

**PEOPLES TRUST PREPAID CARD CLASS ACTION
SETTLEMENT AGREEMENT**

Made as of July 15, 2020

Between

JOYCE BERNSTEIN

(the “**Plaintiff**”)

and

PEOPLES TRUST COMPANY and PEOPLES CARD SERVICES LLP

(the “**Defendants**”)

**PEOPLES TRUST PREPAID CARD CLASS ACTION
SETTLEMENT AGREEMENT**

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RECITALS

A. **WHEREAS** this Proceeding was commenced by Statement of Claim dated November 29, 2013, certified as a class action by the Honourable Justice Perell on January 31, 2017, and decided by summary judgment on May 13, 2019;

B. **WHEREAS** judgment was granted to the Plaintiff in the amount of \$15,300,000 in compensatory damages with respect to the Defendants' SLP cards, and \$1,500,000 in punitive damages, plus pre-judgment interest of \$1,233,753 and post-judgment interest (at the rate of 3.0% per annum on \$18,063,753 from May 13, 2019);

C. **WHEREAS** costs were awarded to the Plaintiff in the amount of \$905,244.02 plus post-judgment interest (at the rate of 3.0% per annum from October 21, 2019), in addition to costs previously awarded in the cause in the amount of \$10,000 plus post-judgment interest at the rate of 2.0% per annum commencing on April 10, 2017;

D. **WHEREAS** judgment was granted to the Defendants dismissing the balance of the Plaintiff's claim, with respect to the Defendants' GPR cards;

E. **WHEREAS** the Defendants commenced an appeal of the judgment against them, and the Plaintiff commenced a cross-appeal of the judgment dismissing the balance of the claim;

F. **WHEREAS** the appeal and the cross-appeal were scheduled to be heard by the Court of Appeal for Ontario on June 9 and 10, 2020;

G. **WHEREAS** on June 5, 2020, the Ontario Court of Appeal advised that, upon approval of the settlement by the Case Management Judge, it would issue an Order in the form attached as **Schedule "D"** containing the following terms:

- (a) that the Defendants' appeal with respect to the issue of punitive damages be allowed and the Order of the Superior Court be reversed on this issue;
- (b) that the balance of Defendants' appeal be dismissed;
- (c) that the Plaintiff's cross-appeal be dismissed; and
- (d) that there be no costs to either party in respect of the appeal or cross-appeal.

H. **WHEREAS** the Parties have agreed on terms to fully and finally settle this action, including the appeal and the cross-appeal;

I. **WHEREAS** the Plaintiff and Class Counsel have concluded, after carefully considering the relevant circumstances, that: (1) it is in the best interests of the Class to enter into the settlement in order to avoid the uncertainties of further appeals and to ensure that the benefits reflected herein, including the amount to be paid by the Defendants under this agreement, are obtained for the Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the Class;

J. **WHEREAS** the Plaintiff on behalf of the Class and the Defendants entered into Minutes of Settlement dated June 8, 2020;

K. **WHEREAS** the Defendants are entering into this agreement in order to achieve a final resolution of all claims asserted or which could have been asserted in this Proceeding and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

L. **WHEREAS** counsel for the Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this settlement agreement;

M. **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 are hereby acknowledged, it is agreed that, subject to the approval of the Court, the Proceeding be settled on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto:

(1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

- (2) **Approval Order** means the Order substantially in the form attached as **Schedule "C"**.
- (3) **Cardholders** means holders of GPR cards or SLP cards.
- (4) **Case Management Judge** means the Honourable Mr. Justice Perell or such other Judge of the Superior Court of Justice designated as case management judge in respect of this Proceeding (as defined below).
- (5) **Certification Date** means January 31, 2017.
- (6) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Court to administer the Distribution Fund in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (7) **Class** means all "consumers" within the meaning of the Consumer Protection Act, 2002, SO 2002, c. 30, Sch A ("CPA") in Ontario, who were Cardholders, between November 29, 2011 and April 30, 2014, of SLP cards and GPR cards.
- (8) **Class Counsel** means Sotos LLP and Goldblatt Partners LLP.
- (9) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding.
- (10) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Class Members to any other body or Person.
- (11) **Class Member** means a member of the Class.
- (12) **Class Period** means November 29, 2011 to April 30, 2014.
- (13) **Counsel for the Defendants** means Lenczner Slaght Royce Smith Griffin LLP.
- (14) **Court** means the Ontario Superior Court of Justice.

