

*In the Supreme Court of British Columbia*

Between

**Eric Finkel**

Plaintiff

and

**Coast Capital Savings Credit Union**

Defendant

Proceeding under the *Class Proceedings Act*, RSBC 1996, c 50

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**NOTICE OF APPLICATION**

**APPROVAL OF THE SETTLEMENT AGREEMENT, CLASS COUNSEL FEES AND  
DISBURSEMENTS / HONOURARIUM, SETTLEMENT ADMINISTRATION AND  
DISTRIBUTION PLAN, AND CLAIMS NOTICE**

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**Name of Applicant:** the plaintiff, Eric Finkel

**TO:** the defendant, Coast Capital Savings Credit Union

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, B.C. V6Z 2E1 on 22/Sep/2022 at 10:00 a.m. for the order(s) set out in Part 1 below.

**PART 1: ORDERS SOUGHT**

**Settlement Approval**

1. An order that the settlement agreement dated for reference June 30, 2021, attached as **Schedule "A"** (the "Settlement Agreement") is incorporated in its entirety and forms part of this Order by reference, the definitions in the Settlement Agreement shall be applied in interpreting this Order, and each of the orders listed

in s. 3.4(3)(d) of the Settlement Agreement are incorporated herein and approved as orders of this Court;

2. An order that the Settlement Agreement is fair, reasonable and in the best interests of the class;
3. An order that the Settlement Agreement is hereby approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c 50, and shall be implemented in accordance with its terms and the terms of this Order;
4. An order that this Order, including the Settlement Agreement, is binding upon the representative plaintiff and each Class Member who did not validly opt-out of this Proceeding;
5. An order that upon the Effective Date, each Releasor who has not validly opted-out of this Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasee from the Released Claims;
6. An order that upon the Coast Distribution Date, each Releasor who has not validly opted-out of this Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasee from the Released Distribution Claims;
7. An order that other than fulfilling its duties expressly set out in the Settlement Agreement, the Releasee shall have no responsibility or liability whatsoever with respect to the administration, implementation or enforcement of the Settlement Agreement, or the Notice and Settlement Administration Plan, including the Coast Distribution Process, or the administration, investment, or distribution of the Settlement Funds, including under the Coast Distribution Process; and
8. An order that on the Effective Date, the Plaintiff has leave to dismiss the action against Coast Capital Savings Federal Credit Union (formerly Coast Capital Savings Credit Union) ("Coast Capital"), with prejudice and without costs.

### **Class Counsel Fees and Disbursements / Honorarium**

9. An order approving the retainer agreement with the representative plaintiff, Eric Finkel;
10. An order that disbursements in the amount of \$121,366.11 are hereby approved as fair and reasonable and shall be paid out of the Settlement Amount to Camp Fiorante Matthews Mogerman (“Class Counsel”);
11. An order approving a holdback amount of \$25,000 for the cost of administering and distributing the Settlement Amount and the Distribution Plan (the “Holdback Amount”), and to the extent the holdback exceeds costs, the amount will be used to pay part of the balance of legal fees and taxes in paragraph 14;
12. An order that \$10,000 be paid to the representative plaintiff, Eric Finkel, for acting as representative plaintiff in this proceeding, and that the amount be considered an additional disbursement to that described in paragraph 10, above, to be paid out of Settlement Funds;
13. An order that legal fees in the amount of 30% of the first \$1,000,000 recovered and 25% of all amounts recovered in excess of \$1,000,000 (calculated after disbursements, including any honorarium), plus taxes, be approved;
14. An order that legal fees and taxes of up to \$404,217.49 is approved, and that \$303,163.12, amounting to approximately 75% of Class Counsel’s legal fees and associated taxes, be paid to Class Counsel out of the Settlement Funds on receipt of the Settlement Amount in accordance with the Settlement Agreement, and the balance (which is to be calculated in accordance with paragraph 13) be paid to Class Counsel after distribution of the Net Settlement Amount;

### **Settlement Administration and Distribution Plan**

15. An order that the settlement administration and distribution plan is hereby approved in substantially the form attached as **Schedule “B”** (the “Plan”);

16. An order appointing Class Counsel as the Claims Administrator under the Plan;
17. An order that, subject to the terms of the Settlement Agreement, the Plan shall govern the administration and distribution of the Settlement Fund and Net Settlement Amount;
18. An order that, to the extent that Coast Capital makes payment in accordance with subsection 3.4(3)(d)(B) of the Settlement Agreement, such payments are made and received in full and final settlement of all entitlements to compensation under the Settlement Agreement and no person, even if that person was formerly a holder of the Coast Capital membership or was in any way associated with either the relevant Coast Capital membership, or a Qualifying International Withdrawal, at any time during the Class period, is entitled to make a claim to those or any additional funds;
19. An order that notice to Settlement Class Members (the "Claims Notice") be sent in accordance with the plan of dissemination attached as **Schedule "C"**;
20. An order that no person may bring a claim or action against any party to the Settlement Agreement in relation to the distribution of the Settlement Funds or the settlement administration process without leave of the Court.

## **PART 2: FACTUAL BASIS**

### **Events Prior to Filing of the Notice of Civil Claim**

1. Eric Finkel was a Coast Capital member and the holder of a Coast Chequing Prestige Package. He was issued a Coast Capital member card that allowed him to withdraw cash from ATM machines connected to international payment networks. As of January 1, 2013, this card allowed him to withdraw cash through the Cirrus branded payment network.

Affidavit #3 of Eric Finkel ("Finkel #3"), at para. 2.

2. On January 1, 2013, he used his Coast Capital member card to withdraw US dollars from an ATM in Cambodia on two occasions. When he later reviewed the

statements from his chequing account, he noticed that the amount debited from his account exceeded the amount he expected to be withdrawn.

Finkel #3, at paras. 2 and 4.

3. Mr. Finkel investigated the matter by looking at the prevailing MasterCard exchange rate, and by making direct enquiries of Coast Capital. The correspondences with Coast Capital continued until March 25, 2013.

Finkel #3, at paras. 3 and 4.

4. Mr. Finkel contacted Camp Fiorante Matthews Mogeran LLP (“CFM”) to discuss his options. He decided that a class action was a viable option, and CFM agreed to bring the claim on a contingency basis. Mr. Finkel and CFM entered into a contingency fee agreement (the “CFA”). That contingency fee agreement provided, among other things, as follows:

3. As fees for its professional legal services, the Firm shall be entitled to 30% of the first \$1,000,000 recovered by way of any settlement, or compensation from any source or judgment pertaining to the Case and to 25% of all amounts recovered in excess of \$1,000,000. The fee shall be payable on all amounts, including prejudgment interest and post judgment interest (amounts awarded by the Court for interest on the judgment before trial and after trial) (the “Contingency Fee”).

4. The amount of the Contingency Fee payable shall be calculated after all case expenses incurred by the Firm have first been deducted. For the sake of clarity, if no money is recovered by way of settlement, or compensation from any source or judgment pertaining to the Case, no Contingency Fee or case expenses or applicable taxes are payable.

...

6. Case expenses are those costs reasonably incurred by the Firm to prosecute the Case. The Client authorizes the Firm to pay case expenses to prosecute the Case as the Firm deems necessary in accordance with Schedule “A” to this Agreement.

7. In the event of settlement, or compensation from any source, or judgment being obtained, the Client agrees that the Firm is entitled to payment of the Contingency Fee and any outstanding case expenses and all applicable taxes from the settlement, or

compensation from any source, or judgment proceeds, subject to court approval. For greater certainty, the Client shall have no responsibility for any payment to the Firm other than in accordance with this paragraph.

Finkel #3, at paras. 5 and 6, and Ex. "C".

### **Case History**

5. This proceeding was commenced on August 28, 2013. It was alleged that there were undisclosed surcharges that Coast Capital charged to its members who made foreign currency withdrawals from their Coast Capital personal accounts via foreign ATMs on the Plus System or the Cirrus System outside of Canada from August 28, 2007 to August 31, 2015.
6. The claim was originally framed in breach of contract, contravention of sections 4 and 5 of the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, and contravention of the *Competition Act*, RSC 1985, c C-34. The defendant denied the allegations.

*Finkel v Coast Capital Savings Credit Union*, 2016 BCSC 561 (the "Certification Decision"), at para. 2.

7. The certification hearing of this matter took place on October 14-16, 2015. Mr. Finkel affirmed two affidavits in support of certification, the second of which was a reply affidavit to the evidence presented by Coast Capital that:
  - (a) Coast Capital does not charge any fee based on a value or percentage charge calculated on foreign exchange transactions made by Coast Capital members who use a foreign ATM to access their accounts, nor does it charge a foreign exchange "surcharge";
  - (b) Coast Capital does not set the foreign exchange rates used by the third party participants that process foreign exchange transaction for Coast Capital members; and

- (c) Where a Coast Capital member initiates a foreign exchange transaction, and there are sufficient funds or credit on the member's account, the only decision that Coast Capital makes is based on the debit request amount it receives in Canadian dollars - in other words, Coast Capital makes a "pay" or "no pay" decision almost instantaneously through its automated banking system.

For his reply affidavit, Mr. Finkel conducted additional ATM withdrawals in New York City in order to calculate the effective exchange rate being applied to him and his wife, including by other financial institutions, and then he compared that rate to the posted rates from the Visa USA website.

Finkel #3, at paras. 12 and 13.

8. On March 31, 2016, this action was certified as a class proceeding. Claims with respect to breach of contract and contravention of sections 4 and 5 of the *Business Practices and Consumer Protection Act* were certified. Claims with respect to the *Competition Act* were not certified.

Certification Decision

9. The Certification Decision was appealed by Coast Capital. On February 7, 2017, the appeal was heard. On October 20, 2017, the BC Court of Appeal dismissed the appeal.

*Finkel v Coast Capital Savings Credit Union*, 2017 BCCA 361  
(the "Certification Appeal Decision").

10. Following the Certification Appeal Decision, the parties attended mediation. The mediation was unsuccessful in resolving the dispute.

Affidavit #1 of Jonathan Fung ("Fung #1"), at para. 7.

11. On November 14, 2019, Mr. Justice Masuhara approved the notices of certification in this matter. The opt-out period expired on April 5, 2020, and Class Counsel recorded 228 purported opt-outs (some did not provide the necessary information to clearly identify themselves or their claims).

Affidavit #8 of Aisling Slevin made April 20, 2022 (“Slevin #8”), at para. 2.

Fung #1, at para. 8.

12. An examination for discovery of Mr. Finkel was conducted on February 3, 2020. Examinations for discovery of Nancy McNeill as representative for Coast Capital were conducted on February 12, 2020 and October 20, 2020.

Fung #1, at para. 7.

13. Throughout the litigation, there were a number of applications and hearings. The following is a summary:

- (a) Application for summary trial and cross-application that the certification hearing proceed first (it was later decided at a case management conference that the first hearing should be the certification hearing – see *Finkel v Coast Capital Savings Credit Union*, 2015 BCSC 1805);
- (b) Application for certification: heard October 14-16;
- (c) Appeal of certification decision: heard February 7, 2017;
- (d) Application for notice approval (certification) and opt outs: heard November 12, 2019;
- (e) Application for non-party (MasterCard Incorporated) documents: heard January 13, 2021;
- (f) Application for non-party (Visa International) documents: heard January 26, 2021;
- (g) Application for responses to discovery requests: heard March 29, 2021;
- (h) Application to amend common issue: heard March 29, 2021;
- (i) Application for production of unredacted documents: heard March 29, 2021;

- (j) Application for non-party (RBC) documents: heard June 16, 2021; and
- (k) Application for notice approval (settlement hearing): heard April 27, 2022.

Fung #1, at para. 7

- 14. Some applications were contested by the parties while others were not. With respect to contested applications, success was divided.
- 15. There were also 6 lists of documents from the plaintiff, 10 lists of documents from the defendant, and documents produced by non-parties to the litigation. In total, 5,201 documents were produced.

Fung #1, at para. 9.

- 16. The trial of this matter was scheduled for eight days commencing on July 5, 2021. In the lead up to trial, notices to admit were served and responded to (6 from the plaintiff, and 1 from the defendant), witnesses were interviewed (and in some cases, subpoenaed), documents were reviewed and identified for inclusion at trial, read-ins were prepared, trial briefs were prepared, and submissions were drafted.

Fung #1, at para. 10.

### **Settlement and Notice of Settlement Approval Hearing**

- 17. On June 30, 2021, five days prior to the commencement of trial, the plaintiff and the defendant settled, subject to court approval. The settlement included a monetary term, certain disclosure obligations on Coast Capital's website, and a distribution method by which proceeds of settlement will be paid by Coast Capital directly into certain class members' accounts.

Slevin #8, at Ex. "A".

Fung #1, at para. 11.

- 18. The wording of the Settlement Agreement is a result of a series of lengthy discussions and negotiations between the plaintiff and the defendant. Working out the details of the distribution mechanism was particularly time-consuming because the flow of information between the plaintiff and the defendant had to be carefully

considered and drafted, and the technical requirements for a direct distribution through Coast Capital's banking system had to be addressed.

