada Trust Company**

Defendants

**SCHEDULE A
DRAFT FIRST ORDER (APPROVING THE NOTICE OF HEARING)**

Court File No.: CV-21-00656203-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

| | | | |
|------------------|---|-------|--------------------|
| THE HONOURABLE |) | _____ |), THE _____ |
| |) | | |
| JUSTICE AKBARALI |) | | DAY OF _____, 2023 |
| |) | | |

BETWEEN:

TYLER DFAULT

Plaintiff

- and -

THE TORONTO-DOMINION BANK AND THE CANADA TRUST COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

O R D E R

THIS MOTION made by the Plaintiff, on consent, for an Order amending the class definition for settlement purposes, approving the short form and long form Notice of Certification and Notice of Hearing for Class Action Settlement Approval and Counsel Fee Approval (“**Notices of Hearing**”), and approving the form, content, and method of dissemination of notice for the Notice of Hearing as set out in the Notice Plan, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of the Plaintiff, including the Settlement Agreement between the Plaintiff and the Defendants dated August 17, 2023 (the “**Settlement Agreement**”), the Affidavit of [REDACTED], sworn [REDACTED] and upon hearing the submissions of counsel for the Plaintiff and for the Defendants;

AND ON BEING ADVISED that the Defendants consent to this Order, without any admission of liability by the Defendants whatsoever:

1. **THIS COURT ORDERS** that the capitalized terms in this Order, unless otherwise defined in this Order, shall have the meanings set out in the Settlement Agreement attached as Appendix 1.

AMENDMENT OF CLASS DEFINITION FOR SETTLEMENT PURPOSES

2. **THIS COURT ORDERS** the amendment of the Certification Order of Justice Belobaba dated December 7, 2022 and attached as Appendix 2, such that the definition of "**Class**" in section 2 thereof is hereby deleted and replaced with the following:

Every person resident in Canada who is or was a personal deposit account holder with TD Bank and whose personal deposit account has been charged a non-sufficient funds fee by TD Bank on a re-presented pre-authorized debit transaction between February 2, 2019 and • [the date of approval of the Notice of Hearing].

NOTICES OF CERTIFICATION AND HEARING

3. **THIS COURT ORDERS** that the Notices of Certification and Hearing are approved in the form attached as Appendix 3 and Appendix 4, respectively.
4. **THIS COURT ORDERS** that the Notice Plan, setting out the plan for dissemination of the Notices of Hearing, is approved in the form attached as Appendix 5 and the Notices of Hearing shall be disseminated in accordance with the Notice Plan

PRIVACY LAWS AND DISCLOSURE OF PERSONAL INFORMATION

5. **THIS COURT ORDERS AND DECLARES** that this Order is an order compelling the production of information by the Defendants including, specifically, the Active Group List, within the meaning of applicable privacy laws, including that it satisfies the requirements of section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

OPT OUTS AND OBJECTIONS

6. **THIS COURT ORDERS** that Class members may opt out of this class proceeding by delivering a written request to opt out to Class Counsel to be emailed or postmarked, on or before • (the “**Opt-Out Deadline**”), being 60 days from the day of this Order, and any opt out forms received by Class Counsel after this date will not be accepted or valid.
7. **THIS COURT ORDERS** that to be valid, an opt out must be delivered by mail to Koskie Minsky LLP, 20 Queen St W, Toronto, ON M5H 3R3 or by email to tdbankclassaction@kmlaw.ca and must contain:
 - a. The full name, mailing address, telephone number, and email address of the proposed Class member; and
 - b. If the proposed Class member is a TD account holder, then their account number at TD.
8. **THIS COURT ORDERS** that any Class members who validly opt out of this action by the Opt-Out Deadline are not bound by the Settlement Agreement and shall no longer participate in, or have the opportunity in the future to participate in, this action or the Settlement Agreement, and are excluded from the Class.
9. **THIS COURT ORDERS** that within 10 business days of the Opt-Out Deadline, Class Counsel shall provide to the Defendants the names of persons who have delivered valid opt out notices and a copy of the opt out notices.
10. **THIS COURT ORDERS** that any persons wishing to object to the proposed settlement or related items shall deliver an objection form, in the form attached to the Notice Plan, to be emailed or postmarked on or before • (the “**Objection Deadline**”), being 60 days from the day of this Order), to the contact information indicated on the objection form.
11. **THIS COURT ORDERS** that any objections received after the Objection Deadline set out in paragraph 10 shall not be filed with the Court or considered at the hearing to approve the proposed settlement without leave of the Court.

12. **THIS COURT ORDERS** that within 10 business days of the Objections Deadline, Class Counsel shall serve on the Defendants and file with the Court an affidavit attaching all valid objection forms received prior to the Objections Deadline.

BANK ACT REQUIREMENTS

13. **THIS COURT DECLARES** that the Defendants' Contract Amendment clarifies the existing NSF Fee and does not constitute an amendment imposing an "increased charge" or "new charge" within the meaning of section 627.72(1) of the *Bank Act*, S.C. 1991, c. 46.