(15) ***Court of Appeal Order*** means the Order of the Court of Appeal for Ontario substantially in the form attached as **Schedule “D”**, but including, in any case, an Order allowing the Defendants’ appeal on the issue of punitive damages and reversing the Judgment of the Superior Court dated May 13, 2019, on this issue, in accordance with the direction of the Court of Appeal for Ontario issued on June 5, 2020.

(16) ***CPF*** means the Class Proceedings Fund created pursuant to Section 59.1 of the *Law Society Act* and administered by the Class Proceedings Committee of the Law Foundation of Ontario.

(17) ***CPF Levy*** means a levy from the Settlement Amount equal to the amount of financial support paid to the Plaintiff by the CPF plus 10% Distribution Fund to which the CPF is entitled pursuant to Ontario Regulation 771/92 after it approved the Plaintiff for financial support in 2016.

(18) ***Date of Execution*** means the date on which the Parties execute this Settlement Agreement.

(19) ***Defendants*** means Peoples Trust Company and Peoples Card Services LLP.

(20) ***Distribution Fund*** means the Settlement Amount remaining after deductions in respect of Administration Expenses, Class Counsel Disbursements, Class Counsel Fees, and CPF Levy, to be paid out to Class Members pursuant to the Distribution Protocol.

(21) ***Distribution Protocol*** means the plan for distributing the Claim Fund described in general terms in Section 9.1 of this Settlement Agreement, and as approved by the Court.

(22) ***Effective Date*** means the date of the Approval Order from the Court approving this Settlement Agreement.

(23) ***GPR card(s)*** means the general purpose reloadable payment cards at issue in this action.

(24) ***Minutes of Settlement*** means the agreement reached by the Parties, the terms of which were stipulated in the Minutes of Settlement dated June 8, 2020, a copy of which is attached to this Settlement Agreement as **Schedule “A”**.

(25) ***Party and Parties*** means the Defendants, the Plaintiff, and, where necessary, the Class Members.

(26) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(27) **Plaintiff** means Joyce Bernstein.

(28) **Proceeding** means the action commenced in the Court bearing Court File No. CV-13-493837CP.

(29) **Released Matters** means, up to the date of the execution of this Settlement Agreement, any and all actions, causes of action, suits, debts, claims and demands, howsoever arising, by the Releasers as the result of, relating to, or arising from the matters raised in the Proceeding or which could have been raised in the Proceeding, whether known or unknown, or by reason of any cause, matter or thing whatsoever and in particular, but without limiting the generality of the foregoing, from any and all claims up to the date of execution of this Settlement Agreement which were advanced in the Proceeding or could have been advanced in the Proceeding.

(30) **Releasees** means Peoples Trust Company and Peoples Card Services LLP and their predecessors, successors, assigns and any of their related entities, including but not limited to affiliates, parents, and subsidiaries, and any of their related entities, and their respective present and former officers, directors, employees and agents and their heirs, executors, successors and assigns.

(31) **Releasers** means the members of the Class in the Proceeding, if individual persons, for themselves, their heirs, executors, successors and assigns, and if a corporation or other legal entity, for themselves and their predecessors, successors, assigns and any of their related entities, including but not limited to affiliates, parents, and subsidiaries, and any of their related entities, and their respective present and former officers, directors, employees and agents and their heirs, executors, successors and assigns

(32) **Settlement Agreement** means this agreement, including the recitals and schedules.

(33) **Settlement Amount** means CAD\$17,000,000.

(34) *SLP card(s)* means the single load payment cards at issue in this action.

(35) *Trust Account* means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Sotos LLP or the Claims Administrator, once appointed, for the benefit of the Class Members or the Defendants, as provided for in this Settlement Agreement.

SECTION 2 – SETTLEMENT APPROVAL

2.1 Motion Seeking Approval of Notice

The Plaintiff shall file a motion before the Court for an order in the form of Schedule “B” approving the notices described in Section 7.1(1) as soon as reasonably practicable after the Date of Execution and, in any event, by July 22, 2020.