Slevin #8, at Ex. "A".

Fung #1, at para. 12.

19. As mentioned, the settlement is subject to court approval. The Settlement Agreement also contemplates that the plaintiff will apply for court approval of Class Counsel fees and disbursements, and the Plan.

Slevin #8, at Ex. "A".

20. On April 27, 2022, Mr. Justice Masuhara approved notices which advise Class Members of:

- (a) the basic terms of the Settlement Agreement;
- (b) the intention of the plaintiff to seek approval of the Settlement Agreement, the notice and settlement administration plan, and Class Counsel fees, and the intention of the plaintiff to request an honourarium, at a Settlement Approval Hearing; and
- (c) their right to participate in the Settlement Approval Hearing.

21. The notices were first disseminated by Class Counsel, on August 23, 2022. In accordance with the notices, any objections received on or before 12:00 p.m. on September 15, 2022, will be put before the Court.

Order of Mr. Justice Masuhara made April 27, 2022.

Affidavit #9 of Aisling Slevin, to be sworn and filed ("Slevin #9").

### **Disbursements and the Calculation of Counsel Fees**

22. The CFA provides that in the event of settlement, Class Counsel is, subject to court approval, entitled to payment of its case expenses. The contingency fee payable is calculated after all case expenses have first been deducted.

Finkel #3, at Ex. "C".

23. As of June 13, 2022, the disbursements incurred in this class action, including the appeal of the certification decision, are \$121,366.11 (which, for clarity, does not include the honourarium sought to be approved by the representative plaintiff).

Fung #1, at para. 19.

24. In addition, there will be additional case expenses in respect of administering and distributing the Settlement Amount. The Plan contemplates a holdback from the Settlement Amount of \$25,000 to cover the expenses (to be approved by the court at a future date) of administering and distributing the settlement.

Fung #1, at para. 22.

25. Class Counsel also seeks approval of an honourarium of \$10,000 for the representative plaintiff, Mr. Finkel. In his capacity as representative plaintiff, Mr. Finkel has attended to various matters including the following:

- (a) investigating the foreign exchange rate applied to his transactions;
- (b) providing Class Counsel with documentation;
- (c) reviewing pleadings and various amendments to the pleadings;
- (d) preparing, reviewing, and affirming affidavits;
- (e) preparing for and attending the certification hearing;
- (f) attending the appeal of the certification decision and reviewing the certification decisions;
- (g) preparing for and attending mediation;
- (h) preparing for and attending examination for discovery, and reviewing the examination for discovery transcript;
- (i) preparing for trial;
- (j) engaging in settlement discussions; and

(k) reviewing and discussing the settlement agreement.

Finkel #3.

26. Mr. Finkel has consistently made himself available to Class Counsel throughout the litigation. Mr. Finkel has remained actively engaged in the litigation and has kept apprised of the important factual and legal issues. Mr. Finkel has provided timely instructions to Class Counsel, always with the best interests of the Class Members in mind.

27. Mr. Finkel has documented some (but not all) of the time he spent dealing with matters pertaining to this action.

Finkel #3, at paras. 10 and Ex. "D".

28. Class Counsel also seeks approval of its fees in accordance with the CFA, namely, legal fees in the amount of 30% of the first \$1,000,000 recovered and 25% of all amounts recovered in excess of \$1,000,000 (calculated after the deduction of disbursements, including honorarium if approved by the court), plus taxes.

Finkel #3, at Ex. "C".

29. Class Counsel seeks approval of up to the full amount of its fees and taxes in accordance with the CFA, which amounts to \$404,217.49 calculated as follows:

Settlement Amount:	\$1,400,000.00
Minus Disbursements:	121,366.11
Minus Honourarium (if approved):	10,000.00
Minus Holdback:	<u>25,000.00</u>
Total	\$1,243,633.89

30% of \$1,000,000.00	\$300,000.00
25% of \$243,633.89	<u>60,908.47</u>
Total	\$360,908.47

Taxes	<u>\$43,309.02</u>
Total	\$404,217.49

30. But at this time, Class Counsel seeks payment of approximately 75% of its legal fees and taxes on that amount, which amounts to \$303,163.12 (\$404,217.49 x 0.75). The balance of Class Counsel's legal fees and associated taxes will be paid after distribution of the Net Settlement Amount (at which point the disbursements will be crystallized, and the fees and taxes can be calculated).
31. Class Counsel docketed \$808,574.50 of time on this matter. The fees requested will be significantly less than the docketed time.

Fung #1, at para. 18.

### **Settlement Administration and Distribution Plan**

32. In consultation with the defendant, Class Counsel has developed the proposed Plan for the distribution of the settlement funds. Class Counsel has also consulted with the plaintiff who is in support of the Plan.

Finkel #3, at para. 16.

33. Pursuant to the Plan, Class Counsel will act as Claims Administrator.
34. Direct Deposit Settlement Class Members are identified as having Active Coast Memberships, and, because of the direct deposit distribution mechanism described in the Settlement Agreement, will not be required to submit a claim in order to receive settlement benefits.
35. Claims Based Settlement Class Members are identified as having Non-Active Coast Memberships, and so they will be required to submit a Claim with sufficient information for the Claims Administrator to identify (using the daily transaction reports produced in this litigation) whether they have a Qualifying International Withdrawal.
36. The Net Settlement Amount allocated to Settlement Class Members will be subject to claims-weighting to reflect different alleged (and contested) intermediary charges related to foreign exchange rates applied by third parties involved in processing the international ATM transaction during the Class Period. The weighting is based on a alleged (and contested) 0.9% for transactions during the

period August 28, 2007 to October 8, 2010, and a confirmed 2.5% for transactions (the nature of which is contested) during the period October 9, 2010 to August 31, 2015.

37. After the Net Settlement Amount is allocated:
- (a) For Direct Deposit Settlement Class Members, the Claims Administrator will advise Coast Capital the portion of the Net Settlement Amount to be transferred to them, and, subject to section 3.4 of the Settlement Agreement, Coast Capital Savings will make direct deposits to the associated Coast Accounts; and
  - (b) For Claims Based Settlement Class Members, the Claims Administrator will send their portion of the Net Settlement Amount to them by e-transfer or cheque.

### **PART 3: LEGAL BASIS**

#### **Settlement Approval**

38. A settlement of a class proceeding is not binding unless approved by the court. To approve a settlement, the court must find that it is fair, reasonable, and in the best interests of the class.

*Class Proceedings Act, RSBC 1996, c 50, s 35 (“CPA”); Haney Iron Works Ltd v Manufacturers Life Insurance Co (1998), 169 DLR (4th) 565 (BCSC), at paras. 9-15 and 27.*

39. The factors considered in approving a class proceeding settlement are as follows:
- (i) likelihood of recovery or likelihood of success;
  - (ii) amount and nature of discovery, evidence or investigation;
  - (iii) settlement terms and conditions;
  - (iv) recommendations and experience of counsel;
  - (v) future expense and likely duration of litigation;

- (vi) recommendations of neutral parties, if any;
- (vii) number of objectors and nature of objections; and
- (viii) the presence of arms-length bargaining and the absence of collusion.

*Jeffery v Nortel Networks Corp*, 2007 BCSC 69, at para. 18.

40. These factors have been distilled into four broad questions for consideration as set out below.

**Question 1: Has counsel of sufficient experience and ability undertaken sufficient investigations?**

41. The Settlement Agreement was reached by experienced counsel on both sides, including counsel who have been involved in many class actions litigated in Canada to date.
42. Class Counsel thoroughly researched the legal issues in this case. Examinations for discovery of a representative of Coast Capital was conducted over the course of two days. There was an application for discovery requests following the examinations. There were also three separate applications for documents from non-parties (MasterCard, Visa, and RBC). In total, 5201 documents were produced in this litigation.

Fung #1, at paras. 7 and 9.

43. The parties have confirmed that Coast Capital did not itself add, collect, or retain the alleged undisclosed surcharge (the amounts and nature of which was contested). The alleged surcharge, if any, was instead added, collected, and retained by third party network intermediaries (and Coast Capital took the position that any amount added was part of the currency conversion rate that these intermediaries could impose in accordance with the network rules). In addition, there was limited evidence regarding these alleged surcharges between August 28, 2007 and October 8, 2010 (the earlier part of the Class Period), and debate between the parties continued up to trial with respect to whether any amount was

charged as a “surcharge” (the plaintiff took the position that 0.9% was charged as a “surcharge”, while the defendant was of the view that there was no such “surcharge”).

Fung #1, at para. 14.

44. The foreign exchange transactions and the associated network used are included in daily transaction reports produced by Coast Capital in this litigation. The plaintiff retained Jennifer Ng from Delta Economics Group Inc. to use the daily transaction reports to:
- (a) collect data of the foreign exchange transactions conducted on the Plus network and on the Cirrus network; and
  - (b) calculate the total amount of the alleged surcharge, assuming surcharge rates of 0.9% for transactions on the Plus network (which is the period between August 28, 2007 and October 8, 2010), and 2.5% for transactions on the Cirrus network (which is the period between October 9, 2010 and August 31, 2015).

Fung #1, at para. 14 and Ex. “B”.

45. In this way, the plaintiff was able to quantify the alleged undisclosed surcharge.

**Question 2: Have collusion or extraneous considerations tainted the negotiations?**

46. There is a strong initial presumption of fairness when a proposed class settlement, which was negotiated at arms-length by counsel for the class, is presented for court approval.

*Ford et al v F Hoffmann-La Roche Ltd et al* (2005), 74 O.R. (3d) 758 (SCJ), at paras. 113 and 114, adopted in *Ritchie-Smith Feeds, Inc. et al. v Rhône-Poulenc Canada Inc. et al.*, 2005 BCSC 583, at para. 2.

47. In this case, the settlement was reached following hard fought litigation and intensive discussions and negotiations in the lead up to the trial.

**Question 3: Does the Settlement Agreement reflect an appropriate balancing of the costs and benefits of settlement?**

48. The court must be assured that the settlement secures appropriate consideration for the class in return for the surrender of litigation rights against the defendants. However, the court must balance the need to scrutinize the settlement against the recognition that there may be a number of possible outcomes within the zone or range of reasonableness.

*Bodnar v The Cash Store Inc.*, 2010 BCSC 145, at para. 17; *Sun-Rype Products Ltd v Archer Daniels Midland Company*, 2010 BCSC 472, at para. 44.

49. As mentioned, the plaintiff's investigation allowed it to quantify the alleged undisclosed surcharge at \$3.6 million. The Settlement Agreement will result in payment of \$1.4 million for the benefit of Settlement Class Members. Class Counsel estimate that this will result in recovery of approximately 40% of each Settlement Class Member's claim amount, from which legal fees and disbursements will be deducted.

50. There are significant risks with proceeding to trial on the common issues. In particular:

(a) The Court might find that

(i) There was no breach of contract. The breach of contract claim depended on the proper interpretation of the phrase "the rate of conversion into Canadian currency will be fixed according to the rules of the electronic network through which the Transaction is conducted", found in the standard form account agreement used by Coast Capital;

(ii) There was no breach of the *BPCPA*;

(iii) The breach(es) did not cause the loss alleged;

(iv) Proof of individual reliance is required;

- (v) Coast Capital did not itself add, collect, or retain the alleged surcharge, and therefore Coast Capital did not “acquire” anything because of the alleged contravention;
  - (vi) Damages were smaller than those claimed;
  - (vii) Damages be setoff by expenses incurred by Coast Capital; or
  - (viii) Damages cannot be assessed in aggregate and would require individual assessment;
- (b) The claims were vigorously defended by Coast Capital, who raised, among other things, defences that it would seek to have considered at the individual issues trial stage, including:
- (i) Defences relating to the account verification clause in the standard form account agreement, which provided that within 30 days, a member give notice of any errors, irregularities or omissions, failing which the member has no claim for reimbursement relating to any entry on their member statement;
  - (ii) Defences relating to whether the transactions were “consumer” transactions under the *BPCPA*; and
- (c) The parties confirmed that Coast Capital did not itself add, collect, or retain the alleged transaction fees or surcharges, which weakened the plaintiff’s restitution claim under s. 172(3)(a) of the *BPCPA* because it was open to the Court to find that Coast Capital did not “acquire” anything as part of the alleged contravention; and
- (d) Out-of-province witnesses had to be subpoenaed to attend trial.

Fung #1, at para. 14.

51. In addition, even if the plaintiff and the Settlement Class Members were successful at a common issues trial, the defendant could appeal, either successfully or

resulting in delay of resolution of the matter. There also could be individual issues to deal with after the trial of the common issues (for example, the issue of whether a particular claimant is a “consumer” for the purposes of the *BPCPA*).

Fung #1, at para. 14.