HEARING

14. **THIS COURT FURTHER ORDERS** that the hearing for settlement approval and approval of class counsel fees in this matter shall take place on February 13, 2023 by videoconference.
-

APPENDIX 1
[Settlement Agreement]

APPENDIX 2

[Certification Order of Justice Belobaba dated December 7, 2022]

APPENDIX 3

[Short Form Notice of Hearing for Settlement Approval and Class Counsel Fee Approval, with Defendants' covering letter – **Settlement Agreement, Schedule B**]

APPENDIX 4

[Long Form Notice of Hearing for Settlement Approval and Class Counsel Fee Approval, with Defendants' covering letter – **Settlement Agreement, Schedule B**]

APPENDIX 5

[Notice Plan – Settlement Agreement, Schedule F]

TYLER DUFAULT and THE TORONTO DOMINION BANK
ET AL.
Plaintiff Defendants

Court File No. CV-21-00656203-00CP

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|--|--|
| ONTARIO SUPERIOR COURT OF JUSTICE Proceeding commenced at TORONTO | |
| ORDER | |
| McCarthy Tétrault LLP Box 48, Suite 5300 Toronto Dominion Bank Tower Toronto, ON M5K 1E6 | |
| Christine L. Lonsdale LSO# 44787S clonsdale@mccarthy.ca Tel: 416-601-8019 | |
| Adriana Forest LSO# 77307W aforest@mccarthy.ca Tel: 416-601-8856 | |
| Adam H. Kanji LSO# 78024R akanji@mccarthy.ca Tel: 416-601-8145 | |
| Lawyers for the Defendants RCP-F 4C (September 1, 2020) | |

SCHEDULE B
NOTICE OF HEARING & CERTIFICATION (SHORT FORM)
For Amendment of Class Definition, Settlement Approval, and Counsel Fee Approval

Tyler Dufault v.
The Toronto-Dominion Bank and The Canada Trust Company
Notice of Hearing

Dear TD Customer

You are receiving this Notice because you are part of a class action which was certified by the Ontario Superior Court of Justice, against The Toronto-Dominion Bank and The Canada Trust Company (together, “**TD**”), on December 7, 2022.

The class action alleges that TD unlawfully charged customers multiple non-sufficient funds fees (“**NSF fees**”) on a single cheque issued or payment made. The certified class includes those customers who were charged NSF fees on re-presented pre-authorized debit (“**PAD**”) transactions (i.e., PADs that were submitted for payment a second time after being returned due to insufficient funds).

You now have three options:

1. You can do nothing and you will automatically receive your share of the settlement proceeds if the settlement is approved;
2. You can opt out of the Class Action and settlement – in which case you **WILL NOT** receive any share of the settlement proceeds but you keep any rights to sue TD on your own about the same legal claims in this lawsuit. Opt-out instructions are provided in the long form notice which you can obtain by contacting class counsel. If you do not want to participate in the settlement and receive your share of the settlement, you must opt out by **[DATE]**
3. You can object to the settlement and ask the Court not to approve it. If the Court does not approve the settlement, there will be no settlement proceeds at this time. The deadline for objecting is **[DATE]**. You can access the objection form by contacting class counsel.

SETTLEMENT APPROVAL

TD has reached a settlement with the representative plaintiff for a total payment of \$15.9 million. TD has not admitted liability and denies liability. Class counsel fees and certain expenses associated with the class action will be deducted from the total settlement. The court will hold a settlement approval hearing on **[DATE]**

If the settlement is approved, a *pro rata* amount will be delivered to every current customer who TD’s records show may have been charged an NSF fee on a PAD transaction from the same merchant and in the same amount as a previous PAD transaction within 30 days with respect to

which an NSF fee was charged (a “**Second NSF Fee**”), between February 2, 2019 and [DATE – Notice of Hearing approved]. TD’s records show you were charged a Second NSF Fee during this time period. It is estimated that the *pro rata* payout will be [AMOUNT]. If the settlement is approved, you will not need to submit a claim – this amount will be directly deposited in your TD account.

The Court has also amended the certification order to specify the class period, which runs from February 2, 2019 to [DATE] which is the date this Notice of Hearing was approved.

FOR MORE INFORMATION

If you would like more information or if you have a question, please contact class counsel at:

Koskie Minsky LLP
20 Queen St W
Toronto, ON, M5H 3R3
1-833-786-0010
tdbankclassaction@kmlaw.ca

<https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>

This notice is only a summary. More details can be found on the website of Class Counsel, hyperlinked above.

NOTICE OF HEARING & CERTIFICATION (LONG FORM)
For Amendment of Class Definition, Settlement Approval, and Counsel Fee Approval

Are you a customer of TD Bank who has been charged multiple NSF fees since February 2, 2019?

If YES, A Class Action May Affect Your Rights. Read This Notice Carefully.

A court authorized this notice. You are not being sued.

Have you been charged a non-sufficient funds (NSF) fee on a pre-authorized debit transaction from February 2, 2019 to [DATE – Date Notice of Hearing approved]?

- You could be affected by a class action lawsuit. This notice is directed to every person resident in Canada who is or was a personal deposit account holder with TD Bank and whose personal deposit account has been charged a non-sufficient funds fee by TD Bank on a re-presented pre-authorized debit transaction between February 2, 2019 and [DATE – Date Notice of Hearing is approved] (the “Settlement Class” or “Settlement Class Members”).
- If you received a short form notice, then TD Bank’s records indicate that you are a member of the Settlement Class who can expect to receive compensation following approval of the settlement.
- A proposed \$15,900,000 settlement has been reached in a class action related to TD Bank’s allegedly improper charging of NSF fees. TD has not admitted liability and denies liability. Class counsel fees and certain expenses associated with the class action will be deducted from the total settlement. The Court will hold a settlement approval hearing on [DATE].