2.2 Motion Seeking Approval of the Settlement, Distribution Protocol and Class Counsel Fees

(1) The Plaintiff shall file a motion before the Court for an order in the form of Schedule “C” approving this Settlement Agreement no later than five (5) days following the last to occur of:

- (a) the order referred to in Section 2.1 has been granted; and
- (b) the notices described in Section 7.1(1) have been published.

(2) Subject to the agreement of the Court, the motion referred to in Section 2.2(1) shall be heard no later than September 30, 2020 and the Parties will cooperate in scheduling the motion on or before that date.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within sixty (60) days of the Date of Execution of the Settlement Agreement, and in any event prior to the hearing of the motion referred to in Section 2.2(1), the Defendants shall pay the Settlement Amount to Counsel for the Defendants, for deposit into the Trust Account, and Counsel for the Defendants shall provide Class Counsel with proof of such payment.

(2) Within four (4) business days of the granting of the Approval Order and the granting of the Appeal Order, Counsel for the Defendants shall pay the Settlement Amount to Sotos LLP in trust. The Defendants shall have no reversionary interest in, or reversionary claim to, the Settlement Amount.

(3) Payment of the Settlement Amount shall be made by wire transfer. Prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

(4) The Settlement Amount shall be provided in full satisfaction of the Released Matters against the Releasees.

(5) The Settlement Amount includes \$6,186,000 for credit balances existing after the "valid thru" date and shall be all-inclusive of all amounts, including, without limitation, taxes, including the withholdings and remittances referred to below in 9(1)(e) and (f), interest, costs, Class Counsel Fees, Class Counsel Disbursements, and any Administration Costs in excess of the amounts set out in section 3.2, below.

(6) Once a Claims Administrator has been appointed by the Court, Class Counsel shall transfer control of the Settlement Amount, less approved Class Counsel Fees and Class Counsel Disbursements to the Claims Administrator.

(7) Sotos LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.

(8) Sotos LLP and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with the Settlement Agreement, the Distribution Protocol, or an order of the Court obtained after notice to the Parties.

3.2 Administration Expenses

Up to an aggregate amount of CAD \$150,000, the cost of notice and administration will be paid 50% by the Defendants (separate and apart from the Settlement Amount), and 50% by the Class (out of the

Settlement Amount) up to a maximum amount of CAD \$75,000 each. All additional costs of notice and administration will be paid 100% by the Class (out of the Settlement Amount).

3.3 Taxes and Interest

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

3.4 Disposition of Appeals

Forthwith upon the granting of the Approval Order, the Parties will request that the Court of Appeal issue the Court of Appeal Order, in the form attached as **Schedule “D”**, containing the following terms, all on consent of the Parties:

- (a) that the Defendants’ appeal with respect to the issue of punitive damages be allowed and the Order of the Superior Court be reversed on this issue;
- (b) that the balance of the Defendants’ appeal be dismissed;
- (c) that the Plaintiff’s cross-appeal be dismissed; and
- (d) that there be no costs to either party in respect of the appeal or cross-appeal.

SECTION 4 – TERMINATION OF SETTLEMENT AGREEMENT

4.1 Right of Termination

(1) In the event that (a) the Court does not approve this Settlement Agreement, or (b) the Court does not grant the Approval Order, or (c) the Court of Appeal for Ontario does not grant the Court of Appeal Order, the Plaintiff and the Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 11.16, within five (5) days following an event described above.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1) or 3.1(2), the Plaintiff shall have the exclusive right to terminate this Settlement Agreement, at her sole discretion, by delivering a written notice pursuant to Section 11.16.

(3) Except as provided for in Section 4.3, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and of no further force or effect, and shall not be

binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

4.2 If Settlement Agreement is Terminated

If this Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to approve this Settlement Agreement, which has not been decided, shall proceed; and
- (b) the Parties will cooperate in seeking to have any issued order approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise.