52. There is also a real benefit to the Settlement Class Members receiving payment pursuant to the Settlement Agreement now, rather than potentially waiting a number of years for the litigation to unfold (which also carries with it the risk, as described above, that the plaintiff may not be successful).
53. In addition, the Settlement Agreement provides for certain disclosure language with respect to foreign currency withdrawals from ATMs to be added to Coast Capital’s website, and for certain assistance from Coast Capital in distributing the Settlement Amount to the Settlement Class Members, both of which provide significant non-monetary benefits to the Class. Such a remedy would not have been available by way of judgment at trial.

Slevin #8, at Ex. “A”.

54. The enhanced disclosure language should assist others in understanding the full costs of making a foreign exchange withdrawal. The proposed disclosure language makes it clear that additional fees or commissions are charged by third parties involved in processing international ATM or POS transactions.

Finkel #3, at para. 20.

Slevin #8, at Ex. “A”.

55. There was a risk of a low take-up rate of any award at trial if individual claims must be made. The distribution assistance provided by Coast Capital in the Settlement Agreement should lead to a much larger take-up rate by Settlement Class Members, at a reduced cost of distribution to the Class. For Settlement Class Members with Active Coast Capital Memberships, their respective shares of the Net Settlement Amount will be distributed to their accounts without the need for them to make a claim. Coast Capital’s assistance in this regard engages complicated internal banking systems, reconciliation of historic data to link

transaction information with membership information, and is being provided by Coast Capital at its own cost.

Slevin #8, at Ex. "A".

Fung #1, at para. 15.

56. In summary, the settlement is a compromise which takes into account the risks of proceeding to trial, meets the goal of behaviour modification by enhancing the disclosure language on fees and commissions, and increases Settlement Class Member participation in claiming their share of the Net Settlement Amount.

**Question 4: Are the class members adequately informed?**

57. In accordance with the Order pronounced April 27, 2022, notice of this approval hearing was posted on Class Counsel's website, provided by Class Counsel to any person who requested it, and published in the Vancouver Sun, the Victoria Times Colonist, and the Nanaimo News Bulletin.

Aisling #9.

58. The deadline for objections is 12:00pm (noon) on September 15, 2022. Any objections received by this time will be put before the Court.

Aisling #9.

**Conclusions on Settlement Approval**

59. In summary, the Settlement Agreement is fair, reasonable and in the best interest of the Settlement Class Members, specifically because:
- (a) the settlement benefits are favourable to Settlement Class Members;
  - (b) the settlement was negotiated at arm's length;
  - (c) the matters were well-investigated;
  - (d) the settlement results in behaviour modification through enhanced disclosure language;

- (e) the settlement will have a larger take-up rate due to the distribution assistance negotiated; and
- (f) the settlement is preferable when compared to the prospect of litigation with an uncertain outcome and duration.

60. Mr. Finkel, the representative plaintiff in this action, has reviewed the Settlement Agreement, understands the core terms, and supports approval of the Settlement Agreement.

Finkel #3, at paras. 17-25.

61. Class Counsel recommends approval of the Settlement Agreement. As held by Mr. Justice Butler in *Main v Cadbury Schweppes plc*, 2010 BCSC 816, paraphrasing Mr. Justice Strathy in *Osmun v Cadbury Adams Canada Inc.*, 2010 ONSC 2643, this recommendation is important:

[...] because class counsel has a duty to the class as a whole, as well as a duty to the court. In addition, class counsel is uniquely situated to assess the risks of the litigation and the benefits of the settlement. Class counsel in this case have extensive experience in class proceedings generally and price-fixing cases in particular.

*Main v Cadbury Schweppes plc*, 2010 BCSC 816, at para. 10;  
*Osmun v Cadbury Adams Canada Inc.*, 2010 ONSC 2643, aff'd  
2010 ONCA 841, leave to appeal to SCC denied, 2011 CarswellOnt  
6019.

62. The plaintiff and Class Counsel submit that, in light of the risks in this litigation, the Settlement Agreement is well within the zone of reasonableness.

### **Approval of the Fees and Disbursements / Honourarium**

#### **General Principles**

63. Section 38(2) of *CPA* provides that an agreement respecting fees and disbursements between a solicitor and a representative plaintiff requires court approval in order to be enforceable.

64. The agreement must be in writing and must (a) state the terms under which fees and disbursements are to be paid, (b) give an estimate of the expected fee, and (c) state the method by which payment is to be made.

*CPA*, at s. 38(1).

65. The purpose of the fee approval requirement is to ensure that the fee charged to the class is fair and reasonable, and that Class Counsel are appropriately compensated. Class action litigation is challenging and risky. The fee “should not only reward counsel for meritorious efforts, but it should also encourage counsel to take on difficult and risky class action litigation.” The real risk of failure, with financial consequences to counsel, cannot be ignored.

*Bodnar v Cash Store Inc*, 2010 BCSC 145 at paras. 23-25  
[*Bodnar*].

*Pro-Sys Consultants Ltd v Infineon Technologies AG*, 2014 BCSC  
1936 [*Pro-Sys*].

*Endean v Canadian Red Cross Society*, 2000 BCSC 971, at paras.  
57-64 [*Endean*].

66. In assessing the fairness and reasonableness of the requested fees, the courts have recognized that the objectives of the *Class Proceedings Act* – judicial economy, access to justice and behaviour modification – are dependent, in part, upon counsel’s willingness to take on class proceedings.

*Endean*, at paras. 87-88.

67. The access to justice element of class proceedings differentiates fee approvals in the context of class actions from fee approvals in non-class proceedings.

*Pro-Sys*, at para. 61.

68. Contingency fees help promote access to justice in that they allow counsel, not the client, to finance the litigation. Percentage contingency fees also promote judicial economy in that they encourage efficiency in the litigation and discourage unnecessary work that might otherwise be done simply to increase the lawyer’s base fee. Class Counsel submit that percentage contingency fees properly

emphasize the quality of the representation and the results achieved, and ensure that counsel are not penalized for efficiency.

*Endean*, at para. 88.

69. The amount payable pursuant to the retainer agreement is the starting point for the analysis of the proposed fee. As noted by Madam Justice Dickson in *Bodnar*, “the issue for determination is whether the agreement operates reasonably in the context, given the fee proposed.” Madam Justice Dickson also noted that, “...if the proposed fee is to be reduced, a principled basis for the reduction must be identified”.

*Bodnar*, at paras. 25 and 26.

70. The courts have reviewed the range of contingency fees awarded to Class Counsel under the *Class Proceedings Act*. Approved contingency fees in British Columbia have generally ranged from 15% to 33%.

*Bodnar*, at para. 26.

71. In an Ontario case, Belobaba J., an experienced class action judge, created the concept of the “presumptive validity” of a 33% contingency fee as long as the representative plaintiff understood the fee agreement. He noted that injecting greater predictability into the judicial approach to contingency fees will “encourage greater use of the class action vehicle, enhancing access to justice.”

*Cannon v Funds for Canada Foundation*, 2013 ONSC 7686, at paras. 8-10.

*Bodnar*, at paras. 25 and 26.

72. It is difficult to convey the difficulties inherent in the building, maintenance and management of a plaintiffs’ practice in the class action field. Fees from winning cases must assist in maintaining the ongoing viability and strength of contingency practices. Business expenses, case disbursements and unpaid legal time must be carried for many years and for many cases in practices of this type. Fees in successful cases must also assist in overcoming the deficits created by losses.

This allows for thriving practices that contribute to access to justice and behaviour modification.

73. This important reality has been recognized by the courts:

It should be noted in this regard that this action was commenced in 2005. Thus, for over five years Class Counsel has undertaken this action without any remuneration. In the meantime, rent had to be paid, lawyers and staff had to be paid salaries, and expenses were incurred and paid. Without a substantial firm infrastructure and resources, an action of this kind would be an impossible undertaking.

*Abdulrahim v Air France*, 2011 ONSC 512, at para. 16.

74. The following factors are relevant in assessing the reasonableness of Class Counsel fees:

- (a) the time expended by the solicitor;
- (b) the legal complexity of the matters to be dealt with;
- (c) the degree of responsibility assumed by the solicitor;
- (d) the monetary value of the matters in issue;
- (e) the importance of the matter to the client;
- (f) the degree of skill and competence demonstrated by the solicitor;
- (g) the results achieved;
- (h) the ability of the client to pay;
- (i) the client's expectations as to the amount of the fee;
- (j) the risk undertaken by counsel, including the risk that the action might not be certified; and
- (k) the position of any objectors.

*Jeffery v Nortel Networks*, 2007 BCSC 69, at para. 70.

*Pro-Sys*, at para. 57 & 61.

### **The Time Spent By Counsel and Complexity of the Matter**

75. This case was commenced in 2013, and it involved numerous applications and an appeal. The litigation was hard-fought, and it settled five days prior to the commencement of trial on the common issues.
76. From the inception of this proceeding to June, 2022, Class Counsel have docketed time totalling \$808,574.50. The legal fees sought (30% of the first \$1,000,000 recovered and 25% of all amounts recovered in excess of \$1,000,000) will be well under Class Counsel's time spent.

### **Results Achieved**

77. As noted above in paragraphs 50 and 51, this case involved substantial legal risks in going to trial.
78. In light of these risks, the Settlement Agreement has resulted in monetary compensation for Settlement Class Members and other non-monetary benefits described above.

### **Litigation Risk Assumed by Class Counsel**

79. The litigation risk assumed by counsel is a function of the probability of success, the complexity of the proceedings, and the time and resources expended to pursue the litigation.

*Parsons v Canadian Red Cross Society* (2000), 49 OR (3d) 281, at paras. 13 & 18-47(SCJ) [*Parsons*].

80. This action was vigorously litigated by both sides.
81. Class Counsel assumed significant risk in pursuing this litigation. In particular, there were risks related to:
  - (a) the account verification clause which could bar recovery for every Class Member;

- (b) the restitutionary claim, given that Coast Capital did not retain any of the undisclosed alleged surcharges;
- (c) the amount and nature of the undisclosed surcharge collected by third-party intermediaries during the Class Period was contested;
- (d) non-party witnesses; and
- (e) potential individual issues after the trial of the common issues.

82. In the end, the settlement involved compromise on both sides.

### **Conduct by Class Counsel**

83. Class Counsel demonstrated a high degree of skill and competence. Class Counsel were successful in certifying the action as a class proceeding, defending the appeal of the certification decision, and negotiating a favourable settlement on behalf of the Settlement Class Members.

### **Clients' Expectation and Appropriateness of Fees Sought**

84. Class Counsel's fee request is consistent with the CFA and is supported by the representative plaintiff.

*Finkel #3*, at paras. 31-33.

85. As the Ontario Court of Appeal has noted, a "representative plaintiff in a class action lawsuit is a genuine plaintiff, who chooses, retains and instructs counsel and to whom counsel report." Their approval of and support for a fee request should not be taken lightly.

*Fantl v Transamerica Life Canada*, 2009 ONCA 377, at para. 44.

86. Class Counsel submit that the disbursements and fees sought are reasonable in light of the risks assumed and the time and resources expended. The disbursements and fees sought are also consistent with the CFA. Class Counsel respectfully request that the disbursements and fees be approved.

## Honourarium

87. In *Parsons v Coast Capital Savings Credit Union*, the Court of Appeal affirmed that compensation to the representative plaintiff is appropriate where the plaintiff has provided “competent service” by fulfilling the duties posed upon him or her, and success has been achieved for the class. The amount of compensation awarded to the representative plaintiff should be proportionate to the benefit derived by the class, his or her efforts in the litigation, and the risks that he or she assumed.

*Parsons v Coast Capital Savings Credit Union*, 2010 BCCA 311  
[*Parsons 2010*], at paras. 19-21.

88. *Parsons 2010* was applied by this Court in *MacKinnon* to award two representative plaintiffs compensation in the amount of \$7,500 each in recognition of their services to the class.

*MacKinnon v National Money Mart Company*, 2010 BCSC 1008  
[*MacKinnon*], at paras. 51 to 60.

89. In *MacKinnon*, each of the representative plaintiffs fulfilled their duties by taking an active involvement in the proceedings, swearing one and two affidavits respectively, participating and instructing counsel during settlement negotiations, and providing personal information with respect to the subject matter of the litigation.

*MacKinnon*, at paras. 8, 42 and 55-56.

90. On at least five other instances this court has approved compensation to a representative plaintiff in the amount of \$10,000 for their services and contributions.

*Casavant v Cash Money Cheque Cashing Inc*, 2010 BCSC 148  
[*Casavant*].

*Bodnar*.

Order of Mr. Justice Masuhara in *Pro-Sys Consultants Ltd. v. Infineon Technologies AG*, entered on March 3, 2015 [*Pro-Sys Honourarium Order*].

*Denluck v The Board of Trustees for the Boilermakers' Lodge 359 Pension Plan*, 2021 BCSC 242 [*Boilermakers*].

*Jones v Zimmer GMBH*, 2016 BCSC 1847.

