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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN DIEGO
10

11 DANIEL MCSWAIN, TRUSTEE OF THE
12 DANIEL S. MCSWAIN TRUST DATED
13 JULY 17, 2012, on behalf of the trust and all
others similarly situated, and the general
public,

14 Plaintiff,

15 v.

16 AXOS BANK, fka BANK OF THE
17 INTERNET USA; and DOES 1-10,
18 INCLUSIVE,

19 Defendant.
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Case No. 37-2019-00015784-CU-BC-CTL

**CLASS LITIGATION SETTLEMENT
AGREEMENT**

1 This Class Litigation Settlement Agreement (the “Settlement Agreement” or “Agreement”) is
2 made and entered into by and between Plaintiff Daniel McSwain, Trustee of the Daniel S. McSwain
3 Trust Dated July 17, 2012 (“Plaintiff”), individually and on behalf of the settlement class that he purports
4 to represent, counsel for Plaintiff, Law Offices of Ronald A. Marron, APLC and the Law Office of
5 Michael G. Olinik (“Class Counsel”), and Defendant Axos Bank, formerly known as BofI Federal Bank
6 (“Axos” or “Defendant”). Plaintiff and Defendant are referred to hereinafter as the “Settling Parties.”
7 This settlement is intended to fully, finally, and forever resolve, discharge, release, and settle the lawsuit
8 captioned *Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012 v. Axos Bank,*
9 *fka Bank of the Internet, USA*, Case No. 37-2019-00015784-CU-BC-CTL (the “Litigation”), upon and
10 subject to the terms and conditions herein.

11 **1. Recitals**

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13 1.1 On March 25, 2019, Plaintiff filed a Class Action Complaint in the Superior Court of
14 California for the County of San Diego (the “Court”), captioned *Daniel McSwain, Trustee of the*
15 *Daniel S. McSwain Trust Dated July 17, 2012 v. Axos Bank, fka Bank of the Internet, USA*, Case No.
16 37-2019-00015784-CU-BC-CTL (Register of Actions (“ROA”) # 1).

17 1.2 Plaintiff’s Complaint alleged that Defendant violated section 2954.8(a) of the California
18 Civil Code because it failed to pay borrowers a minimum of 2% simple interest per annum on the
19 amounts in its borrowers’ escrow accounts for loans secured by one to four family residential
20 properties located in California. Plaintiff alleged causes of action for violations of section 17200 of
21 California’s Business & Professions Code (the “UCL”) and breach of contract. (ROA # 1).

22 1.3 On May 15, 2019, Defendant filed a Demurrer to Plaintiff’s Complaint arguing, *inter*
23 *alia*, that Plaintiff failed to comply with the Notice and Cure Provision in his Deed of Trust before
24 filing suit and that Plaintiff’s claims are preempted by the federal Homeowners’ Loan Act (“HOLA”),
25 12 U.S.C. §§ 1461, *et seq.* (ROA # 13).

1 1.4 On June 3, 2019, Plaintiff filed a First Amended Complaint (“FAC”) adding additional
2 allegations concerning Plaintiff’s purported compliance with the Notice and Cure Provision in his
3 Deed of Trust. (ROA # 17).

4 1.5 On June 14, 2019, the Court overruled Defendant’s Demurrer to the Complaint as moot
5 in light of Plaintiff’s filing of the FAC. (ROA # 20).

6 1.6 On July 19, 2019, Defendant filed a Demurrer to Plaintiff’s FAC arguing, *inter alia*,
7 that Plaintiff failed to comply with the Notice and Cure Provision in his Deed of Trust before filing suit
8 and that Plaintiff’s claims are preempted by HOLA. (ROA # 22).

9 1.7 On August 23, 2019, the Court entered an Order overruling Defendant’s Demurrer.
10 (ROA # 35).

11 1.8 On May 1, 2019, Plaintiff served his first set of written discovery on Defendant
12 consisting of form interrogatories, special interrogatories, requests for production of documents, and
13 requests for admission.

14 1.9 On August 15, 2019, Defendant served responses to Plaintiff’s first set of written
15 discovery. Defendant also produced documents relating to the aggregate monthly escrow account
16 balances for all loans held or serviced by Axos and secured by one to four family residential properties
17 located in California, which allowed Plaintiff to estimate the total damages that would be available if
18 Plaintiff were to prevail at trial.