4.3 Survival of Provisions After Termination

If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(8), 4.1(3), 4.2, 4.3, 6.1, 6.2, 7.1(2) and 7.2(3), and the definitions and Schedules applicable thereto (but only for the limited purpose of the interpretation of those sections) shall survive the termination and continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 5 – RELEASES AND DISMISSALS

5.1 Release of Releasees

- (1) The Releasors irrevocably and finally release the Releasees of and from any and all Released Matters.
- (2) The Releasors covenant, represent and warrant that, as of the Date of Execution, they have no further claims against the Releasees for, or arising out of, the Released Matters. In the event that the Releasors have made or should make any claims or demands or commence or threaten to commence any actions, claims or proceedings or make any complaints against the Releasees arising out of the Released Matters, this Release may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

(3) The Releasors acknowledge and agree that, except as specifically provided for in section 3.2, the gross sum of the Settlement Amount to be paid by the Defendants in respect of the Settlement is inclusive of all amounts owing by the Releasees or otherwise to be paid by the Releasees in respect of the Settlement Amount or the administration of the Settlement, including in respect of costs (including fees and disbursements), taxes and interest.

(4) The Releasors agree and undertake that they will not make any claim or commence or maintain any proceeding, complaint, action or claim against any Person in which any claim could arise against the Releasees for contribution or indemnity or any other relief over in respect of any of the actions, causes of action, claims, debts, suits or demands of any nature or kind that has been released by this Release. In the event that the Releasors make any claim or commence any proceeding in respect of the Released Matters against any person or entity which might make a claim, whether for contribution or indemnity or declaratory or other relief, from the Releasees or any of them, or which might result in a claim, whether for contribution or indemnity or declaratory or other relief, being made against the Releasees or any of them, this Release may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

(5) This release is conditional upon the Court's approval of the Settlement Agreement and granting of the Approval Order, and the Court of Appeal granting the Court of Appeal Order. In the event that (a) the Court does not approve this Settlement Agreement, or (b) the Court does not grant the Approval Order, or (c) the Court of Appeal for Ontario does not grant the Court of Appeal Order, the Releasors will not be bound by the terms of this Release.

5.2 Dismissal of the Proceeding

Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against the Defendants.

SECTION 6 – EFFECT OF SETTLEMENT

6.1 No Admission of Liability

(1) Nothing in the Settlement Agreement amounts to an admission of liability by the Defendants or any of the Releasees.

(2) The Plaintiff, the Defendants, and all Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason.

(3) Regardless of whether this Settlement Agreement is finally approved, 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, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding.

6.2 Agreement Not Evidence

The Parties agree that, regardless of whether it is finally approved, 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, shall 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, enforce, or some combination thereof this Settlement Agreement, to defend against the assertion of Released Matters, as necessary in any insurance-related proceeding, or as otherwise required by law.

SECTION 7 – NOTICE TO CLASS

7.1 Notices Required

(1) The Class shall be given a single notice of: (i) the hearing at which the Court will be asked to approve the Settlement Agreement; and (ii) if it is brought with the hearing to approve the Settlement Agreement, the hearing to approve Class Counsel Fees and Class Counsel Disbursements.

(2) If following notice being given in accordance with Section 7.1(1), this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the Class shall be given notice of such event.

7.2 Form and Distribution of Notices

- (1) The notices shall be in a form approved by the Court.
- (2) The notices shall be disseminated by:
 - (a) direct mailings to the Class Members using e-mail (where available);
 - (b) publication on Class Counsel's websites;
 - (c) electronic and/or social media advertising; and
 - (d) such other means as may be reasonably necessary after consultation with the Claims Administrator, to ensure that Class Members receive actual notice.
- (2) The Defendants shall cooperate with Class Counsel in providing reasonably necessary information required for the administration of this settlement and the distribution of the Settlement Amount.
- (3) Class Counsel may disclose all information provided by the Defendants pursuant to Section 7.2(2) to the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in Sections 7.2, 8.1 and 9.1. If this Settlement Agreement is terminated, no record of the information so provided shall be retained by Class Counsel or the Claims Administrator in any form whatsoever.
- (4) Upon three business days' written notice, the Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to Section (2) from Class Counsel or the Claims Administrator. The Defendants' obligation to make themselves reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 5 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Defendants' obligation to cooperate pursuant to this Section 7.2 shall cease when all settlement funds or court awards have been distributed.
- (5) The information required under Section (2) shall be delivered to Class Counsel no later than thirty (30) days following the Date of Execution or at a time mutually agreed upon by the Parties.