91. *Casavant* was a class proceeding that was resolved in 2 years, without a contested certification application. Following its commencement in February 2008, a number of applications were heard, including an unsuccessful application by the defendants seeking disclosure of the representative plaintiff's medical records, which was affirmed on appeal. In August 2009 the parties negotiated a settlement, and in February, 2010, the court certified the action as a class proceeding and approved the settlement and the compensation for the representative plaintiff. With respect to the compensation for Ms. Casavant the court awarded her \$10,000 and cited her involvement in achieving a successful outcome for the class, her exposure to adverse costs arising from the pre-certification applications, and the personal nature of the application brought with respect to her medical records.

*Casavant*, at paras. 8 and 31.

92. *Bodnar* was commenced in March 2004. It was certified as a class proceeding against some defendants in 2005, a decision that was affirmed on appeal. It was certified against the remaining defendants in 2008. In conjunction with their application seeking approval of a settlement between the parties, the plaintiffs sought compensation of \$10,000 for Mr. Bodnar and Mr. Bartolome, two of the three representative plaintiffs, and \$5,000 for Mr. Wournell. The court approved the compensation citing their respective participation, the necessity of Messrs. Bodner and Bartolme participating in two separate examinations for discovery, and their contributions to settlement negotiations.

*Bodnar*, at paras. 3, 7 and 42-49.

93. *Pro-Sys* was certified as a class proceeding after 10 years of litigation. It was certified as a class proceeding, which was appealed to the Court of Appeal and Supreme Court of Canada. In conjunction with their application seeking approval of a settlement agreement, the plaintiffs sought compensation of \$10,000 for the representative plaintiff. The court approved the compensation from the bench and directed that the additional compensation be paid as a disbursement from the settlement funds.

*Pro-Sys* Honorarium Order.

94. *Boilermakers* was commenced in 2015 and was certified as a class proceeding three years after in 2018. The defendant did not appeal the certification decision. In 2019 the parties agreed to a settlement and in 2021 this court approved the settlement. The representative plaintiff who was extensively involved in the litigation, sought a honourarium payment of \$10,000. Justice Mayer approved the \$10,000 payment to the representative plaintiff.
95. A case in which a lower honourarium was awarded is *McLean*. In that case, the action was certified as a class proceeding for settlement purposes only. Prior to settlement, certification material had been exchanged, but no discoveries had been conducted. The Court found that honoraria at this stage of proceedings have typically been in the range of \$3,000 to \$4,000. The amount sought in this case was only \$1,500, and it was awarded.

*McLean v Cathay Pacific Airways Limited, 2021 BCSC 1456, at paras. 2 and 57.*

96. The factors that emerge from these cases accord with a non-exhaustive list of factors set out by Justice Strathy (as he then was) for this type of application in *Robinson v Rochester Financial Limited*:
- (a) active involvement in the initiation of the litigation and retainer of counsel;
  - (b) exposure to a real risk of costs;
  - (c) significant personal hardship or inconvenience in connection with the prosecution of the litigation;
  - (d) time spent and activities undertaken in advancing the litigation;
  - (e) communication and interaction with other class members; and
  - (f) participation at various stages in the litigation, including discovery, settlement negotiations and trial.

*Robinson v Rochester Financial Limited*, 2012 ONSC 911, at para. 43.

97. Although some decisions from Ontario have taken a restrictive approach of only compensating representative plaintiffs in exceptional circumstances (see *Robinson, supra* at para. 27), in British Columbia the Court of Appeal has clearly stated that exceptional service is not required.

*Parsons 2010*, at para. 21.

98. That being said, cases in Ontario and at the Federal Court have awarded honoraria of \$50,000.

*Cannon v Funds for Canada Foundation*, 2017 ONSC 2670.

*Charette v Trinity Capital Corp*, 2019 ONSC 3153.

*Toth v Canada*, 2019 FC 125.

99. This is not a case that would have been discovered without Mr. Finkel's investigation into his foreign exchange transactions. Mr. Finkel has been actively and extensively involved in this case. Class Counsel propose that Mr. Finkel be paid an honorarium of \$10,000 for his services and contributions, to be paid as a disbursement out of the Settlement Funds.

### **Approval of the Settlement Administration and Distribution Plan**

100. The *CPA* contains tools to facilitate the distribution of recoveries achieved in class action litigation. While those legislative tools focus on distribution of awards at the conclusion of contested proceedings, guidance can be taken from those provisions for the purposes of distributing recoveries achieved by settlement. Generally speaking, the statutory provisions permit and facilitate the flexible and efficient delivery of litigation recoveries to class members. In particular, they grant the Court broad discretion to "direct any means of distribution [of a judgment]...that it considers appropriate".

*CPA*, s. 33(1).

101. There are also provisions which broadly authorize the use of a number of efficient procedures to minimize burdens on class members such as:

- (a) the payment of awards on an average or proportional basis;
- (b) the use of individual claims processes using standardized claims forms; and
- (c) the payment of awards in a manner that may reasonably be expected to benefit class members.

*CPA*, s. 31-33.

102. The approach of Canadian courts is to examine whether a proposed distribution is reasonable, fair, economical, and practical on the facts of each particular case. A distribution “consistent” with the underlying facts is “equitable”.

*Pro-Sys Consultants Ltd v Infineon Technologies AG*, 2014 BCSC 1936, at para. 34.

*Ontario Hospital Association v Summers*, 2010 ONSC 4497, at para. 31 [*Ontario Hospital*].

103. There is rarely only one way of distributing settlement funds that qualifies as appropriate under any given set of circumstances. Accordingly, the selection of a distribution method or plan should not require that all other possible means of distributing the settlement funds be rejected as inadequate or unreasonable, only that the method that is selected by the parties and the court be fundamentally fair and practicable.
104. The proposed Plan is fundamentally fair and practicable because it aims to provide as many Settlement Class Members as possible with a share of the Settlement Amount in the most efficient way possible.

### **The Recommendations and Experience of Counsel Should be Given Weight**

105. The experience of counsel working out a settlement in an adversarial context favours approval. Class Counsel submit that the recommendation of experienced counsel with regard to the distribution plan should be given similar weight.

*Carom v Bre-X Minerals Ltd*, 2014 ONSC 2507, at paras. 100 and 133-139.

106. Class Counsel in this proceeding have been responsible for the distribution of settlement proceeds in many prior class actions, including consumer-based class actions.

### **Claims Administrator**

107. The plaintiff seeks approval of the appointment of Class Counsel as the Claims Administrator for the Plan.
108. As the Claims Administrator, Class Counsel will be responsible for allocating to each Settlement Class Member their portion of the Net Settlement Amount.
109. The appointment of Class Counsel as Claims Administrator will avoid the extra expense associated with hiring a third party claims administrator.

### **The Distribution Plan Meets the Legal Test**

110. Class Counsel have consulted with the defendant and the representative plaintiff with respect to the Plan.
111. Pursuant to the Plan, Direct Deposit Settlement Class Members will not be required to submit a claim in order to receive settlement benefits. Their proportionate share of the Net Settlement Amount will automatically be deposited into their accounts. This is efficient, and it is expected to increase the take-up rate by a significant amount.
112. Claims Based Settlement Class Members will be required to submit a Claim with sufficient information for the Claims Administrator to identify whether they have a Qualifying International Withdrawal (using the daily transaction reports produced in this litigation). Their proportionate share of the Net Settlement Amount will be sent to them by e-transfer or cheque.
113. The Plan is reasonable, fair, economical, and practical on the facts of this case and that it should be approved.

114. In Class Counsel's opinion, this is the most efficient and cost-effective means of distributing the Net Settlement Funds.

**PART 4: MATERIAL TO BE RELIED ON**

115. Affidavit #8 of Aisling Slevin, made April 20, 2022;

116. Affidavit #9 of Aisling Slevin, to be sworn and filed;

117. Affidavit #3 of Eric Finkel;

118. Affidavit #1 of Jonathan Fung; and

119. Such other material as counsel may advise.

The applicant estimates that the application will take 1 day.

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application

(a) file an application response in Form 33,

(b) file the original of every affidavit, and of every other document, that

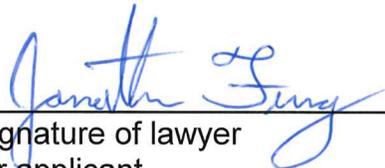
(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding, and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

- (i) a copy of the filed application response;
- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 22/Aug/2022

  
\_\_\_\_\_  
Signature of lawyer  
for applicant

David G.A. Jones

*To be completed by the court only:*

Order made

- in the terms requested in paragraphs ..... of Part 1 of this notice of application
- with the following variations and additional terms:

.....  
.....  
.....

Date: ..... Signature of  Judge  Master

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## APPENDIX

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THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

Schedule "A"

**SETTLEMENT AGREEMENT AND RELEASE**

Made as of June 30, 2021

Between

**ERIC FINKEL**  
(the "Plaintiff")

and

**COAST CAPITAL SAVINGS FEDERAL CREDIT UNION**  
(formerly known as Coast Capital Savings Credit Union)

("Coast Capital Savings")

## TABLE OF CONTENTS

RECITALS .....	1
SECTION 1- DEFINITIONS .....	2
SECTION 2 - SETTLEMENT APPROVAL .....	7
2.1 Best Efforts .....	7
2.2 Application for Settlement Approval .....	7
2.3 Right of Termination .....	8
2.4 Survival of Provisions After Termination .....	8
SECTION 3 - SETTLEMENT BENEFITS .....	8
3.1 Payment of Settlement Amount .....	8
3.2 Taxes and Interest .....	10
3.3 Disclosures .....	10
3.4 Distribution and the Notice and Settlement Administration Plan .....	12
SECTION 4 - RELEASES AND DISMISSALS .....	17
4.1 Release of the Released Claims and the Released Distribution Claims .....	17
4.2 No Further Claims .....	18
4.3 Dismissal of the Proceeding .....	19
SECTION 5 - EFFECT OF SETTLEMENT .....	19
5.1 No Admission of Liability .....	19
5.2 Agreement Not Evidence .....	19
SECTION 6 - MISCELLANEOUS .....	20
6.1 Releasee Has No Liability for Administration .....	20
6.2 Destruction of Documents .....	20
6.3 Headings, etc .....	20
6.4 Applications .....	21

6.5	Computation of Time .....	21
6.6	Ongoing Jurisdiction .....	21
6.7	Governing Law .....	22
6.8	Entire Agreement .....	22
6.9	Amendments .....	22
6.10	Binding Effect .....	22
6.11	Counterparts .....	22
6.12	Negotiated Agreement .....	23
6.13	Recitals .....	23
6.14	Schedules .....	23
6.15	Authorized Signatures .....	23
6.16	Notice .....	23

## RECITALS

### WHEREAS:

A. On August 28, 2013, the Plaintiff commenced the Proceeding against Coast Capital Savings Credit Union, which Proceeding alleges that Coast Capital Savings participated in the Alleged Conduct, and the Plaintiff claimed damages allegedly caused as a result of the Alleged Conduct on behalf of himself and the proposed Class Members.

B. On March 31, 2016, the Proceeding was certified as a class proceeding. Common issues in respect of, among other things, breach of contract and conduct contrary to the *Business Practices and Consumer Protection Act*, S.B.C. c. 2 were certified.

C. On October 20, 2017, the decision to certify the Proceeding as a class proceeding was upheld by the British Columbia Court of Appeal.

D. Coast Capital Savings took the position that it is not liable in respect of the claims in the Proceeding, and Coast Capital Savings believes it has good and reasonable defences in respect of the merits of the Proceeding, including its defences that all amounts charged to the Class Members properly formed part of the conversion rate set and applied by third party entities that processed foreign currency withdrawals initiated by Class Members at ATMs located outside of Canada during the Class Period and no "surcharge" was charged by Coast Capital Savings.

E. Coast Capital Savings does not admit, through the execution of this Settlement Agreement, or otherwise, any of the Alleged Conduct alleged in the Proceeding.

F. Despite Coast Capital Savings' belief that it is not liable in respect of the Alleged Conduct and that it has good and valid defences in respect of the claims advanced in the Proceeding, Coast Capital Savings has negotiated and entered into this Settlement Agreement in order to achieve a full and final resolution of all claims asserted or which could have been asserted against it by the Plaintiff and the Class Members in the Proceeding, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation to the detriment of its operations, and so it can focus its resources on advancing the financial wellbeing of its membership.

G. As part of this resolution, Coast Capital Savings has agreed to pay the Settlement Amount for the benefit of the Class Members. Coast Capital Savings has agreed to participate in the Coast Distribution Process subject to employee availability, taking into account existing and anticipated organizational needs and requirements.

H. The Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs claims, and having regard to the benefits of this Settlement Agreement, and the burdens and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals in light of the potential defences asserted by Coast Capital Savings, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiff and the classes he represents.