The Court has also ordered that the certification order is amended to specify that the class period runs from February 2, 2019 to [DATE] which is the date this Notice of Hearing was approved.

- Read this notice carefully. It provides important information about the class action, the prospective settlement, distribution of settlement funds, and Settlement Class Members’ rights in respect of the settlement and proposed distribution.
- You may want more information or legal advice about whether to stay in this class action or sue on your own. This notice explains where you can get more information or legal advice.
- Your options are explained in this notice. If you do not want to participate in the settlement, and receive your share of the settlement proceeds, you must ask to be removed by [DATE].

QUESTIONS? CALL 1-833-786-0010, Email tdbankclassaction@kmlaw.ca or visit

<https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE

Do Nothing

Stay in this class action and share in benefits from the outcome but give up certain individual rights.

By doing nothing, you will remain part of the class. The settlement fund will be distributed on a *pro rata* basis to Class members who are members of the “**Active Group**”, which includes all Class members who: (1) are Canadian residents; (2) are TD personal deposit accountholders; (3) whose TD accounts were still open and able to accept deposits as of the distribution date; (4) who were charged a \$48 NSF Fee as a result of a PAD and then within 30 days were charged a second \$48 NSF Fee as a result of a PAD from the same merchant and dollar amount as the first PAD. If you are part of the Active Group and do not opt out, you will receive a deposit estimated to be in the range of [AMOUNT] to your TD personal deposit account. But, you give up any rights to sue TD Bank on your own about the same legal claims in this lawsuit.

Remove Yourself (Opt Out)

Get out of this lawsuit and get no benefits from it. Keep your right to sue TD individually.

If you ask to be removed (opt out) and money or benefits are later awarded, you won’t share in those. But, you keep any rights to sue TD Bank on your own about the same legal claims in this lawsuit.

Object

Voice your concern about the proposed settlement.

If you want to object to the proposed settlement, you may do so by setting out your objection in writing to Class Counsel by [DATE]. You can access the objection form at <https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>.

WHAT THIS NOTICE CONTAINS

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WHAT HAPPENS TO THE SETTLEMENT MONEY?

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GETTING MORE INFORMATION

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BASIC INFORMATION

1. Why was this notice issued?

This notice was issued to advise Settlement Class Members that this Class Action was certified and that a hearing has been scheduled on [DATE] to approve a settlement reached between the representative plaintiff and TD Bank. This notice explains the hearing and your rights in respect of the settlement.

The case is known as *Dufault v. The Toronto-Dominion Bank et al.*, Court File No. CV-21-00656203-00CP. The person who sued, Tyler Dufault, is called the Plaintiff. TD Bank is the Defendant.

2. What is this lawsuit about?

The lawsuit says TD Bank improperly charges multiple NSF fees on a single cheque issued or payment made in violation of its contract with class members, and includes class members who were charged an NSF fee on a re-presented pre-authorized debit transaction.

TD Bank does not admit any wrongdoing or liability and disagrees with the allegations in the lawsuit, but has agreed to a settlement that will repay money to Class Members.

The proposed settlement will resolve the litigation entirely.

3. Why is this a class action?

In a class action, one person called the “representative plaintiff” (in this case, Tyler Dufault) sues on behalf of a group of people (in this case, TD Bank customers) who have similar claims. All of these people are a “class” or “class members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class.

4. Who is a member of the Class?

The Settlement Class includes:

Every person resident in Canada who is or was a personal deposit account holder with TD Bank and whose personal deposit account has been charged a non-sufficient funds fee by TD Bank on a re-presented pre-authorized debit transaction from February 2, 2019 to [DATE – Date Notice of Hearing Approved]

The Court has amended the class definition for settlement purposes, in order to specify that the class definition runs from February 2, 2019 to [DATE] which is the date this Notice of Hearing was approved

5. What is the status of the lawsuit?

The representative plaintiff and TD Bank have reached a proposed settlement in this matter under which TD will pay \$15,900,000 to settle this lawsuit.

The parties will seek for the settlement to be approved by the Ontario Superior Court of Justice on [DATE]. The settlement is a compromise of disputed claims and settles, extinguishes, and bars all claims relating in any way to or arising out of the class action against TD Bank.

The Court has not decided whether TD Bank did anything wrong. If the case had not settled (or if the proposed settlement is not approved), the Plaintiff would have to prove his claims and the claims of the other class members against TD Bank. There is no guarantee that the Plaintiff would win any money or benefits for the class at trial.

WHAT HAPPENS TO THE SETTLEMENT MONEY?

The parties will seek approval from the Ontario Superior Court of Justice for a method of distributing the settlement funds achieved in this litigation.

6. Amount available for distribution

Under the proposed settlement, TD Bank will pay \$15,900,000 (“**Gross Settlement Funds**”). The Gross Settlement Funds, plus any interest, and less court-approved legal fees, funding fees, disbursements, honorarium, administration expenses and applicable taxes are available for compensation to eligible Settlement Class Members (“**Net Settlement Funds**”).