19 1.10 Following the Court’s ruling on Defendant’s Demurrer to the FAC, the Settling Parties
20 began engaging in settlement negotiations that resulted in a binding Memorandum of Understanding
21 (“MOU”) that set forth the material terms of the settlement that form the basis for this Settlement
22 Agreement.

23 1.11 On December 12, 2019, the Settling Parties also participated in a half day mediation
24 before the Hon. Leo S. Papas (Ret.) of Judicate West to discuss and negotiate additional terms of the
25 settlement. Following the Settling Parties’ mediation, the Settling Parties executed an Addendum to
26 their MOU that sets forth additional terms of the settlement that form the basis for this Settlement
27 Agreement.
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1 1.12 The Settling Parties and their counsel have extensively investigated the facts and issues
2 raised in the Litigation, and have sufficient information to evaluate their settlement and this Settlement
3 Agreement.

4 1.13 Defendant denies the allegations in the Litigation and further denies that it is liable to
5 Plaintiff or any Settlement Class Member (as defined in Section 2.26 below) in connection with the
6 allegations and claims asserted in the Litigation. Nonetheless, to avoid the substantial burden, risk,
7 and distraction that arises from continuation of the Litigation, and to fully and finally resolve the
8 claims asserted or that could have been asserted against it therein, Defendant has agreed to the terms of
9 this Settlement Agreement. Defendant continues to maintain that it has complied with applicable
10 California laws and that Section 2954.8(a) of the California Civil Code is preempted by HOLA.

11 1.14 Counsel for the Settling Parties engaged in arm's-length negotiations to achieve
12 settlement of the Litigation. After extensive confidential settlement negotiations, the Settling Parties
13 reached an agreement that forms the basis of this Settlement Agreement. The Settling Parties did not
14 discuss attorneys' fees, costs, or any potential incentive award to Plaintiff until they first agreed on the
15 substantive terms of their settlement.

16 1.15 Class Counsel analyzed and evaluated the merits of Defendant's defenses, the risks of
17 continued litigation, and the benefits this settlement would confer on Plaintiff and the Settlement Class,
18 as defined below. Among the risks of continued litigation considered by Class Counsel are the
19 possibilities the Court will not certify a class, Plaintiff will be unable to prove liability, damages, or
20 entitlement to injunctive relief at trial on a class-wide or individual basis, and, even if proven,
21 Defendant could challenge the determinations on appeal.

22 1.16 Based on their experience and knowledge of the strength of the claims and defenses in
23 the Litigation, counsel for the Settling Parties concluded and are satisfied that the terms and conditions
24 of this Settlement Agreement are fair, reasonable, adequate, and in the best interest of the Settling
25 Parties and the Settlement Class Members.

26 1.17 Nothing contained in this Settlement Agreement shall be used or construed as an
27 admission of liability and this Settlement Agreement shall not be offered or received in evidence in any
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1 action or proceeding in any court or other forum as an admission or concession of liability or
2 wrongdoing of any nature or for any other purpose other than to enforce the terms of this Settlement
3 Agreement.

4 1.18 **NOW, THEREFORE**, pursuant to the terms set forth herein and subject to the Court's
5 approval of this Settlement Agreement, the Settling Parties hereby stipulate and agree, including on
6 behalf of the Settlement Class, as defined below, fully and finally to settle, compromise, and resolve
7 the claims that were or could have been asserted in the Litigation.

8 **2. Definitions**

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10 Capitalized terms in this Settlement Agreement are defined by the terms set forth in this Section.
11 If and to the extent Definitions in this Section conflict with other terms set forth in this Settlement
12 Agreement, the Definitions in this Section shall govern.

13 2.1 "Class Counsel" means the Law Offices of Ronald A. Marron, APLC and the Law
14 Office of Michael G. Olinik.

15 2.2 "Class Counsel's Fees" means an award of Plaintiff's attorneys' fees, costs, and
16 expenses to be approved by the Court of up to \$200,000.00.

17 2.3 "Class Period" means March 25, 2015 until the date of preliminary approval.