I. The Plaintiff and the Class Members intend to fully and completely settle and resolve the claims advanced or which could have been advanced in the Proceeding as against the Releasee on the Effective Date pursuant to this Settlement Agreement;

J. The Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the Proceeding as against Coast Capital Savings.

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 Proceeding be settled and dismissed on the merits with prejudice, without costs as to the Plaintiff, the Class, or Coast Capital Savings, subject to the approval of the Court, on the following terms and conditions:

#### **SECTION 1 - DEFINITIONS**

I. For the purpose of this Settlement Agreement, including the Recitals and Schedules hereto the following definitions apply:

- (!) ***Alleged Conduct*** means all conduct that has been alleged or could have been alleged as against Coast Capital Savings in the Proceeding, including alleged breaches of Coast Capital Savings' Personal Account and Services Agreement

entered into with Class Members and alleged breaches of the *Business Practices and Consumer Protection Act*, S.B.C. c. 2 relating to undisclosed "surcharges" allegedly charged by Coast Capital Savings to its members who made foreign currency withdrawals at ATMs, located outside of Canada, from their accounts held with Coast Capital Savings during the Class Period.

- (2) **ATM** means automated teller machine or automated banking machine.
- (3) **Active Coast Memberships** means memberships associated with accounts through which a Qualifying International Withdrawal was made, identified further to section 3.4(3)(a)(C), that remain active and are associated with an active Coast Capital Savings deposit account, but does not include any Opted-Out Memberships.
- (4) **Cirrus System** means the branded international payment system operated by MasterCard Incorporated that processed part of the International Withdrawals requested by Coast Capital Savings' members at foreign ATMs during part of the Class Period.
- (5) **Class** and **Class Members** means members of Coast Capital Savings who are residents of British Columbia and used their Coast Capital Savings member card to make a Qualifying International Withdrawal from their personal Coast Capital Savings account through an ATM on the Plus System or the Cirrus System outside Canada from August 28, 2007 to August 31, 2015. For greater certainty, Class and Class Members referred to in this Settlement Agreement include all the classes and "Class Members" and "Subclass Members" defined in the Order Made After Application (Contested Certification), made March 31, 2016 in the Proceeding.
- (6) **Class Counsel** means Camp Fiorante Matthews Mogeran LLP.
- (7) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST/PST and other applicable taxes or charges of Class Counsel.
- (8) **Class Period** means August 28, 2007 to August 31, 2015.

- (9) ***Coast Distribution Date*** means the date of the final distribution by Coast Capital Savings under the Coast Distribution Process.
- (10) ***Coast Distribution Process*** means the distribution process by Coast Capital Savings described and defined below in section 3.4 of this Settlement Agreement.
- (11) ***Court*** means the Supreme Court of British Columbia.
- (12) ***Disclosures*** means the disclosures described and defined below in section 3.3(1) of this Settlement Agreement.
- (13) ***Effective Date*** means the next calendar day after the day on which all appellate rights with respect to the Settlement Approval Order made in the Action have expired or have been exhausted.
- (14) ***International Withdrawal*** means a foreign currency transaction (referred to as a "withdrawal") conducted through the use of a Coast Capital Savings member card to obtain funds in a foreign (non-Canadian Dollar) currency from an ATM located outside of Canada with funds drawn from a Coast Capital Savings account.
- (15) ***Processor*** means [REDACTED].
- (16) ***Non-Active Coast Memberships*** means (a) memberships associated with accounts through which a Qualifying International Withdrawal was made, identified further to section 3.4(3)(a)(C), that remain active and are not associated with an active Coast Capital Savings deposit account; (b) memberships identified further to section 3.4(3)(a)(C) as belonging to Class Members at the time of a Qualifying International Withdrawal, that have been closed or do not otherwise continue to hold an active Coast Capital Savings account associated with the membership number through which a Qualifying International Withdrawal was made, but does not include any Opted-Out Memberships; and (c) any PAN or membership that is deemed to be a Non-Active Coast Membership in section 3.4.
- (17) ***Notice and Settlement Administration Plan*** means a plan that sets out:

- (a) the form and procedure by which notice of the Settlement will be provided to the Class Members, including notice of the legal fees and expenses paid or payable to Class Counsel;
  - (b) the procedure by which Class Members can claim an entitlement under the Settlement; and
  - (c) the procedure for the determination of eligible claims and the amount of those claims, and the subsequent payment of them.
- (18) ***Opted-Out Memberships*** means memberships associated with accounts through which a Qualifying International Withdrawal was made, identified further to section 3.4(3)(a)(C), that are associated with persons who opted out of the Proceeding in accordance with the order pronounced by Mr. Justice Masuhara on November 14, 2019.
- (19) ***Parties*** means the Plaintiff, the Class Members, and Coast Capital Savings.
- (20) ***Plus System*** means the branded international payment system operated by Visa International that processed part of the International Withdrawals requested by Coast Capital Savings members at foreign ATMs during part of the Class Period.
- (21) ***Proceeding*** means British Columbia Court File No. S-136507, Vancouver Registry.
- (22) ***Qualifying International Withdrawal*** means an International Withdrawal by a Class Member during the Class Period.
- (23) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, disputes, whether class, individual, or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class 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 Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, will, or may have, arising out of or relating in any way to the Alleged Conduct.

- (24) ***Released Distribution Claims*** means any and all manner of claims, demands, actions, suits, causes of action, disputes, whether class, individual, or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class 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 Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, will, or may have, arising out of or relating in any way to Coast Capital Savings' involvement in either the Notice and Settlement Approval Plan or the Coast Distribution Process.
- (25) ***Releasee*** means Coast Capital Savings, and all of its owners, directors, officers, managers, partners, employees, servants, employees, representatives, insurers, agents, service providers, administrators, estate trustees, trustees, legal and personal representatives, predecessors, successors, and assigns, past, present, and future.
- (26) ***Releasors*** means the Plaintiff and the Settlement Class Members, and their respective predecessors, successors, heirs, beneficiaries, executors, administrators, committees, representatives, trustees, assigns, and affiliates of any kind.
- (27) ***Settlement Agreement*** means this agreement and release, including the recitals and schedules.
- (28) ***Settlement Amount*** means the all-inclusive sum of one million four hundred thousand Canadian dollars (CAD \$1,400,000.00).
- (29) ***Settlement Appl'Oval Hearing*** means the date the Court is scheduled to consider the Settlement Approval Order.

- (30) ***Settlement Approval Order*** means a final judgment or final approval order approving this Settlement Agreement, which order will be substantially in the form attached as Schedule "B" or as may be amended with the consent of the Parties.
- (31) ***Settlement Class Member*** means a member of the Class who has not opted out in accordance with the order pronounced by Mr. Justice Masuhara on November 14, 2019.
- (32) ***Settlement Fund*** means a Trust Account controlled by Class Counsel, which will hold the Settlement Amount.
- (33) ***Trust Account*** means a segregated interest-bearing trust account under the control of Class Counsel for the benefit of the Settlement Class Members.

## **SECTION 2 - SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

- (1) The Parties will use their reasonable best efforts to
  - (a) effectuate this Settlement Agreement, including obtaining the approval of the Court, and to secure the prompt, complete, and final dismissal with prejudice of the Proceeding as against Coast Capital Savings; and
  - (b) secure the prompt, complete and final dismissal of the Proceeding against Coast Capital Savings, with prejudice and without costs.

### **2.2 Application for Settlement Approval**

- (1) As soon as practicable after the Settlement Agreement is executed the Plaintiff will bring an application before the Court approving this Settlement Agreement.
- (2) At least thirty days in advance of the application referred to in section 2.2(1), or such shorter period of time as the Parties may agree, Class Counsel shall provide Coast Capital Savings with drafts of the Notices of Application, any related notices to the Class, and any supporting materials which are intended to be filed with the Court in support of the application, provided nothing herein requires the approval of Coast Capital Savings of such materials.

### **2.3 Right of Termination**

(I) If the Settlement Approval Order is not granted, or is reversed or modified on appeal, then unless the Parties expressly agree otherwise in writing:

- (a) Subject to section 2.4 below, this Settlement Agreement and all orders made pursuant to it will be null and void, will have no further force and effect with respect to the Parties, and will not be offered in evidence or used in any litigation for any purpose; and
- (b) All orders in existence as of the date on which this Settlement was executed will become operative and fully effective, as if proceedings relating to this Settlement had not occurred.

### **2.4 Survival of Provisions After Termination**

(I) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2, 3.4(4), 3.4(6), 3.4(7), 5.1, 5.2 and 6.1 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately as set out in section 2.3 above.

## **SECTION 3 - SETTLEMENT BENEFITS**

### **3.1 Payment of Settlement Amount**

(I) At least 15 days prior to the Settlement Approval Hearing, or as the Parties otherwise agree, acting reasonably, Coast Capital Savings will pay the Settlement Amount to Borden Ladner Gervais LLP, in trust with irrevocable instructions to Borden Ladner Gervais LLP to:

- (a) Hold the Settlement Amount in an interest-bearing trust account pending the Settlement Approval Order in the Action;

- (b) If the Settlement is not approved in the Action, to return the Settlement Amount and all interest earned thereon to Coast Capital Savings upon its request to do so; and
  - (c) If the Settlement is approved in the Action, to pay the Settlement Amount and all accrued interest thereon, to Class Counsel in trust within 15 days after the Effective Date.
- (2) Upon receiving the Settlement Amount, Class Counsel will deposit those monies into the Trust Account pending orders from the Court approving the Settlement Agreement, Class Counsel Fees, and the Notice and Settlement Administration Plan.
- (3) Class Counsel shall not pay out all or part of the monies in the Trust Account, except in accordance with this Settlement Agreement and the orders of the Court, and, in any event, only after the Effective Date.
- (4) Except as otherwise provided herein, Coast Capital Savings will have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.
- (5) When the Settlement Amount is paid in accordance with section 3.1(1)(c), Class Counsel will receive it in trust in full satisfaction of all payment obligations under this Settlement Agreement and in full satisfaction of the Released Claims against the Releasee.
- (6) Coast Capital Savings will have no legal or beneficial interest in the Settlement Fund.
- (7) As soon as reasonably possible after the Effective Date, Class Counsel will provide instructions to Coast Capital Savings and funds required by Coast Capital Savings to complete the Coast Distribution Process in accordance with this Settlement Agreement and the orders of the Court.

### 3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount while in the Trust Account shall accrue to the benefit of the Class Members and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Class Members. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.

(3) Coast Capital Savings shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account.

### 3.3 Disclosures

(I) Coast Capital Savings will include, on a travel page on its website (the "**Travel Webpage**"), the following with respect to International Withdrawals:

- (a) The language set out in Schedule "A" to this Agreement (the "**General Disclosure**"); and
- (b) With specific language to be agreed to by the Parties, acting reasonably, and subject to the Processor's agreement, a point-in-time example transaction explaining the cost of an International Withdrawal to a Coast Capital Savings member, including the identity of the third party participants known to Coast Capital Savings, or a generic reference to those participants, involved in the example transaction and the breakdown, as applicable where such information is available, of the applicable rates of conversion or fees or commissions applied as of the point-in time of the example transaction (the "**Example Transaction Disclosure**")

(collectively, the General Disclosure and the Example Transaction Disclosure, the "**Disclosures**").

(2) Should the Processor not agree to the Example Transaction Disclosure, the Plaintiff may, on notice to the Processor and to Coast Capital Savings, seek an order or declaration that Coast Capital Savings make the Example Transaction Disclosure, by identifying on a Travel Webpage (a) the relevant Canadian gateway processor in an International Withdrawal and (b) a breakdown of the total transaction cost, including the applicable currency conversion rate(s) as of the point-in-time of the proposed example transaction and the method by which those conversion rate(s) are set, where known as a result of investigations conducted during this Proceeding, and any fees or commissions. Any such application will be made by the Plaintiff without the Plaintiff seeking costs as against Coast Capital Savings and on any such application Coast Capital Savings will take no position.

(3) If the Processor does not agree to the Example Transaction Disclosure, and if the Court does not order or declare that Coast Capital Savings make the Example Transaction Disclosure, as set out in section 3.3(2), above, Coast Capital Savings will include the General Disclosure on the Travel Webpage.

(4) In recognition that it is in the interests of the Parties and the Class Members' that the content of the Travel Webpage be accurate and not misleading, the Parties agree that Coast Capital Savings is at liberty to amend the content of the Travel Webpage, including the General Disclosure, from time to time as may be required by commercial developments, including changes in the technical processes of transacting or processing International Withdrawals.

(5) Subject to s. 3.3(4), the Travel Webpage will be maintained by Coast Capital Savings for a period of five (5) years, calculated from the date the Travel Webpage is first available online. After the five-year period ends, Coast Capital Savings is at liberty, in its sole discretion, to maintain or delete the Travel Webpage.

(6) Should any Party determine that the Travel Webpage is not in compliance with this Section 3.3, notice of non-compliance will be provided to Coast Capital Savings in

accordance with this Agreement and Coast Capital Savings will correct any non-compliance within 15 business days of receipt of notice.