YOUR RIGHTS AND OPTIONS

You have the right to object to the settlement. If you want to object to the proposed settlement, you may do so by setting out your objection in writing to Class Counsel by [DATE]. You can find an objection form at <https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>. If you object to the settlement, you are asking the Court to not approve it. If the Court does not approve the settlement, there will be no settlement proceeds at this time, and may never be money to distribute to Class Members in the future.

7. What happens if I do nothing?

If you do nothing, you will be deemed not to have objected to the proposed settlement. You will be bound by all Court orders. If you are part of the Settlement Class, you will receive compensation at a later date.

8. What if I don’t want to be in the lawsuit?

If you do not want to be in the lawsuit, you must remove yourself. This is sometimes called “opting out.” If you remove yourself, you will not receive any benefit that may be obtained if the proposed settlement is approved. You will not be bound by any Court orders and you keep your right to sue TD Bank as an individual regarding the issues in this case. To remove yourself, send an Opt Out Form available at <https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/> or send legible written request to opt out of the class action *Dufault v. The Toronto-Dominion Bank et al.* to Class Counsel via E-mail, mail or facsimile. Include your name, address, telephone number, and signature. The opt-out notice must be sent by [DATE].

Call 1-833-786-0010 or email tdbankclassaction@kmlaw.ca if you have any questions about how to get out of the Class.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP from Toronto to represent Class Members as “Class Counsel.”

10. How will the lawyers be paid?

You will not have to pay any of Class Counsel’s fees or expenses. Class Counsel’s fees and expenses will be deducted from the Gross Settlement Funds. The Court will be asked to approve the lawyers’ fees pursuant to a contingency fee retainer agreement that they entered into with the Plaintiff.

The contingency fee retainer agreement provides that Class Counsel can seek up to 30% of any settlement as payment for the work they performed for the class. Class counsel will ask the Court to approve a contingency fee of 27.5% of the settlement. Additional information can be found in the Settlement Agreement and by contacting class counsel.

GETTING MORE INFORMATION

11. How do I get more information?

You can get more information about this case by contacting Class Counsel.

SCHEDULE C

NOTICE OF SETTLEMENT APPROVAL ORDER (SHORT FORM)

TYLER DUFAULT V.

The Toronto-Dominion Bank and The Canada Trust Company

Dear TD Customer

You are receiving this Notice because you are part of a class action which was certified by the Ontario Superior Court of Justice, against The Toronto-Dominion Bank and The Canada Trust Company (together, “TD”), on December 7, 2022 and the settlement was approved on [DATE].

SETTLEMENT APPROVED

The parties have negotiated a settlement of the Class Action (the “**Settlement**”), which has been approved by the Court as fair, reasonable and in the best interests of the Class.

THE SETTLEMENT TERMS

Under the Settlement, the Defendants will pay \$15,900,000.00 (the “**Settlement Amount**”) to the Class in full and final settlement of all claims against them. The Defendants will receive releases on behalf of the Class, and the Class Action will be dismissed. The Settlement Amount includes all legal fees, interest, and administration costs.

The Settlement Amount, less Class Counsel fees and the costs of administering the Settlement (the “**Settlement Fund**”), will be distributed on a *pro rata* basis to Class members who are members of the “**Active Group**”. The Active Group includes all Class members: (1) who are Canadian residents; (2) who are TD personal deposit accountholders; (3) whose TD accounts were still open and able to accept deposits as of ●, 2023; and (4) who were charged a \$48 NSF Fee as a result of a PAD and then within 30 days received a second \$48 NSF Fee as a result of a PAD from the same merchant and dollar amount as the first PAD.

Each member of the Active Group will receive an average payment of approximately CAD [AMOUNT] under the Settlement as a deposit in their TD account. Any amount remaining in the Settlement Fund after the claims administration process will be transferred to ACORN Canada, a community organization that advocates on behalf of low- and moderate-income Canadians.

Further details of the Settlement including a copy of the Settlement Agreement and the Court’s settlement approval order may be accessed at: <https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>

YOUR RIGHTS

If you are part of the Active Group, a payment estimated to be [AMOUNT] will be credited to your TD account without any further action by you.

You are part of the class and bound by the settlement agreement. You have released any legal claim you may have against TD for the same subject matter as this class action.

FOR MORE INFORMATION

If you would like more information or if you have a question, please contact class counsel:

Koskie Minsky LLP
20 Queen St W
Toronto, ON, M5H 3R3
1-833-786-0010
tdbankclassaction@kmlaw.ca

<https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>

This notice is only a summary. More details can be found on the website of Class Counsel, hyperlinked above.

NOTICE OF SETTLEMENT APPROVAL ORDER (Long Form)

Are you a customer of TD Bank?

If YES, A Class Action May Affect Your Rights. Read This Notice Carefully.

A court authorized this notice. You are not being sued.

Have you been charged a non-sufficient funds (NSF) fee on a pre-authorized debit transaction since February 2, 2019?