SECTION 8 – ADMINISTRATION AND IMPLEMENTATION

8.1 Mechanics of Administration

(1) The mechanics of the implementation and administration of this Settlement Agreement shall be in accordance with the Distribution Protocol, which is proposed solely by the Plaintiffs, and on which the Defendants take no position, as approved by the Court, which shall be drafted in accordance with Section 9.1.

SECTION 9 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

9.1 Distribution Protocol

(1) Subject to approval by the Court, the Distribution Fund will be divided into two pools as follows:

- (a) **POOL A** will consist of 29.2% of the Distribution Fund and will be payable to Class Members who possessed GPR card;¹
- (b) **POOL B** will consist of 70.8% of the Distribution Fund and will be payable to Class Members who possessed SLP cards.

(2) Class Members will submit claims for compensation from either pool, depending upon which type of card they held. Each claimant with a valid claim will be entitled to be paid, on a *per capita* basis, up to the average amount of fees and expired balances incurred by Class Members who held either GPR (in the case of POOL A) or SLP (in the case of POOL B) cards.

(3) To the extent that either pool is undersubscribed, the payout may be increased up to two times the average amount of fees and expired balances incurred by Class Members who held the type of card attributable to that pool.

¹The proportionate share of Pool A has been calculated by taking the proportionate share of the overall damages = (\$21,512,00 / \$36,852,00 = 58.4%) and applying a 50% discount having regard to the fact that the claim of Class Members holding GPR cards was dismissed on summary judgment and would only have been successful if the Plaintiff's cross-appeal had been allowed.

(4) To the extent that either pool remains undersubscribed after the reallocation described in section 9.1(3) the remaining balance may be reallocated to the other pool up to the payout described in section 9.1(3).

(5) To the extent that either pool remains undersubscribed after the reallocation described in section 9.1(4) the remaining balance will be the subject of further motion to and direction by the Court.

(6) To the extent that either pool is oversubscribed the compensation, each claim under that pool will be discounted on a *pro rata* basis.

9.2 Court Approval of Distribution Protocol

(1) Class Counsel will seek, and the Defendants will not object to or oppose, the Court's approval of the Distribution Protocol contemporaneous with seeking approval of this Settlement Agreement.

(2) In the event that the Distribution Protocol is not approved by the Court, all other terms of this Settlement Agreement remain in effect and enforceable.

SECTION 10 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

10.1 Responsibility for Fees, Disbursements and Taxes

(1) The Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members, or any lien of any Person on any payment to any Class Member from the Settlement Amount.

(2) The Defendants recognize that Class Counsel Fees and Class Counsel Disbursements payable are a matter between Class Counsel and the Class, subject to approval by the Court. The Defendants agree that they will not object to or oppose Class Counsel's request for approval of Class Counsel Fees so long as it does not exceed the maximum payable under the retainer agreement with Class Counsel. The Defendants further agree that they shall not, unless otherwise directed by the Court, make any submissions to the Court on Class Counsel's request for approval of Class Counsel Fees.

10.2 Court Approval of Class Counsel Fees and Disbursements

Class Counsel will seek the Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

SECTION 11 – MISCELLANEOUS

11.1 Motions for Directions

- (1) Class Counsel or the Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

11.2 Headings, etc.

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 shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

11.3 Computation of Time

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

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and

including the day on which the second event happens, including all calendar days;
and

- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

11.4 Ongoing Jurisdiction

The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiff, Class Members and Defendants attorn to the jurisdiction of the Court for such purposes.

11.5 Governing Law

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

11.6 Entire Agreement

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

11.7 Amendments

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.

11.8 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendants, the Releasors, the Releasees 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 shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

11.9 Counterparts

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

11.10 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.11 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English. Nevertheless, if required to by the Court, Class Counsel a translation firm selected by Class Counsel, or some combination thereof shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

11.12 Recitals

The recitals to this Settlement Agreement form part of the Settlement Agreement.

11.13 Schedules

The schedules form part of this Settlement Agreement.