### **3.4 Distribution and the Notice and Settlement Administration Plan**

(1) At the Settlement Approval Hearing, the Plaintiff will apply to the Court for approval of Class Counsel Fees, the Notice and Settlement Administration Plan, and the order described below ins. 3.4(3)(d).

(2) Class Counsel Fees will be reimbursed and paid out of the Settlement Fund.

(3) As part of the Notice and Settlement Administration Plan:

(a) The following exchange of information will occur after the Effective Date:

(A) Class Counsel will provide to Coast Capital Savings information regarding the persons who opted out of the Proceeding in accordance with the order pronounced by Mr. Justice Masuhara on November 14, 2019, such information consisting of their name and the address associated with their Coast Capital Savings account(s), and any other personal information that Class Counsel has received. From this information, Coast Capital Savings will use reasonable efforts to identify from its current banking system any "PAN" numbers active during the Class Period associated with the Opted-Out Memberships, and provide that "PAN" number or numbers to Class Counsel, and will identify any persons for whom Coast Capital Savings cannot determine that person's associated Opted-Out Membership (the "**Questionable Opt-Outs**"). Class Counsel will make further inquiry with the Questionable Opt-Outs to obtain further personal information, including their Coast Capital Savings Member number or account number, and provide that information to Coast Capital Savings prior to or in conjunction with providing the information described in section 3.4(3)(a)(B) below. If such further information is not provided, or if, with that information, Coast Capital Savings is unable to identify the Questionable Opt-

Outs' associated "PAN" number during the process set out in section 3.4(3)(a)(C) below, such persons will not be treated as having an Opted-Out Membership;

- (B) Class Counsel will then identify and provide to Coast Capital Savings (a) from daily reports issued by "Everlink", the "PAN" number associated with Settlement Class Members' deposit accounts through which Qualifying International Withdrawals were made; and (b) from daily reports issued by "Threshold" or "DC Payments", the "PAN" number and the "Debit Account ID/Credit Account ID" number ("**Account Number**") associated with Settlement Class Members' deposit accounts through which Qualifying International Withdrawals were made. In providing the information described in this section, Class Counsel will exclude any "PAN" number and Account Number (where applicable) associated with Opted-Out Memberships;
- (C) From the information provided under section 3.4(3)(a)(B), Coast Capital Savings will search its active banking system and identify and advise Class Counsel which PAN numbers are associated with Active Coast Memberships, Non-Active Coast Memberships, or, if not identified by Coast Capital Savings previously, Opted-Out Memberships. If a specific PAN number cannot be identified by Coast Capital Savings as associated with any membership, Coast Capital Savings will treat that PAN as if it is associated with a Non-Active Coast Membership and it will be deemed a Non-Active Coast Membership for the purposes of this Agreement. If a specific PAN number is associated with more than one membership, Coast Capital Savings will associate the PAN with an Active Coast Membership and, further, in the event that there is more than one Active Coast Membership associated with the PAN, Coast Capital Savings has sole discretion to choose which of those Active Coast Memberships will be used for the purposes of distribution under this section 3.4;

- (D) Along with the information provided under section 3.4(3)(a)(C), Coast Capital Savings will also provide, to the extent reasonably available, the names and most recent contact information for any Non-Active Coast Memberships;
  - (E) Subject to obtaining the order set out in section 3.4(3)(d) below, from the information provided under section 3.4(3)(a)(C), Class Counsel will deliver to Coast Capital Savings a list, in a form to be agreed by the Parties, of the Active Coast Memberships and the amount to be transferred to each Active Coast Memberships' Coast Account (defined below) by Coast Capital Savings (the "**List**");
  - (F) Should any of the above steps fall within the period March to May 2022, the Parties acknowledge and agree that Coast Capital Savings may pause this information exchange, and that this information exchange process will recommence May 31, 2022; and
  - (G) The Parties agree to use best efforts to assist each other in the above information exchange, and address any technical issues that may arise;
- (b) the Plaintiff will be solely responsible for determining the respective shares of the Settlement Fund to be distributed to the specific Active Coast Memberships and Non-Active Coast Memberships;
  - (c) the Plaintiff will be solely responsible for distribution of the Non-Active Coast Memberships' respective shares of the Settlement Fund;
  - (d) with respect to the distribution of the Active Coast Memberships' respective shares of the Settlement Fund, the Plaintiff will seek an order that Coast Capital Savings distribute the respective shares of the Settlement Fund to Active Coast Memberships through a direct payment to an active Coast Capital Savings deposit account (the "**Coast Account**") identified as part of the identification process of Active Coast Memberships described above in section 3.4(3)(a)(C), without requiring the Class Members associated with

the Active Coast Memberships to make a claim under the Settlement Administration Plan (being the Coast Distribution Process), and Coast Capital Savings will engage in the Coast Distribution Process provided that the order also provides that:

- (A) Within 90 days, or such other time as parties may agree, acting reasonably, of delivery of the information described in section 3.4(3)(a)(C), Class Counsel will (a) deliver to Coast Capital Savings the List and (b) transfer to Coast Capital Savings from the Trust Account the funds to be transferred to Coast Accounts in accordance with the List (the "**Distribution Funds**");
- (B) Subject to section 3.4(3)(d)(C) and (D) below, within 30 days or such other time as parties may agree, acting reasonably, of receipt of the List and the Distribution Funds, Coast Capital Savings will transfer the amounts specified in the List from the Distribution Funds into the relevant Coast Accounts (the last date of transfer, being the Coast Distribution Date) and provide the Plaintiff confirmation that the amounts specified in the List have been transferred.
- (C) If the List is delivered to Coast Capital Savings during the period March to May 2022, the 30 day period specified in section 3.4(3)(d)(B) above will not commence until May 31, 2022.
- (D) If between the time that Coast Capital Savings identifies the Active Coast Membership and the time that Coast Capital Savings attempts to make payment in accordance with section 3.4(3)(d)(B), the associated active deposit account becomes inactive and there are no other active deposit accounts associated with that membership, or any other technical issue arises that prevents the deposit, Coast Capital Savings will (a) identify that membership to Class Counsel by providing the associated PAN number, the associated name, and the most recent contact details associated with it, and (b) return the

share of the Distribution Funds associated with that membership to Class Counsel (subject to agreement otherwise). The Parties will treat that membership as if it was not on the List and deem it a Non-Active Membership, and the Plaintiff will be responsible for distribution of its share of the Distribution Funds;

- (E) To the extent that Coast Capital Savings makes payment in accordance with subsection 3.4(3)(d)(B), such payments are made and received in full and final settlement of all entitlements to compensation under this Settlement Agreement and no person, even if that person was formerly a holder of the Coast Capital Savings membership or was in any way associated with either the relevant Coast Capital Savings membership, or a Qualifying International Withdrawal, at any time during the Class Period, is entitled to make a claim to those or any additional funds;
  - (F) Coast Capital Savings' obligation in respect of the Coast Distribution Process is limited to making a payment to the Coast Account in an amount specified in the List from the Distribution Funds in accordance with section 3.4(3)(d)(B);
  - (G) Coast Capital Savings is not liable nor responsible for making any payments with respect to Non-Active Class Memberships or any payments that are not expressly set out in the List, subject to section 3.4(3)(d)(D); and
  - (H) No person may bring a claim or action against any party to this Settlement Agreement in relation to the distribution of the Settlement Funds without leave of the Court.
- (4) Coast Capital Savings shall not be liable for any fees, disbursements or taxes, including but not limited to any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or any Settlement Class Member's respective lawyers, experts, advisors, agents, or representatives, or Class Counsel Fees.

(5) As part of the Notice and Settlement Administration Plan, the Parties, acting reasonably, will agree to a communications plan and the language to be used.

(6) Coast Capital Savings is not responsible for notification to any Class Members about the Settlement Agreement, or related court approvals or distribution processes. Coast Capital Savings will have the right, but not the obligation, to communicate with its members to alert them to the settlement through Coast Capital Savings' website or other means, after giving reasonable advance notice to Class Counsel of the proposed communication.

(7) Coast Capital Savings is not responsible for the cost of any mail outs or other costs relating to distribution of funds to Class Members, other than its own costs in processing payments in accordance with section 3.4(3)(d).

(8) For any unclaimed amount in the Settlement Fund, 50% will go to the Law Foundation of British Columbia, and the remaining 50% will be donated to one or more consumer financial literacy organizations to be agreed to by the Parties, acting reasonably.

(9) The Settlement Fund will be disbursed in accordance with this Settlement Agreement, the Notice and Settlement Administration Plan, and as otherwise directed by the Court.

(JO) Other than the matters addressed in sections 3.4(1) through (7) and (9), the Court has discretion to amend the Notice and Settlement Administration Plan. With the exception of this section 3.4, the Notice and Settlement Administration Plan will not form part of this Settlement Agreement and the approval of the Settlement will not be contingent on either the approval of the Notice and Settlement Administration Plan or the presentation of the Notice and Settlement Administration Plan.

## **SECTION 4 - RELEASES AND DISMISSALS**

### **4.1 Release of the Released Claims and the Released Distribution Claims**

(I) In consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the receipt and sufficiency of which are hereby acknowledged:

- (a) Upon the Effective date, the Releasors and each of them, forever and absolutely release, remise and forever discharge the Releasee from the Released Claims; and
- (b) Upon the Coast Distribution Date, the Releasors and each of them, forever and absolutely release, remise and forever discharge the Releasee from the Released Distribution Claims.

(2) The Parties and their respective counsel shall use their best efforts to have the terms of the releases of the Released Claims and the Released Distribution Claims contemplated herein incorporated into the order obtained from the Court approving this Settlement Agreement. Should the terms of the releases contemplated herein (or either of them) not be incorporated into the order obtained from the Court approving this Settlement Agreement, the Parties shall use their best efforts to have the terms of the releases of the Released Claims and the Released Distribution Claims (or either of them, as applicable) contemplated herein incorporated into the Court order contemplated in section 3.4(3)(d).

(3) The Plaintiff and Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Proceeding and this Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims and Released Distribution Claims (including, without limitation, anything that might be based on additional or different facts later discovered), and in furtherance of such intention, the releases shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

#### **4.2 No Further Claims**

(I) The Releasors and each of them will not now or hereafter threaten, institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, proceeding, complaint or demand against or collect or seek to recover from any Releasee or any other person who may claim contribution or indemnity under statute, contract, or at law or at equity, or claim any other relief of a monetary, declaratory or

injunctive nature, from any Releasee in respect of any Released Claim or any Released Distribution Claim.

(2) The Releasors and each of them agree that the releases under this Settlement Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by the Releasors and any of them in respect of any Released Claim, any Released Distribution Claim, or in violation of either sections 3.4 or 4.2(1) or both sections 3.4 and 4.2(1), as the case may be, and the Releasors and each of them agree that the releases contained in this Settlement Agreement, or either of them, may be pleaded in the event any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis.

#### **4.3 Dismissal of the Proceeding**

(1) The Proceeding will be dismissed with prejudice and without costs as soon as reasonably possible after the Effective Date.

### **SECTION 5 - EFFECT OF SETTLEMENT**

#### **5.1 No Admission of Liability**

(I) Whether or not this Settlement Agreement is terminated or otherwise fails to take effect for any reason, 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, will not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or equitable doctrine, or of any wrongdoing or liability by Coast Capital Savings, or of the truth of any of the claims or allegations contained in the Proceeding or any other pleading filed by the Plaintiff.

#### **5.2 Agreement Not Evidence**

(1) The Parties agree that, whether or not it is 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, will not be referred to, offered as evidence or received in

evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

## **SECTION 6 - MISCELLANEOUS**

### **6.1 Releasee Has No Liability for Administration**

(I) Other than fulfilling its duties expressly set out herein, the Releasee has no responsibility for and no liability whatsoever with respect to the administration, implementation or enforcement of this Settlement Agreement or the Notice and Settlement Administration Plan, including the Coast Distribution Process, or the administration, investment or distribution of the Settlement Funds, including under the Coast Distribution Process.

### **6.2 Destruction of Documents**

(I) Further to paragraph 12 of the Order pronounced by Mr. Justice Masuhara on June 16, 2021 regarding the confidentiality of the information disclosed by Royal Bank of Canada pursuant to that Order and the requirements of the Parties (and their counsel) to destroy the documents received pursuant to that Order within 90 days of the conclusion of the Proceeding, the commencement of the 90 day period in which the Parties (and their counsel) will destroy the received documents is triggered upon the pronouncement of the dismissal order in the proceeding, or within 90 days of the final determination of any appeals arising therefrom, whichever date is later.

(2) Class Counsel and the Plaintiff agree to destroy, and to instruct any of their service providers to destroy, within 120 days of the final distribution of the Settlement Fund, all copies of the documents produced or provided by Coast Capital Savings in this proceeding that contain Class Members' personal information.

### **6.3 Headings, etc.**

(I) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "hereof", "hereunder" and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

#### **6.4 Applications**

- (1) Any disputes that are not resolved by agreement of the parties shall be resolved by the Court.
- (2) All applications contemplated by this Settlement Agreement shall be on notice to the Plaintiff and Coast Capital Savings.