18 2.4 "Class Released Claims" means the claims to be released by the Settlement Class
19 Members as set forth in Section 10.2 of this Settlement Agreement.

20 2.5 "Court" shall mean the Superior Court of the State of California, for the County of San
21 Diego.

22 2.6 "Effective Date" means the date on which the Final Judgment (defined below) in the
23 Litigation becomes "Final." As used in this Settlement Agreement, "Final" means three business days
24 after all of the following conditions have been satisfied:

- 25 (1) the Final Judgment is entered; and
26 (2) if reconsideration and/or appellate review is not sought from the Final Judgment, the
27 expiration of time for filing or noticing any motion for reconsideration, appeal, petition, and/or writ; or
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(3) if reconsideration and/or appellate review is sought from the Final Judgment: (a) the date on which the Final Judgment is affirmed and is no longer subject to judicial review, or (b) the date on which the motion for reconsideration, appeal, petition, or writ is dismissed or denied and the Final Judgment is no longer subject to judicial review.

2.7 “Final Approval” means: (a) issuance of a Court order granting final approval of the settlement and this Settlement Agreement as binding on the Settling Parties and the Settlement Class; (b) the Court’s determination that the Settlement Agreement and Preliminary Approval Order are fair, adequate, reasonable, and binding on the Settlement Class; (c) determination that the relief provided in this Settlement Agreement should be disseminated to the Settlement Class; (d) effectuating the releases set forth in Section 10 of this Settlement Agreement; (e) entering Final Judgment in the Litigation; and (f) retaining continuing jurisdiction over the interpretation, implementation, and enforcement of the Settlement.

2.8 “Final Approval Hearing” means the hearing to be held by the Court to adjudicate whether:

(1) the terms of this Settlement Agreement are fair, reasonable, and adequate to the Settlement Class and should be approved;

(2) the Notice constitutes due, adequate, and sufficient notice to all persons entitled to notice of the Litigation and meets all applicable requirements of the California Rules of Court, the United States Constitution (including the Due Process Clause), rules of this Court, and any other applicable law, and constitutes notice as directed by the Court in the Preliminary Approval Order to apprise the Settlement Class of the (a) pendency of the Litigation; (b) nature and terms of the Settlement; (c) right of Settlement Class Members to object to the Settlement; and (d) right of Settlement Class Members to appear at the Final Approval Hearing;

(3) a Final Judgment should be entered dismissing the Litigation with prejudice, as contemplated by this Settlement Agreement;

(4) the Court should approve the award of Class Counsel’s Fees to Class Counsel; and

(5) any other matter that the Court may deem appropriate.

1 The Settling Parties anticipate the Final Approval Hearing will be scheduled approximately one hundred
2 and twenty (120) days after the Notice to the Settlement Class.

3 2.9 “Final Judgment” means the Final Judgment to be entered by the Court, which, among
4 other things, fully and finally approves this Settlement Agreement and dismisses Defendant from the
5 Litigation with prejudice.

6 2.10 “Gross Settlement Fund” means the non-reversionary amount of \$500,000 (Five
7 Hundred Thousand Dollars 00/100) that Defendant shall pay in settlement of the Litigation. From the
8 Gross Settlement Fund, the following will be deducted upon approval by the Court (1) attorneys’ fees
9 of up to the amount approved by the Court and other costs associated with the settlement no greater
10 than \$200,000 as set forth in Section 8.1 below; and (2) an Incentive Award in the amount of up to
11 \$7,500 to Plaintiff as set forth in section 8.3 below.

12 2.11 “Incentive Award” means the award that will be sought by application and, if approved
13 by the Court, will be payable to Plaintiff from the Settlement Fund for his role as the class
14 representative and the responsibility and work attendant to that role.

15 2.12 “Net Settlement Fund” means the amount of money that will remain after the following
16 are deducted from the Gross Settlement Fund upon approval by the Court (1) attorneys’ fees of up to
17 the amount approved by the Court and other costs associated with the settlement no greater than
18 \$200,000 as set forth in Section 8.1 below; and (2) an Incentive Award in the amount of up to \$7,500
19 to Plaintiff as set forth in section 8.3 below. The Settling Parties estimate that the Net Settlement Fund
20 will total approximately \$292,500 and the Net Settlement Fund will be used to make Settlement
21 Payments to Settlement Class Members as described in Section 7.2 of this Settlement Agreement.