11.14 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

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

11.15 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

11.16 Notice

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

For the Plaintiff and for Class Counsel in the Proceeding:

Louis Sokolov and Jonathan Schachter

SOTOS LLP
180 Dundas Street West, Suite 1200
Toronto, ON M5G 1Z8
Tel: 416.977.0007
Email: lsokolov@sotosllp.com
jschachter@sotosllp.com

Steven Barrett, Charles Sinclair and Nadine
Blum

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2
Tel:416.977.6070
Email: sbarrett@goldblattpartners.com
csinclair@goldblattpartners.com
nblum@goldblattpartners.com

For the Defendants:

Peter Griffin, Lawrence Thacker and
Jonathan Chen

LENCZNER SLAGHT ROYCE SMITH
GRIFFIN LLP
30 Adelaide Street West, Suite 2600
Toronto, ON M5H 3P5
Tel: (416) 865-9500
Email: pgriffin@litigate.com
lthacker@litigate.com
jchen@litigate.com

11.17 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

JOYCE BERNSTEIN, on her own behalf and on behalf of the Class, by her counsel

Name of Authorized Signatory:

Louis Sokolov

Signature of Authorized Signatory:



Sotos LLP
Class Counsel

Name of Authorized Signatory:

Steven Barrett

Signature of Authorized Signatory:



Goldblatt Partners LLP
Class Counsel

PEOPLES TRUST COMPANY and PEOPLES CARD SERVICES LLP.

Name of Authorized Signatory:

TITLE:

I have authority to bind the corporations.

Signature of Authorized Signatory:

11.17 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

JOYCE BERNSTEIN, on her own behalf and on behalf of the Class, by her counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Sotos LLP
Class Counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Goldblatt Partners LLP
Class Counsel

PEOPLES TRUST COMPANY and PEOPLES CARD SERVICES LLP.

Name of Authorized Signatory: Howard Klein
TITLE: President, Payments and Card Services

I have authority to bind the corporations.

Signature of Authorized Signatory:  _____
FAED68296C5B4E3..

SCHEDULE "A"

1

Court File No. CV-13-49387-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOYCE BERNSTEIN

Plaintiff

and

PEOPLES TRUST COMPANY and PEOPLES CARD SERVICES LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*

MINUTES OF SETTLEMENT

WHEREAS this certified Class Action was decided by summary judgment on May 13, 2019;

AND WHEREAS judgment was granted to the Plaintiff in the amount of \$15,300,000 in compensatory damages and \$1,500,000 in punitive damages, plus pre-judgment interest of \$1,233,753; plus post-judgment interest (at the rate of 3.0% per annum on \$18,063,753 from May 13, 2019);

AND WHEREAS costs were awarded to the Plaintiff in the amount of \$905,244.02 plus postjudgment interest (at the rate of 3.0% per annum from October 21, 2019), in addition to costs previously awarded in the cause in the amount of \$10,000 plus postjudgment interest at the rate of 2.0% per annum commencing on April 10, 2017;

AND WHEREAS judgment was granted to the Defendants dismissing the balance of the Plaintiff's claim;

AND WHEREAS the Defendants commenced an appeal of the judgment against them;

AND WHEREAS the Plaintiff commenced a cross-appeal of the judgment dismissing the balance of the claim;

AND WHEREAS the appeal and the cross-appeal are scheduled to be heard by the Ontario Court of Appeal on June 9 and June 10, 2020;

AND WHEREAS the Parties have agreed on terms to fully and finally settle this action, including the appeal and the cross-appeal;

AND WHEREAS the Plaintiff and Class Counsel have concluded, after carefully considering the relevant circumstances, that: (1) it is in the best interests of the Class to enter into the settlement in order to avoid the uncertainties of further appeals and to ensure that the benefits reflected herein, including the amount to be paid by the Defendants under this agreement, are obtained for the Class; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the Class;

AND WHEREAS the Defendants are entering into this agreement in order to achieve a final resolution of all claims asserted or which could have been asserted in this proceeding and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

AND WHEREAS counsel for the Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this agreement;

NOW THEREFORE for good and valuable consideration, the Parties agree to settle this Class Action fully and finally on the following terms:

1. The Defendants (collectively "PTC") agree to pay the gross sum of CDN\$17,000,000 (the "Settlement Amount"), including \$6,186,000 for unused balances after the "valid thru" date",

inclusive of all amounts owing by PTC or otherwise to be paid by PTC in respect of the Settlement Amount, including in respect of costs (including fees and disbursements), tax and interest.

2. The cost of notice and administration will be borne, in equal shares, by PTC (separate and apart from the Settlement Amount), and by the Class (out of the Settlement Amount) up to CDN\$ 75,000, after which such additional cost will be paid out of the Settlement Amount.