#### **6.5 Computation of Time**

- (1) 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 will 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 Saturday, Sunday or a holiday, the act may be done on the next day that is not a Saturday, Sunday, or a holiday.

#### **6.6 Ongoing Jurisdiction**

- (1) The Court will retain exclusive jurisdiction over the Proceeding, the Parties thereto, and the Class Counsel Fees in the Proceeding.

**6.7 Governing Law**

(1) This Settlement Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

**6.8 Entire Agreement**

(1) 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 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.

**6.9 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Court with jurisdiction over the matter to which the amendment relates.

**6.10 Binding Effect**

(1) This Settlement Agreement will be binding upon, and enure to the benefit of, the Plaintiff, the Releasors, the Releasee, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff will be binding upon all Releasors and each and every covenant and agreement made herein by Coast Capital Savings will be binding upon the Releasee.

**6.11 Counterparts**

(1) 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 electronic or PDF signature will be deemed an original signature for purposes of executing this Settlement Agreement.

**6.12 Negotiated Agreement**

(I) This Settlement Agreement has been the subject of negotiations and discussions among the Parties, 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 will 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, will have no bearing upon the proper interpretation of this Settlement Agreement.

**6.13 Recitals**

(I) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

**6.14 Schedules**

(I) The schedules annexed hereto form part of this Settlement Agreement.

**6.15 Authorized Signatures**

(I) Class Counsel warrants that they are fully authorized to execute this Settlement Agreement on behalf of the Plaintiff and the Settlement Class Members and to execute and legally bind the Plaintiff and the Settlement Class Members to this Settlement Agreement.

(2) Borden Ladner Gervais LLP warrants that they are fully authorized to execute this Settlement Agreement on behalf of Coast Capital Savings.

**6.16 Notice**

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

For Plaintiff and for Class Counsel in the Proceeding:

David G.A. Jones  
Camp Fiorante Matthews Mogelman LLP  
400- 856 Homer Street  
Vancouver, BC V6B 2W5  
Telephone: 604-689-7555  
Facsimile: 604-689-7554  
Email: djones@cfmlawyers.ca and  
jfung@cfmlawyers.ca

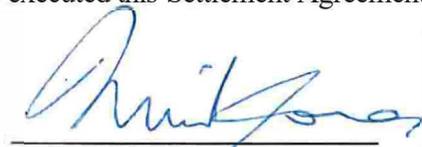
For the Defendant:

Michelle T. Maniago  
Borden Ladner Gervais LLP  
1200 Waterfront Centre  
200 Bunard Street  
Vancouver, BC V7X 1T2  
Telephone: 604-640-4139  
Facsimile: 604-662-5562  
Email: MManiago@blg.com and  
sliesch@blg.com

IN WITNESS THEREOF, the Parties hereto have executed this Settlement Agreement as follows:

Date: 4 March 2022

By:



David G.A. Jones as Class Counsel  
on behalf of the Plaintiff and  
the Settlement Class Members

Date: 01/11/22

By:



Michelle T. Maniago  
on behalf of Coast Capital Savings Federal  
Credit Union

## **SCHEDULE A - GENERAL DISCLOSURE**

We charge an International ATM or POS administration fee on international ATM transactions of 2% on the transaction amount. The 'transaction amount' we use to calculate the commission is the amount of the POS or ATM request we receive and pay from your account to settle your international ATM or POS transaction. The ATM or POS request we receive is in Canadian dollars. Any currency conversion to calculate the Canadian dollar transaction amount is done by a third party in the electronic network your debit request comes through on. We do not set the rates for or complete those currency conversions. Additional fees or commissions charged by third parties involved in processing your international ATM or POS transaction will also be included in the transaction amount.



3. The Settlement Agreement is hereby approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c. 50, and shall be implemented in accordance with its terms and the terms of this Order;
4. This Order, including the Settlement Agreement, is binding upon the representative plaintiff and each Class Member who did not validly opt-out of this Proceeding.
5. Upon the Effective Date, each Releasor who has not validly opted-out of this Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasee from the Released Claims;
6. Upon the Coast Distribution Date, each Releasor who has not validly opted-out of this Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasee from the Released Distribution Claims;
7. Other than fulfilling its duties expressly set out in the Settlement Agreement, the Releasee shall have no responsibility or liability whatsoever with respect to the administration, implementation or enforcement of the Settlement Agreement, or the Notice and Settlement Administration Plan, including the Coast Distribution Process, or the administration, investment, or distribution of the Settlement Funds, including under the Coast Distribution Process.
8. On the Effective Date, the Plaintiff has leave to dismiss the action against Coast Capital Savings Credit Union, with prejudice and without costs.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

---

Signature of David G.A. Jones  
Lawyer for the Plaintiff

---

Signature of Michelle T. Maniago  
Lawyer for the Defendant, Coast Capital  
Savings Federal Credit Union (formerly  
known as Coast Capital Savings Credit  
Union)

By the Court.

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Registrar

THIS ORDER was prepared by the law firm of Camp Fiorante Matthews Mogerman LLP,  
whose place of business and address for seNice is #400- 856 Homer Street, Vancouver,  
British Columbia, V6B 2W5. Telephone: (604) 689-7555. Fax: (604) 689-7554.  
Counsel Reference: David G.A Jones

Schedule “B”

No. S136507  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**Eric Finkel**

Plaintiff

and

**Coast Capital Savings Credit Union**

Defendant

Proceeding under the *Class Proceedings Act*, RSBC 1996, c 50

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**SETTLEMENT ADMINISTRATION AND DISTRIBUTION PLAN**

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**GENERAL PRINCIPLES**

1. This settlement administration and distribution plan (the “**Plan**”) will govern the procedure for claiming entitlement, and the determination of eligibility and subsequent payment thereof, of the “Settlement Amount” as defined in the settlement agreement as made between Eric Finkel and Coast Capital Savings Federal Credit Union (formerly known as Coast Capital Savings Credit Union) (“**Coast Capital Savings**”), dated June 30, 2021 (the “**Settlement Agreement**”).
2. The administration shall implement and conform to the Settlement Agreement, orders of the Court and this Plan.

**DEFINITIONS**

3. The definitions set out in the Settlement Agreement apply to and are incorporated in this Plan. For ease of reference, certain defined terms from the Settlement Agreement are set out here:
  - (a) **Active Coast Memberships** means memberships associated with accounts through which a Qualifying International Withdrawal was made,

identified further to section 3.4(3)(a)(C) [of the Settlement Agreement], that remain active and are associated with an active Coast Capital Savings deposit account, but does not include any Opted-Out Memberships.

- (b) **Class and Class Members** means members of Coast Capital Savings who are residents of British Columbia and used their Coast Capital Savings member card to make a Qualifying International Withdrawal from their personal Coast Capital Savings account through an ATM on the Plus System or the Cirrus System outside Canada from August 28, 2007 to August 31, 2015. For greater certainty, Class and Class Members referred to in this Settlement Agreement include all the classes and “Class Members” and “Subclass Members” defined in the Order Made After Application (Contested Certification), made March 31, 2016 in the Proceeding.
- (c) **Class Counsel** means Camp Fiorante Matthews Mogerman LLP.
- (d) **Class Counsel Fees** include the fees, disbursements, costs, interest, GST/PST and other applicable taxes or charges of Class Counsel.
- (e) **Class Period** means August 28, 2007 to August 31, 2015.
- (f) **Effective Date** means the next calendar day after the day on which all appellate rights with respect to the Settlement Approval Order made in [this action] have expired or have been exhausted.
- (g) **International Withdrawal** means a foreign currency transaction (referred to as a “withdrawal”) conducted through the use of a Coast Capital Savings member card to obtain funds in a foreign (non-Canadian Dollar) currency from an ATM located outside of Canada with funds drawn from a Coast Capital Savings account.
- (h) **Non-Active Coast Memberships** means (a) memberships associated with accounts through which a Qualifying International Withdrawal was made,

identified further to section 3.4(3)(a)(C) [of the Settlement Agreement], that remain active and are not associated with an active Coast Capital Savings deposit account; (b) memberships identified further to section 3.4(3)(a)(C) [of the Settlement Agreement] as belonging to Class Members at the time of a Qualifying International Withdrawal, that have been closed or do not otherwise continue to hold an active Coast Capital Savings account associated with the membership number through which a Qualifying International Withdrawal was made, but does not include any Opted-Out Memberships; and (c) any PAN or membership that is deemed to be a Non-Active Coast Membership in section 3.4 [of the Settlement Agreement].

- (i) **Opted-Out Memberships** means memberships associated with accounts through which a Qualifying International Withdrawal was made, identified further to section 3.4(3)(a)(C) [of the Settlement Agreement], that are associated with persons who opted out of the Proceeding in accordance with the order pronounced by Mr. Justice Masuhara on November 14, 2019.
- (j) **Parties** means the Plaintiff, the Class Members, and Coast Capital Savings.
- (k) **Proceeding** means British Columbia Court File No. S-136507, Vancouver Registry.
- (l) **Qualifying International Withdrawal** means an International Withdrawal by a Class Member during the Class Period.
- (m) **Settlement Amount** means the all-inclusive sum of one million four hundred thousand Canadian dollars (CAD \$1,400,000.00).
- (n) **Settlement Approval Order** means a final judgment or final approval order approving [the Settlement Agreement].
- (o) **Settlement Class Member** means a member of the Class who has not opted out in accordance with the order pronounced by Mr. Justice Masuhara on November 14, 2019.

- (p) **Settlement Fund** means a Trust Account controlled by Class Counsel, which will hold the Settlement Amount.
- (q) **Trust Account** means a segregated interest-bearing trust account under the control of Class Counsel for the benefit of the Settlement Class Members.

4. Additional defined terms used in this Plan are set out here:

- (a) **Approved Claim** means each Settlement Class Member's distribution from the Settlement Fund.
- (b) **Claim** means the form that a Claims Based Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Plan.
- (c) **Claims Based Settlement Class Member** means a Settlement Class Member identified as having a Non-Active Coast Membership.
- (d) **Claims Filing Deadline** means the date by which Claims and any required supporting documentation must be postmarked or electronically submitted by Claims Based Settlement Class Members to be considered for settlement benefits under this Plan, which date shall be 30 days after the first publication of the notice advising of the claims process.
- (e) **Direct Deposit Settlement Class Member** means a Settlement Class Member identified as having an Active Coast Membership.
- (f) **Honourarium** means the \$10,000.00 honourarium to be paid to the representative plaintiff, subject to the Court's approval.
- (g) **Net Settlement Amount** means the Settlement Amount plus accrued interest, less, if and in such amounts approved by the Court, Class Counsel Fees and Honourarium.

(h) **Representative Plaintiff** means Eric Finkel.

## **DISTRIBUTION TO SETTLEMENT CLASS MEMBERS**

### **Amount Available for Distribution**

5. The Settlement Amount shall be invested in the Trust Account and interest earned on the Settlement Amount while in the Trust Account (minus taxes on that interest) will accrue to the benefit of the Settlement Class Members.
6. Class Counsel is seeking Court approval of a payment of the Honourarium to the Representative Plaintiff out of the Settlement Amount. The Honourarium will be treated as a disbursement.
7. Class Counsel is seeking Court approval of legal fees in the amount of 30% of the first \$1,000,000 recovered and 25% of all amounts recovered in excess of \$1,000,000 (calculated after deducting disbursements from the Settlement Amount), plus taxes.
8. Class Counsel is also seeking Court approval of payment, out of the Settlement Amount, of Class Counsel Fees as follows:
  - (a) payment of \$121,366.11 in disbursements (which, for clarity, includes taxes but does not include the Honourarium);
  - (b) a holdback of \$25,000 to be used to pay future disbursements related to administering and distributing the Settlement Amount (to the extent the holdback exceeds future disbursements related to administering and distributing the Settlement Amount, the excess amount will be used to pay part of the balance of legal fees and taxes under paragraph 8(c)); and
  - (c) approval of legal fees of up to \$360,908.47 and taxes of up to \$43,309.02, of which 75% (\$270,681.35 in legal fees and \$32,481.77.75 in taxes) to be paid to Class Counsel's on receipt of the Settlement Amount in accordance with Settlement Agreement, and the balance (which is to be calculated in

accordance with paragraph 7) to be paid after distribution of the Net Settlement Amount.

9. As described above, the Honourarium and Class Counsel Fees are subject to court approval. If approved, the monies available to provide settlement benefits to Settlement Class Members pursuant to this Plan will be at least \$832,466.37 (the final number is dependent on future disbursements).

### **Valuation of Claims**

10. The Net Settlement Amount allocated to Settlement Class Members will be subject to claims-weighting to reflect different third party intermediary charges, or presumed charges, related to foreign exchange rates applied during the Class Period, as follows:

<b>Qualifying International Withdrawal Date</b>	<b>Weighted Percentage</b>
For the period August 28, 2007 to October 8, 2010	26.5%
For the period October 9, 2010 to August 31, 2015	73.5%

11. For example, a claim made in respect of a Qualifying International Withdrawal between August 28, 2007 and October 8, 2010 will be calculated as follows:

amount of the foreign currency transaction x 0.265 = weighted transaction amount.