- You could be affected by a class action lawsuit. This notice is directed to every person resident in Canada who is or was a personal deposit account holder with TD Bank and whose personal deposit account has been charged a non-sufficient funds fee by TD Bank on a re-presented pre-authorized debit transaction between February 2, 2019 and • [DATE – Notice of Hearing Approval] (the “Settlement Class” or “Settlement Class Members”).
- If you received this notice, then TD Bank’s records indicate that you are a member of the Settlement Class who is entitled to receive compensation.
- A court has approved a lawsuit as a class action on behalf of TD Bank customers.
- A proposed \$15,900,000 settlement has been approved by the Court in a class action related to TD Bank’s allegedly improper charging of NSF fees.
- The parties have developed a plan for the distribution of settlement funds, which sets out how the settlement funds plus any accrued interest, less counsel fees, funding fees, honorarium, disbursements, applicable taxes and administration expenses will be distributed to class members.
- Read this notice carefully. It provides important information about the class action, the approved settlement, distribution of settlement funds, and Settlement Class Members’ rights in respect of the settlement and proposed distribution.
- You may want more information or legal advice about whether to stay in this class action or sue on your own. This notice explains where you can get more information or legal advice.

WHAT THIS NOTICE CONTAINS

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| 7. Direct distribution of Net Settlement Funds | 7 |

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BASIC INFORMATION

1. Why was this notice issued?

This notice was issued to advise Settlement Class Members that the Class Action has been settled, and that the settlement has received approval from the Ontario Superior Court of Justice. This notice explains the settlement and your rights in respect of the settlement.

The case is known as *Dufault v. The Toronto-Dominion Bank et al.*, Court File No. CV-21-00656203-00CP. The person who sued, Tyler Dufault, is called the Plaintiff. TD Bank is the Defendant.

2. What is this lawsuit about?

The lawsuit says TD Bank improperly charges multiple NSF fees on a single cheque issued or payment made in violation of its contract with class members, and includes class members who were charged an NSF fee on a re-presented pre-authorized debit transaction.

TD Bank does not admit any wrongdoing or liability and disagrees with the allegations in the lawsuit.


The settlement has resolved the litigation entirely.

3. Why is this a class action?

In a class action, one person called the “representative plaintiff” (in this case, Tyler Dufault) sues on behalf of a group of people (in this case, TD Bank customers) who have similar claims. All of these people are a “class” or “class members.” The court resolves the issues for all class members in one case, except for those who remove themselves from the class.

4. Who is a member of the Class?

The Settlement Class includes:

Every person resident in Canada who is or was a personal deposit account holder with TD Bank and whose personal deposit account has been charged a non-sufficient funds fee by TD Bank on a re-presented pre-authorized debit transaction from February 2, 2019 to .

5. What is the status of the lawsuit?

TD will pay \$15,900,000 to settle this lawsuit.

The settlement has been approved by the Ontario Superior Court of Justice. The settlement is a compromise of disputed claims and settles, extinguishes, and bars all claims relating in any way to or arising out of the class action against TD Bank.

The Court has not decided whether TD Bank did anything wrong. If the case had not settled (or if the proposed settlement had not been approved), the Plaintiff would have to prove his claims and

the claims of the other class members against TD Bank at a trial. There is no guarantee that the Plaintiff would win any money or benefits for the class at trial.

WHAT HAPPENS TO THE SETTLEMENT MONEY?

The Ontario Superior Court of Justice has approved a method of distributing the settlement funds achieved in this litigation (the “**Administration Protocol**”). A summary of the proposed Administration Protocol is below.

6. Amount available for distribution

Under the settlement, TD Bank will pay \$15,900,000 (“**Gross Settlement Funds**”). The Gross Settlement Funds, plus any interest, and less court-approved legal fees, funding fees, disbursements, Honorarium, administration expenses and applicable taxes are available for compensation to eligible Settlement Class Members (“**Net Settlement Funds**”).

7. Direct distribution of Net Settlement Funds

Under the settlement, TD Bank will pay the settlement funds directly into Class Members' bank accounts.

YOUR RIGHTS AND OPTIONS

The opt out deadline has passed. As a result, you remain within this class action.

8. What do I need to do?

You do not need to do anything. By not opting out, you automatically remain in the lawsuit. You are bound by all Court orders. You will receive compensation if you are part of the Active Group.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP from Toronto to represent Class Members as “Class Counsel.”

10. How will the lawyers be paid?

You will not have to pay any of Class Counsel’s fees or expenses. Class Counsel’s fees and expenses have been approved by the Court and will be deducted from the Gross Settlement Funds.

GETTING MORE INFORMATION OR QUESTIONS

11. How do I get more information?

You can get more information about this case by contacting Class Counsel.

Koskie Minsky LLP

20 Queen St W
Toronto, ON, M5H 3R3
1-833-786-0010
tdbankclassaction@kmlaw.ca

<https://kmlaw.ca/cases/td-bank-duplicative-nsf-fees-class-action/>

SCHEDULE D NOTICE PLAN

The Notice of Hearing and Notice of Order shall be disseminated as follows:

I. FORM OF NOTICES

1. The Notice of Hearing and Notice of Settlement Approval and Class Counsel Fee Approval will be issued in different formats, as follows:

- (a) A Short Form Notice (“**SF Notice**”) providing information about the amendment of the class definition and the settlement approval hearing and how Class Members can opt out of the TD Bank Action (for the Notice of Hearing), and of settlement approval (for the Notice of Order) in a form and content to be agreed upon by the Parties;
- (b) A Long Form Notice (“**LF Notice**”) providing information about the amendment of the class definition and settlement approval hearing and how Class Members can opt out of the TD Bank Action (for the Notice of Hearing), and of re-certification, settlement approval (for the Notice of Order) in a form and content to be agreed upon by the Parties; and,
- (c) A Joint national press release (“**Press Release**”) issued on class counsel’s website in a form to be agreed upon by the Parties.