22 2.13 “Notice” means the notices to be sent via e-mail, direct U.S. postal mail, and/or made
23 available online, in a form substantially similar to the Notice attached hereto as **Exhibit A**.

24 2.14 “Notice Date” means the date Notice is communicated to Settlement Class Members
25 pursuant to Section 6 of this Settlement Agreement.

26 2.15 “Notice Plan” means the proposal for dissemination of Notice to members of the
27 Settlement Class as described in Section 6 of this Agreement.

1 2.16 “Objection” means the written communication that must be filed with the Court and
2 sent to counsel for the Settling Parties and postmarked on or before the Objection/Exclusion Deadline
3 by a Settlement Class member who wishes to object to the terms of the Settlement as detailed in
4 Section 5.2 below.

5 2.17 “Objection/Exclusion Deadline” is the date by which an Objection or Request for
6 Exclusion by a Settlement Class member must be postmarked, as ordered by the Court in its
7 Preliminary Approval Order referred to in Section 4 of this Settlement Agreement.

8 2.18 “Plaintiff” means class representative and Plaintiff Daniel McSwain, Trustee of the
9 Daniel S. McSwain Trust Dated July 17, 2012.

10 2.19 “Plaintiff’s Released Claims” means the claims to be released by Daniel McSwain as
11 set forth in Section 10.1 of this Settlement Agreement.

12 2.20 “Preliminary Approval Order” means the order to be entered by the Court, substantially
13 in the form attached hereto as **Exhibit B** which preliminarily approves the Settlement, conditionally
14 certifies the Settlement Class for the purposes of this Settlement only, sets dates for the Final Approval
15 Hearing, Objection/Exclusion Deadline, and Notice Date, and approves the Notice Plan.

16 2.21 “Released Claims” means the claims released in accordance with Section 10 of this
17 Settlement Agreement, including the Plaintiff’s Released Claims and the Class Released Claims.

18 2.22 “Released Parties” means Defendant, and each of its past, present and future agents,
19 employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders,
20 attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships,
21 divisions, assigns, predecessors, successors, insurers, consultants, joint venturers, joint employers,
22 affiliates, alter-egos, and affiliated organizations, and all of its respective past, present and future
23 employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and
24 assigns.

25 2.23 “Request for Exclusion” means the written communication that must be sent to Class
26 Counsel and postmarked on or before the Objection/Exclusion Deadline by a Settlement Class member
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who wishes to be excluded from the Settlement Class as detailed in Section 5.1 of this Settlement Agreement.

2.24 “Settlement” or “Settlement Agreement” means this Class Action Settlement Agreement, including all exhibits thereto.

2.25 “Settlement Class” consists of all persons who obtained a loan from Defendant and/or had a loan serviced by Defendant at any time within the Class Period which was secured by a one to four family residential property located in the State of California and had an escrow or impound account on such loan that received money in advance for payment of taxes and assessments on the property, for insurance, or for other purposes relating to the property, and which at any time within the Class Period had a positive balance in such account. The Settlement Class specifically excludes (1) any judicial officer presiding over the Litigation, (2) Defendant and Released Parties, and each of their current or former officers, directors, and employees; (2) legal representatives, successors, or assigns of any such excluded person, and (4) any person who properly executes and sends a timely Request for Exclusion.

2.26 “Settlement Class Members” means all persons who are members of the Settlement Class.

2.27 “Settlement Payment” means the amount to be paid to a Settlement Class Member from the Net Settlement Fund as described in Section 7.2 of this Settlement Agreement.

2.28 “Settlement Website” means an internet website created and maintained by Defendant to provide the Settlement Class Members with information relating to the Settlement, including links to material filings in the Litigation and this Settlement Agreement. The URL of the Settlement Website shall be provided in the Notice.

3. Stipulation to Class Certification

3.1 The Settling Parties hereby stipulate, for purposes of this Settlement only, that the requirements of California Code of Civil Procedure Section 382 are satisfied and, subject to Court approval, the Settlement Class shall be certified for settlement purposes pursuant to the terms and

conditions set forth in this Settlement Agreement. The Settling Parties stipulate and agree to conditional certification of the Settlement Class for purposes of this Settlement only. Should the Court not grant Final Approval of the Settlement, for whatever reason, this stipulation to class certification shall become null and void.