3. The Parties have advised the Court of Appeal that as an essential component of an overall settlement to be put before the Case Management Judge for approval, that the Parties will request that the Court of Appeal issue an Order containing the following terms ("Court of Appeal Order"):

- (a) That PTC's appeal with respect to the issue of punitive damages be allowed and the Order of the Superior Court be reversed on this issue;
- (b) That the balance of PTC's appeal be dismissed;
- (c) That the Plaintiff's cross-appeal be dismissed; and
- (d) That there be no costs to either party in respect of the appeal or cross-appeal.

4. The Court of Appeal panel has advised that it will make the Court of Appeal Order upon approval of the Settlement by the Case Management Judge.

5. The Parties will agree to adjourn the pending appeal, and cross-appeal to a date following the Settlement Approval Hearing at which time, providing that the Settlement is approved by the Case Management Judge, the Parties will request that the Court of Appeal issue an Order containing the following terms:

- (a) That PTC's appeal with respect to the issue of punitive damages be allowed and the Order of the Superior Court be reversed on this issue;
- (b) That the balance of PTC's appeal be dismissed;

- (c) That the Plaintiff's cross-appeal be dismissed; and
- (d) That there be no costs to either party in respect of the appeal or cross-appeal.

6. The Parties will negotiate in good faith, with a view to concluding, by no later than July 15, 2020, a Settlement Agreement which will provide, among other things, for the following:

- (a) the payment of the Settlement Amount to PTC's Counsel on a date that is no earlier than 60 days after execution of the Settlement Agreement, such monies to be held in trust by PTC's Counsel until final approval by the Court of this settlement;
- (b) the allocation method of those Settlement Amounts to be paid to the Class;
- (c) the mechanism for determination and payment of Class Counsel fees, subject to approval by the Court;
- (d) notice of the settlement to the Class; and
- (e) a full and final release and bar against claims over, in the customary form, of all claims by the Class, known and unknown, relating to all matters raised or that could have been raised in this Class Action up to and including the date of the execution of the Settlement Agreement.

7. The Parties shall use their reasonable best efforts to implement the settlement agreement and to obtain approval of the Settlement Agreement by the Court no later than September 30, 2020 and disposition of the appeal, no later than October 31, 2020.

8. PTC agrees that, subject to the approval of the Court, the net proceeds of the Settlement Amount may be distributed in two pools, one to be paid to Class Members who possessed Single

Load Pre-Paid Cards, and the other to be paid to Class Members who possessed General Purpose Reloadable Cards.

9. PTC will cooperate with Class Counsel in providing reasonably necessary information required for the administration of this settlement and the distribution of the Settlement Amount.

10. This settlement and the terms to be set out in the Settlement Agreement are conditional upon approval by the Court. In the event that the settlement agreement is not approved by the Court, neither Party will be bound by the terms of this settlement nor the Settlement Agreement and the appeal and cross-appeal will be scheduled for hearing at the earliest reasonable date.

11. These Minutes of Settlement may be executed in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together constitute one and the same instrument.

Signed this 8th day of June, 2020

**FOR PEOPLES TRUST COMPANY and
PEOPLES CARD SERVICES LLP**



Howard Klein

I have authority to bind the corporations

FOR THE PLAINTIFF CLASS



Sotos LLP

par Louis Sokolow ✓

JOYCE BERNSTEIN
Plaintiff

-and-

PEOPLES TRUST COMPANY et al.
Defendants

Court File No. CV-13-49387-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

MINUTES OF SETTLEMENT

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Louis Sokolov (LSO # 34483L)
Jonathan Schachter (LSO # 63858C)
Tel: 416-977-0007
Fax: 416-977-0717

GOLDBLATT PARTNERS LLP

Barristers and Solicitors
1039-20 Dundas Street West
Toronto ON M5G 2G8

Charles Sinclair (LSO #43178A)
Nadine Blum (LSO # 52772G)
Tel: 416-977-6070
Fax: 416-591-7333

Lawyers for the Plaintiff

SCHEDULE "B"

Court File No. CV-13-49387-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE PERELL) OF , 2020

BETWEEN:

JOYCE BERNSTEIN

Plaintiff

and

PEOPLES TRUST COMPANY and PEOPLES CARD SERVICES LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**ORDER
- Notice Approval -**

THIS MOTION made by the Plaintiff for an Order approving the short-form and long-form notices of settlement approval hearing and the method of dissemination of said notices for settlement approval was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement with the Defendants dated as of ●, 2020 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on reading the submissions of counsel for the Plaintiff

AND WHEREAS this Court certified this Proceeding as a class proceeding on January 31, 2017, on behalf of "all consumers in Ontario within the meaning of the Consumer Protection Act, 2002, who purchased or acquired a prepaid payment card sold or issued by Peoples Trust between November 29, 2011 and April 30, 2014."

AND ON BEING ADVISED that the deadline for opting out of this proceeding has passed, and no Persons validly exercised the right to opt out;

AND ON BEING ADVISED that the Plaintiff and the Defendants consent to this Order;

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the abbreviated, publication and long-form notices of settlement approval hearing are hereby approved substantially in the forms attached respectively hereto as Schedules “B” to “D”.
3. **THIS COURT ORDERS** that the plan of dissemination for the abbreviated, publication and long-form notices of settlement approval hearing (the “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “E” and that the notices of settlement approval hearing shall be disseminated in accordance with the Plan of Dissemination.

The Honourable Justice Perell

SCHEDULE "C"

Court File No. CV-13-49387-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE PERELL) OF , 2020

BETWEEN:

JOYCE BERNSTEIN

Plaintiff

and

PEOPLES TRUST COMPANY and PEOPLES CARD SERVICES LLP

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**ORDER
- Settlement Approval -**

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with the Settling Defendants was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement dated ●, 2020, attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and for the Defendants;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been ● written objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting out of this proceeding has passed, and no Persons validly exercised the right to opt out;

AND ON BEING ADVISED that the Plaintiff and the Defendants consent to this Order:

4. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
5. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
6. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Proceeding.
7. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
8. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
9. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Class shall be deemed to have consented to the dismissal as against the Releasees of any other actions he, she or it has commenced, without costs and with prejudice.
10. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Matters.
11. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendants attorn to the jurisdiction of this Court for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
12. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
13. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Sotos LLP for the benefit of Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Class.

14. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
15. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
16. **THIS COURT ORDERS** that, upon the Effective Date, the Proceeding be and is hereby dismissed, without costs and with prejudice.
17. **THIS COURT ORDERS** that, upon the Effective Date, the Orders of this Court dated May 13, 2019 (Summary Judgment), August 7, 2019 (Pre-Judgment Interest) and October 21, 2019 (Costs) are set aside.

The Honourable Justice Perell

SCHEDULE "D"

Court File No. C67083

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE) , THE DAY
JUSTICES) OF , 2020

B E T W E E N:

JOYCE BERNSTEIN

Plaintiff
(Respondent /
Appellant by
Cross-Appeal)

and

PEOPLES TRUST COMPANY and PEOPLES CARD SERVICES LLP

Defendants
(Appellants /
Respondents by
Cross-Appeal)

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS APPEAL by the Defendants (Appellants / Respondents by Cross-Appeal) and this Cross-Appeal by the Plaintiff (Respondent / Appellant by Cross-Appeal) from the Order of the Honourable Justice Perell granting summary judgment was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON BEING ADVISED that the Parties have agreed to settle this action in its entirety, including the Appeal and Cross-Appeal;

AND ON READING the materials filed, including the settlement agreement dated ●, 2020, attached to this Order as Schedule “A” (the “Settlement Agreement”)

AND ON BEING ADVISED that the Settlement Agreement has been approved by the Honourable Justice Perell;

AND ON BEING ADVISED that the Parties consent to the relief herein:

1. **THIS COURT ORDERS** that the Defendants’ appeal with respect to the issue of punitive damages is allowed and the Order of the Superior Court of Justice is set aside, solely in respect of this issue;
2. **THIS COURT ORDERS** that the balance of the Defendants’ appeal is dismissed;
3. **THIS COURT ORDERS** that the Plaintiff’s cross-appeal is dismissed; and
4. **THIS COURT ORDERS** that there be no costs in respect of the Defendants’ appeal or the Plaintiff’s cross-appeal.

REGISTRAR