II. THE NOTICE PROGRAM

2. The dissemination and timing of each of the Notices is described below:

- (a) The SF Notice will be disseminated via EasyWeb by the Defendants to all of its personal deposit account holders resident in Canada who are Active Group Members, as defined in the Settlement Agreement;
- (b) The SF Notice and LF Notice will be sent by email or direct mail by Class Counsel to any person who has requested it or who has inquired about the Class Action or who has registered to receive updates through Class Counsel’s websites. Where the person is located in Quebec (or otherwise specifically requests), the SF Notice and LF Notice will be sent in English and French;
- (c) The SF Notice and LF Notice will be posted by Class Counsel, in English and French, on their websites;
- (d) The Press Release will be issued in English and French;
- (e) TD will deliver the SF Notice via EasyWeb at their expense and other notices will be delivered by Class Counsel at Class Counsel’s expense;

3. Within a reasonable period of time prior to the dissemination of notice pursuant to paragraph 2 *supra*, the Defendants shall generate a list of Active Group members as of that date which shall include at least the name and last 4 digits of the account number of each Active Group member (the “**Active Group List**”). The Defendants will advise Class Counsel that the Active Group List has been generated, of the number of individuals contained in the list and also provide a summary of the steps taken by TD to generate the Active Group List, at least 7 days prior to the dissemination of notice pursuant to paragraph 2 *supra*. TD will provide Class Counsel with a copy of the Active Group List within a reasonable period of time prior to the dissemination of notice, but not until after the First Order has been issued by the Court.

Within 3 days of receipt of the Active Group List and summary of steps from TD, Class Counsel shall advise TD of any concerns they may have with respect to the steps taken by TD to generate the Active Group List. TD shall take reasonable steps to address any reasonable concerns of Class Counsel with respect to the Active Group List before notice is given.

APPENDIX 1 - OBJECTION FORM

TD BANK NSF FEE CLASS ACTION

ONLY USE THIS FORM IF YOU WANT TO REGISTER YOUR OBJECTION TO THE PROPOSED SETTLEMENT

THIS IS NOT A CLAIM FORM. THIS FORM IS ONLY FOR INDIVIDUALS WHO DO NOT WANT THE PROPOSED SETTLEMENT TO BE APPROVED.

IF YOU WISH TO OBJECT, THIS FORM MUST BE SENT TO:

TD Bank NSF Fee Class Action
c/o Koskie Minsky LLP
20 Queen Street West
Toronto, ON, M5H 3R3

or

tdbankclassaction@kmlaw.ca

Name: _____

Mailing Address: _____

Telephone Number: _____

Email Address: _____

TD Bank Account Number: _____

Are you a Class Member (circle one)? YES NO I DON'T KNOW

On what date(s) were you charged NSF fees by TD Bank? _____

If you object to the terms of the proposed settlement, please use the space below to explain why:

SCHEDULE E
DRAFT SECOND ORDER (APPROVING THIS SETTLEMENT AGREEMENT)

Court File No.: CV-21-00656203-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

| | | | |
|------------------|---|-------|--------------------|
| THE HONOURABLE |) | _____ |), THE _____ |
| |) | | |
| JUSTICE AKBARALI |) | | DAY OF _____, 2023 |
| |) | | |

BETWEEN:

TYLER DFAULT

Plaintiff

- and -

THE TORONTO-DOMINION BANK AND THE CANADA TRUST COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff, on consent, for an order approving the settlement of this action pursuant to section 27.1 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “*CPA*”), in accordance with the terms of the Settlement Agreement between the Plaintiff and the Defendants dated August 17, 2023, was heard this day at 330 University Ave, Toronto, Ontario.

ON READING the motion records of the parties, including the Settlement Agreement dated August 17, 2023 and attached to this Order as Appendix 1 (the “**Settlement Agreement**”), and the facts and briefs of authorities of the Plaintiff and Class Counsel, filed, and on hearing the submissions of Class Counsel and counsel for the Defendants;

AND ON BEING ADVISED that ACORN has consented to accept any *cy-près* award for use in its advocacy and campaigning endeavors;

SETTLEMENT APPROVAL

1. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement at Appendix 1 is incorporated by reference into this Order and that unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to Section 27.1 of the *Class Proceedings Act, 1992*, SO 1992, c 6 and shall be implemented in accordance with its terms.
4. **THIS COURT ORDERS** that the Defendants shall pay \$15,900,000 in full and final settlement of the Released Claims (the “**Settlement Amount**”).
5. **THIS COURT ORDERS** that within 30 business days of the date of this Order the Defendants shall place the Settlement Amount in a TD Bank trust account (the “**Settlement Fund**”), to be distributed in accordance with the Settlement Agreement.
6. **THIS COURT ORDERS** that within 14 days of the Effective Date, the Distribution Protocol at **Schedule G** of the Settlement Agreement shall begin.
7. **THIS COURT ORDERS AND DECLARES** that the Releasors shall not make or continue any claim, complaint, demand, action, suit or proceedings arising out of or relating to the subject matter of the Released Claims against the Releasees or any other person, corporation or entity which might claim damages and/or contribution and indemnity and/or any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees as set out in the Settlement Agreement .
8. **THIS COURT ORDERS AND DECLARES** that, without limiting the foregoing, each Class Member, whether or not they receive compensation under the Settlement Agreement, is deemed to have completely and unconditionally released and forever discharged the Releasees from any and all Released Claims as set out in the Settlement Agreement.

9. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement at Appendix 1, is binding upon the Plaintiff and each Class member, whether or not they receive compensation under the Settlement Agreement, including those Class members who are minors or mentally incapable, and the requirements of Rule 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action.

DISTRIBUTION OF CLAIMS

10. **THIS COURT ORDERS AND DECLARES** that the Defendants shall facilitate the claims administration process and report to the Court and the Parties, all in accordance with the terms of the Settlement Agreement.

11. **THIS COURT ORDERS AND DECLARES** that the Defendants shall deliver a report to this Court within 60 days of the completion of the administration of the Settlement Agreement, detailing the total funds paid out, the number of persons who received a pro rata distribution, an estimate of the distribution of payments between provinces and the amount paid *cy-près*, if any.

NOTICE PLAN

12. **THIS COURT APPROVES** the notices substantially in the form in **Schedule C** of the Settlement Agreement and Appendix 2 to this Order, and shall be disseminated in accordance with the Notice Plan provided in this Court’s order dated ●, 2023 (the “**Notice Order**”).

CY-PRÈS PAYMENT

13. **THIS COURT ORDERS** that any residual amount remaining in the Settlement Fund — after funds have been paid to Class Members in accordance with the Distribution Protocol attached as **Schedule G** to the Settlement Agreement – shall be paid to ACORN.

PRIVACY LAWS AND DISCLOSURE OF PERSONAL INFORMATION

14. **THIS COURT ORDERS AND DECLARES** that this Order is an order compelling the production of information by the Defendants within the meaning of applicable privacy laws, including that it satisfies the requirements of section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

BANK ACT REQUIREMENTS

15. **THIS COURT DECLARES** that the Defendants' Contract Amendment clarifies the existing NSF Fee and does not constitute an amendment imposing an "increased charge" or "new charge" within the meaning of section 627.72(1) of the *Bank Act*, S.C. 1991, c. 46.

DISMISSAL OF ACTION

15. **THIS COURT ORDERS AND ADJUDGES** that this action shall be dismissed against the Defendants without costs and with prejudice.
-

APPENDIX 1
[Settlement Agreement]

APPENDIX 2

[Long and Short Form Notices of Settlement Approval and Class Counsel Fee]

TYLER DUFAULT and THE TORONTO DOMINION BANK
ET AL.
Plaintiff Defendants

Court File No. CV-21-00656203-00CP

| | |
|--|--|
| ONTARIO SUPERIOR COURT OF JUSTICE Proceeding commenced at TORONTO | |
| ORDER | |
| McCarthy Tétrault LLP Box 48, Suite 5300 Toronto Dominion Bank Tower Toronto, ON M5K 1E6 | |
| Christine L. Lonsdale LSO# 44787S clonsdale@mccarthy.ca Tel: 416-601-8019 | |
| Adriana Forest LSO# 77307W aforest@mccarthy.ca Tel: 416-601-8856 | |
| Adam H. Kanji LSO# 78024R akanji@mccarthy.ca Tel: 416-601-8145 | |
| Lawyers for the Defendants | |
| RCP-F 4C (September 1, 2020) | |

SCHEDULE F
DRAFT THIRD ORDER (APPROVING CLASS COUNSEL FEES, HONORARIUM AND FUNDER FEES)

Court File No.: CV-21-00656203-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

| | | |
|------------------|---|--------------------|
| THE HONOURABLE |) | _____ , THE _____ |
| |) | |
| JUSTICE AKBARALI |) | DAY OF _____, 2023 |
| |) | |

BETWEEN:

TYLER DFAULT

Plaintiff

- and -

THE TORONTO-DOMINION BANK AND THE CANADA TRUST COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

O R D E R

(Approval of Class Counsel Fees, Honorarium and Litigation Funder Fees)

THIS MOTION made by Class Counsel for an order approving (1) their fees and disbursements in this action under a contingency agreement between the Plaintiff and Class Counsel dated ●●, 20●, in the amount of \$●, plus HST, (2) an Honorarium to the Plaintiff, and (3) litigation funding fees, was heard this day at 330 University Ave, Toronto, Ontario.