12. The Net Settlement Amount will be distributed to Settlement Class Members *pro rata* (proportionally) based on the value of the Settlement Class Member's weighted transaction amount as against the value of all the weighted transactions amounts of all Approved Claims. If the amount allocated to Settlement Class

Members appears to be disproportionate to the alleged loss, Class Counsel will seek directions from the Court.

## **THE CLAIMS PROCESS**

13. Subject to paragraph 39, Direct Deposit Settlement Class Members will not be required to submit a claim in order to be considered for settlement benefits under this Plan. Their portion of the Net Settlement Amount will be determined in accordance with paragraph 12, and their respective Approved Claims will be deposited directly to the relevant Active Coast Membership by Coast Capital Savings. Such payments are made and received in full and final settlement of all entitlements to compensation under the Settlement Agreement and no person, even if that person was formerly a holder of the Coast Capital Savings membership or was in any way associated with either the relevant Coast Capital Savings membership, or a Qualifying International Withdrawal, is entitled to make a claim to those or any additional funds.
14. Claims Based Settlement Class Members will be required to submit a Claim to Class Counsel before the Claims Filing Deadline in order to be considered for settlement benefits under this Plan. The Claim will require information to allow it to be confirmed by Class Counsel as involving a Qualifying International Withdrawal. The following information may assist and may be provided as part of the Claim:
  - (a) The Claims Based Settlement Class Member's name and PAN number at the time the Qualifying International Withdrawal was made.
  - (b) Information about the asserted Qualifying International Withdrawal, including the date, location, and amount.
15. The Claim will also require the following:

- (a) Authorization to Class Counsel to contact the Claims Based Settlement Class Member or their representative, as Class Counsel deems appropriate, for more information.
  - (b) A declaration that the information submitted in the Claim is true and correct.
16. If the Claim can be confirmed by Class Counsel as involving a Qualifying International Withdrawal, then the claimant will be entitled to settlement benefits under this Plan. Their portion of the Net Settlement Amount will be determined in accordance with paragraph 12, and the Approved Claim amount sent directly to them via e-transfer or cheque. Where a claimant elects to receive payment by cheque, \$2 will be deducted from that Claims Based Settlement Class Member's payment to reflect the cost of issuing a cheque.

### **Assistance in Filing a Claim**

17. Claims Based Settlement Class Members can contact Class Counsel, at no charge, with questions about how to complete a Claim. Claims Based Settlement Class Members may not utilize third-party claims services to file Claims.

### **The Claims Filing Process**

18. Claims Based Settlement Class Members must submit their Claims to Class Counsel by
- (a) email dated no later than the Claims Filing Deadline; or
  - (b) mail postmarked no later than the Claims Filing Deadline.
19. Subject to the discretion of Class Counsel, claims may not be amended after the Claims Filing Deadline. For greater clarity, placeholder claims (inaccurate and/or incomplete claims filed solely for the purpose of meeting the Claims Filing Deadline) will not be permitted.

**Deficiencies**

20. If, during claims processing, Class Counsel finds that deficiencies exist in a Claim or other required information, Class Counsel shall notify the Claims Based Settlement Class Member, by email or regular mail, of the deficiencies. Class Counsel shall allow the Claims Based Settlement Class Member 10 days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the 10-day period, the Claim shall be rejected.

**Adjustments to Claims Process**

21. Subject to the timelines set out in the Settlement Agreement, the Claims Filing Deadline may be extended, and Class Counsel may adjust aspects of the Claims process unrelated to the allocation of the Net Settlement Amount to address any deficiencies that may arise, or to take steps to increase the take-up rate. Subject to the timelines set out in the Settlement Agreement, Class Counsel may extend the Claims Filing Deadline and/or adjust the Claims process if, in its opinion, doing so will not adversely affect the allocation method or fair and efficient administration of the Net Settlement Amount, and it is in the best interests of the Settlement Class Members to do so.

**Decision in Respect of the Claim**

22. In respect of each Claims Based Settlement Class Member who has filed a Claim in accordance with this Plan, Class Counsel shall:
- (a) decide whether the Claims Based Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Amount in accordance with the Settlement Agreement, orders of the Court and this Plan; and
  - (b) make a determination of the value of the Settlement Class Member's weighted transaction amount.

23. Class Counsel shall send to the Claims Based Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim (the "**Decision Notice**").
24. The Claims Administrator's decision will be binding upon the Claims Based Settlement Class Member, subject to the Settlement Class Member's right to seek reconsideration as outlined in paragraphs 25 to 30.

### **Reconsideration of the Decision**

25. Claims Based Settlement Class Members shall be granted 30 days from the date of the Decision Notice to seek written reconsideration of the rejection (in whole or in part) of their Claims.
26. The following grounds shall not be grounds for reconsideration:
  - (a) the refusal of the Claims Administrator to accept a Claim postmarked or electronically submitted after the Claims Filing Deadline;
  - (b) the refusal of the Claims Administrator to accept a Claim where the Claims Based Settlement Class Member did not declare that the information submitted in the Claim is true and correct;
  - (c) the refusal of the Claims Administrator to accept a Claim where there was a failure to respond to a request for additional information made pursuant to paragraph 20; and
  - (d) the structure of the valuation of the Claim as outlined in this Plan, and as approved by the Court.
27. Reconsideration will be done by the Claims Administrator.
28. Reconsideration will be on the basis of written submissions, supported by the documentation provided by the Claims Based Settlement Class Member as part of the claims process. Claims Based Settlement Class Members are not permitted to provide any new documentation as part of the reconsideration.

29. A \$10 fee is payable by a Claims Based Settlement Class Member upon submission of a written request for reconsideration by the Claims Administrator. If a Claims Based Settlement Class Member's claim was partially approved, the fee shall be deducted from the Claims Based Settlement Class Member's settlement benefits. If a Claims Based Settlement Class Member's claim was rejected, or if the partially approved claim is insufficient to cover the amount of the fee, the Claims Based Settlement Class Member will be required to pay the fee to the Claims Administrator by e-transfer or cheque within 10 days after delivering a submitting a request for reconsideration. If a Claims Based Settlement Class Member does not pay the fee within 10 days after delivering a written request for reconsideration, there will be no reconsideration. The fee shall be refunded if the reconsideration is decided in favour of the Claims Based Settlement Class Member.
30. The reconsideration decision is final and binding and shall not be subject to any further appeal or review whatsoever.

**Adjustments to Reconsideration Process and Extension of the Reconsideration Deadline**

31. The Claims Administrator may extend the reconsideration deadline and may adjust the reconsideration process if, in its opinion, doing so will not adversely affect the fair and efficient administration of the Net Settlement Amounts and it is in the best interests of the Claims Based Settlement Class Members to do so.

**DUTIES AND RESPONSIBILITIES**

**Supervisory Powers of the British Columbia Court**

32. Class Counsel shall administer this Plan under the ongoing authority and supervision of the British Columbia Supreme Court.

**The Exchange of Information between Class Counsel and Coast Capital**

33. Class Counsel and Coast Capital will exchange information in accordance with paragraph 3.4(3)(a) of the Settlement Agreement.

**Payment of Settlement Benefits**

34. After the Claims have been reviewed, and any reconsiderations have been resolved in accordance with paragraphs 25 to 30, Class Counsel will determine the amount to be distributed to each Settlement Class Member in accordance with 12.
35. In respect of the Direct Deposit Settlement Class Members:
  - (a) Class Counsel will deliver to Coast Capital a list (the “**List**”) of Active Coast Memberships and the amount to be transferred to each Active Coast Memberships’ Coast Capital Account;
  - (b) Coast Capital will make direct payment to the Active Coast Memberships’ Coast Capital Account in accordance with the List, subject to s. 3.4 of the Settlement Agreement.
36. In respect of the Claims Based Settlement Class Members, Class Counsel will send them an e-transfer or mail them a cheque with their portion of the Net Settlement Amount, in accordance with paragraph 16 above (note that \$2 will be deducted from the payment in the case of a cheque).
37. If a Claims Based Settlement Class Member does not accept the e-transfer or cash the cheque sent to them pursuant to paragraph 36 within six months of the date of issuance, the amount will be considered an “**Unclaimed Amount**”.
38. For any Unclaimed Amount, 50% will go to the Law Foundation of British Columbia, and the remaining 50% will be donated to Credit Counselling Society.
39. If, pursuant to s. 3.4(3)(d)(D) of the Settlement Agreement, Coast Capital returns any funds to Class Counsel with respect to shares of the Distribution Funds that could not be deposited, Class Counsel will use the contact information provided by Coast pursuant to s. 3.4(3)(d)(D) to determine if the associated person will accept their share of the Distribution Funds via e-transfer or cheque (\$2 will be deducted in the case of a cheque), or if that person will not accept their share, or if that

person cannot be contacted or does not respond after reasonable efforts are undertaken, that share will be treated as an Unclaimed Amount.

## **Schedule “C”**

### **PLAN OF DISSEMINATION**

#### **Notice of Claims Process**

The Notice of Claims Process (in English), attached as Schedule 1 (the “Notice”), shall be distributed in the following manner:

1. The Notice be published, once, by Class Counsel, in the following newspapers:
  - (a) the Vancouver Sun;
  - (b) the Victoria Times Colonist; and
  - (c) the Nanaimo News Bulletin;
2. The Notice be posted on Class Counsel’s website;
3. The Notice be provided by Class Counsel to any person who requests them;
4. The Notice be published by Class Counsel on LinkedIn, Twitter, and Instagram; and
5. The Notice be emailed to any email addresses Class Counsel receives pursuant to s. 3.4(3)(a)(D) of the Settlement Agreement (Non-Active Coast Memberships).

## Schedule 1

### NOTICE OF CLAIMS PROCESS IN THE COAST CAPITAL CLASS ACTION

**Did you withdraw foreign currency from your personal Coast Capital account through an ATM outside of Canada from August 28, 2007 to August 31, 2015?**

**If so, you may be eligible to receive money from a class action settlement.**

#### WHAT IS A CLASS ACTION?

A class action is a lawsuit filed by one person on behalf of a large group of people with the same concerns.

#### ABOUT THIS CLASS ACTION

This is a certified class action in BC against Coast Capital Savings Credit Union ("Coast Capital") in relation to ATM withdrawals outside of Canada occurring between August 28, 2007 and August 31, 2015 (the "Class Action"). The Class Action alleges contraventions of the *Business Practices and Consumer Protection Act* and breach of contract in relation to foreign exchange conversion surcharges from withdrawals from ATMs located outside of Canada. Coast Capital denies the allegations.

The parties have reached a settlement in the Class Action. Although Coast Capital denies liability, it has agreed to pay \$1.4 million (the "Settlement Funds") to settle the claim against it in exchange for a full release of claims. The court has reviewed and approved the settlement agreement.

The full terms of the settlement agreement can be found at [www.cfmlawyers.ca/coastforex](http://www.cfmlawyers.ca/coastforex).

This settlement resolves the class action in its entirety.

#### HOW MUCH WILL I TO RECEIVE?

The settlement funds (plus accrued interest and less approved fees and disbursements) are available for distribution to eligible claimants. If you opted out of the Class Action you are not entitled to participate in the claims process.

The Net Settlement Amount will be distributed to Settlement Class Members proportionally using a weighting system to reflect the different intermediary charges alleged during the Class Period.

For more information, see the court approved Distribution and Settlement Administration Plan posted online at [www.cfmlawyers.ca/coastforex](http://www.cfmlawyers.ca/coastforex).

#### DO I HAVE TO SUBMIT A CLAIM AND IF SO WHAT IS THE DEADLINE?

Settlement Class Members that are identified as having Active Coast Memberships will not be required to submit a claim. Their portion of the Net Settlement Amount will be deposited directly to an active deposit account associated with their Active Coast Membership.

Settlement Class Members that are not identified as having Active Coast Memberships will need to submit a claim with sufficient information for the Claims Administrator to identify whether they have a Qualifying International Withdrawal. A claim form can be found at [www.cfmlawyers.ca/coastforex](http://www.cfmlawyers.ca/coastforex). The completed claim form must be submitted to the Claims Administrator no later than *[date that is 30 days after first publication of this notice]* in order to be considered for settlement benefits.

#### WHERE CAN I FIND ADDITIONAL INFORMATION?

Please check [www.cfmlawyers.ca/coastforex](http://www.cfmlawyers.ca/coastforex) for regular updates, or contact Class Counsel for more information.

#### GET MORE INFORMATION:

[www.cfmlawyers.ca/coastforex](http://www.cfmlawyers.ca/coastforex)

Call toll-free 1-800-689-2322

Email [coastcapitalclassaction@cfmlawyers.ca](mailto:coastcapitalclassaction@cfmlawyers.ca).