3.2 Neither this Settlement Agreement nor any statement, transaction, or proceeding in connection with the negotiation, execution, or implementation of this Settlement Agreement shall be construed as, or deemed evidence of an admission or concession by Defendant that a class should or could have been certified in the Litigation for any purpose other than settlement. If the Court fails to grant Final Approval of the Settlement, the Settling Parties agree and stipulate that Defendant shall and does retain all of the rights, defenses, and arguments it had preceding execution of this Settlement Agreement, and nothing in this Settlement Agreement shall or can be used as evidence or argument by Plaintiff or putative Settlement Class Members concerning any aspect of the Litigation, including whether the alleged claims properly can be maintained as a class action.

4. Preliminary Approval

4.1 On or before June 26, 2020, Plaintiff shall apply to the Court for entry of a Preliminary Approval Order substantially in the form attached hereto as **Exhibit B**. The Preliminary Approval Order shall include provisions that:

4.1.1 Preliminarily approve this Settlement as falling within the range of reasonableness meriting final approval;

4.1.2 Direct Notice to the Settlement Class in the manner specified in this Settlement Agreement as set forth in Section 6 below;

4.1.3 Preliminarily determine that Plaintiff is a Settlement Class Member and, for purposes of the Settlement Agreement, satisfies the requirements of California Code of Civil Procedure Section 382 to appoint Plaintiff as the class representative of the Settlement Class;

4.1.4 Conditionally certify the Settlement Class under California Code of Civil Procedure Section 382 for purposes of this Settlement only;

1 4.1.5 Appoint the Law Offices of Ronald A. Marron, APLC and the Law Office of
2 Michael G. Olinick as Class Counsel;

3 4.1.6 Schedule the Final Approval Hearing;

4 4.1.7 Set a briefing schedule for a Motion for Final Approval of the Settlement;

5 4.1.8 Establish the Notice Date, which direct Defendant to cause Notice to be
6 disseminated in the manner set forth in this Settlement Agreement within thirty (30) days after entry of
7 the Preliminary Approval Order;

8 4.1.9 Determine that the Notice to be sent to the Settlement Class: (a) meets the
9 requirements of California Law and the Due Process Clause of the United States Constitution; (b) is
10 the best practicable notice under the circumstances; and (c) is reasonably calculated to apprise
11 Settlement Class members of the pendency of the Litigation and their right to object and opt out of or
12 participate in the Settlement within the timeframe provided herein;

13 4.1.10 Require Settlement Class Members who wish to opt out of the Settlement to
14 submit written Requests for Exclusion timely on or before the Objection/Exclusion Deadline to Class
15 Counsel, as specified in Section 5 of this Settlement Agreement;

16 4.1.11 Require Settlement Class Members who wish to object to the fairness,
17 reasonableness, or adequacy of the Settlement, Class Counsel's Fees, or Incentive Awards to file with
18 the Court and deliver to Class Counsel and Defendant's counsel by the Objection/Exclusion Deadline,
19 a statement of his or her Objection, as well as the specific reason for such Objection, including legal
20 support the Settlement Class Member wishes to bring to the Court's attention, and evidence the
21 Settlement Class Member wishes to introduce in support of his or her Objection;

22 4.1.12 Provide that any Settlement Class Member who does not timely submit a written
23 Request for Exclusion or Objection will be bound by all proceedings, orders, and judgments in this
24 Litigation; and

25 4.1.13 Provide the Objection/Exclusion Deadline be a date that is thirty (30) days prior
26 to the Final Approval Hearing.