ON READING the motion records of the parties and the factums and briefs of authorities of the Plaintiff and Class Counsel, filed, and on hearing the submissions of Class Counsel and counsel for the Defendants;

1. **AND ON BEING ADVISED** that the Defendants consent to this Order, without any admission of liability by the Defendants whatsoever:

2. **THIS COURT ORDERS** that the capitalized terms in this Order, unless otherwise defined in this Order, shall have the same meanings set out in the Settlement Agreement attached as Appendix 1.
 3. **THIS COURT ORDERS** that the total amount payable out of the Settlement Amount to Class Counsel in respect of legal fees is hereby set at \$XX plus \$XX for HST.
 4. **THIS COURT ORDERS** that the total amount payable out of the Settlement Amount to Class Counsel in respect of disbursements, in addition to the legal fees payable pursuant to paragraph 2, above, is hereby set at \$XX (inclusive of all applicable taxes).
 5. **THIS COURT ORDERS** that the Plaintiff, Tyler Dufault, shall receive an honourarium of \$10,000 to be paid out of the Settlement Amount.
 6. **THIS COURT ORDERS** that total amount payable out of the Settlement Amount to Augusta Pool 1 Canada Limited (the “**Litigation Funder**”) is hereby set at \$XX.
 7. **THIS COURT ORDERS** that the amounts payable to Class Counsel, Tyler Dufault, and the Litigation Funder pursuant to paragraphs 2, 3, 4, and 5 of this Order shall be paid by the Defendants out of the Account within fourteen (14) days of the Effective Date.
-

APPENDIX 1
[Settlement Agreement]

TYLER DUFAULT and THE TORONTO DOMINION BANK
ET AL.
Plaintiff Defendants

Court File No. CV-21-00656203-00CP

| | |
|--|--|
| ONTARIO SUPERIOR COURT OF JUSTICE Proceeding commenced at TORONTO | |
| ORDER | |
| KOSKIE MINSKY LLP 900-20 Queen Street West Toronto, ON M5H 3R3 Celeste Poltak LS#: 46207A cpoltak@kmlaw.ca Tel: 416-595-2701 Adam Tanel LS#: 61715D atanel@kmlaw.ca Tel: 416-595-2072 Lawyers for the Plaintiffs | |
| RCP-F 4C (September 1, 2020) | |

**SCHEDULE G
DISTRIBUTION PROTOCOL**

1. The Settlement Fund will be distributed *pro rata* to Class Members who meet the criteria of the Active Group.
2. The Active Group will be identified by TD using their records and applying the following criteria:
 - a. Canadian residents;
 - b. Who are TD personal deposit accountholders;
 - c. Who, between February 2, 2019 and ● [date of Notice of Hearing approval], were charged a \$48 non-sufficient funds fee (“NSF fee”) as a result of a pre-authorized debit (“PAD”); and
 - d. Who, within 30 days, were charged a second \$48 NSF fee as a result of a PAD from the same merchant and dollar amount as the first PAD; and
 - e. Whose account was still open and able to accept deposits at the date of distribution.
3. Based on TD’s records, TD will report that the Active Group consists of Class Members as follows:

| <u>Province</u> | <u>Percentage of Class Members</u> <u>(%)</u> |
|---------------------------|--|
| Alberta | |
| British Columbia | |
| Manitoba | |
| New Brunswick | |
| Newfoundland and Labrador | |
| Nova Scotia | |
| Ontario | |
| Prince Edward Island | |
| Quebec | |
| Saskatchewan | |

| | |
|-----------------------|--|
| Northwest Territories | |
| Nunavut | |
| Yukon | |

4. The Defendants shall determine who is an Active Group Member by creating an Active Group List, which shall contain the name and last 4 digits of the account number of the Active Group members, as set out in Section 3 of the Notice Plan (Schedule “D” to the Settlement Agreement).
5. The Active Group Member List will be provided to Class Counsel within a reasonable period of time prior to the dissemination of notice, but not until after the First Order has been issued by the Court.
6. Each Active Group Member will be entitled to an equal share of the Settlement Fund which is currently estimated to be in the range of \$75.00-\$80.00 CAD (the “**Amount**”).
7. Within 14 days after the Effective Date, TD will commence the distribution of the Settlement Fund on a *pro rata* basis by crediting the Amount directly onto Active Group Members’ TD accounts.
8. TD will provide progress reports to the Plaintiff’s counsel regarding the number of payments completed.
9. After the last payment has been made by the Defendants to Active Group Members, the Defendants shall direct any amount remaining in the Settlement Fund to be paid *cy-près* to ACORN Canada.
10. Within sixty (60) days following the distribution of the Settlement Fund in accordance with the Distribution Protocol, TD will deliver a report to the court confirming (the “**Rendering of Account**”) the following:
 - a. The number of Class Members who were paid out of the Settlement Fund;
 - b. The amount distributed to Class Members;
 - c. The estimate distribution of payments made to Class Members in each province; and
 - d. The *Cy-pres* payment if any to ACORN.






Settlement Agreement (with schedules) - dated November 10, 2023

Final Audit Report

2023-11-10

| | |
|-----------------|--|
| Created: | 2023-11-10 |
| By: | Sarita Ramessar (sramessar@kmlaw.ca) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAI7ouymNHnJTSjL_Nr3EO5STG6K7ADJyT |

"Settlement Agreement (with schedules) - dated November 10, 2023" History

-  Document created by Sarita Ramessar (sramessar@kmlaw.ca)
2023-11-10 - 6:35:59 PM GMT
-  Document emailed to Tyler Dufault (tylerdufaultghs@gmail.com) for signature
2023-11-10 - 6:37:18 PM GMT
-  Email viewed by Tyler Dufault (tylerdufaultghs@gmail.com)
2023-11-10 - 7:01:41 PM GMT
-  Document e-signed by Tyler Dufault (tylerdufaultghs@gmail.com)
Signature Date: 2023-11-10 - 7:05:45 PM GMT - Time Source: server
-  Agreement completed.
2023-11-10 - 7:05:45 PM GMT