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1 **5. Requests for Exclusion and Objections to the Settlement**

2 5.1 Any Settlement Class Member who does not wish to participate in the Settlement must
3 submit a Request for Exclusion to Class Counsel stating his or her intention to be “excluded” from the
4 Settlement. The Request for Exclusion must contain the Settlement Class Member’s name, current
5 address, and telephone number. The Request for Exclusion must be personally signed by the
6 Settlement Class Member and dated, mailed, and postmarked to Class Counsel at the following address
7 on or before the Objection/Exclusion Deadline:

8 **LAW OFFICES OF RONALD A. MARRON, APLC**

9 ATTN: Axos Settlement

10 651 Arroyo Drive

11 San Diego, California 92103

12 Multiple, so-called “mass” or “class,” opt-outs shall not be allowed. The date of the postmark on
13 the return mailing envelope shall be the exclusive means used to determine whether a Request for
14 Exclusion has been timely submitted. Any Settlement Class Member whose request to be excluded from
15 the Settlement Class is approved by the Court will not be bound by the Settlement and will have no right
16 to object, appeal, or comment thereon.

17 5.2 Any Settlement Class Member, on his or her own, or through an attorney hired at his or
18 her own expense, may object to the terms of the Settlement, Class Counsel’s application for an award
19 of Class Counsel’s Fees, or the Incentive Award. Any such Objection must be in writing and include
20 the contents described in Paragraph 5.3 below and must be filed with the Court and sent to counsel for
21 the Settling Parties as set forth below via U.S. Mail on or before the Objection/Exclusion Deadline or
22 as the Court may otherwise direct. Any Objection that is not properly or timely raised is waived. All
23 Objections to the Settlement must be sent to each of the following addresses:

24 **LAW OFFICES OF RONALD A. MARRON, APLC**

25 ATTN: Axos Settlement

26 651 Arroyo Drive

27 San Diego, California 92103

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2 **SHEPPARD, MULLIN, RICHTER & HAMPTON LLP**

3 ATTN: Alejandro E. Moreno

4 RE: Axos Settlement

5 501 West Broadway, 19th Floor

6 San Diego, California 92101

7 5.3 To be effective, Objections must be in writing and accompanied by documents or other
8 evidence, as well as any factual or legal argument the objecting Settlement Class Member intends to
9 rely upon in making his or her Objection. All Objections must include (a) a reference, in its first
10 sentence, to the Litigation, *McSwain v. Axos Bank*, Case No. 37-2019-00015784-CU-BC-CTL; (b) the
11 objector's full, legal name, residential address, telephone number, and email address (and the
12 objector's lawyer's name, business address, telephone number, and email address if objecting through
13 counsel); (c) a statement describing the objector's membership in the Settlement Class, including a
14 verification under oath as to the objector's escrow account number(s); (d) a written statement of all
15 grounds for the Objection, accompanied by any legal support for such Objection; (e) copies of any
16 papers, briefs, or other documents upon which the Objection is based; (f) a list of all persons who will
17 be called to testify in support of the Objection; (g) a statement of whether the objector intends to
18 appear at the Final Approval Hearing (note: if the objector intends to appear at the Final Approval
19 Hearing through counsel, the Objection must also state the identity of all attorneys representing the
20 objector who will appear at the Final Approval Hearing); (h) a list of the exhibits that the objector may
21 offer during the Final Approval Hearing, along with copies of such exhibits; and (i) the objector's
22 signature. In addition, Settlement Class Members, if applicable, must include with their Objection (a)
23 the identity of all counsel who represent the objector, including former or current counsel who may be
24 entitled to compensation for any reason related to the objection; and (b) a detailed list of any other
25 objections submitted by the Settlement Class Member, or his/her counsel, to any class actions
26 submitted in any court, whether state or federal, in the United States in the previous five (5) years.
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5.4 Any Settlement Class Member who fails to file and serve a written Objection timely, setting forth all of the information required by this Section shall be precluded from objecting to the Settlement and foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including, but not limited to, through an appeal.

5.5 Either Party may request that the Court, within its discretion, exercise its right to deem any Objection frivolous and award appropriate costs and fees to any or both of the Settling Parties opposing such Objection(s).

5.6 Any Settlement Class Member who fails to timely submit a Request for Exclusion or Objection as provided in this Settlement Agreement shall be bound by all subsequent proceedings, orders, and Final Judgment in the Litigation, even if he or she has pending, or subsequently initiates, any litigation, arbitration, or other proceeding against Defendant or Released Parties relating to the Released Claims.

6. Notice to Settlement Class Members

6.1 The Notice shall:

6.1.1 Inform the Settlement Class that if they do not timely exclude themselves from the Settlement Class or object to the Settlement they may be eligible to receive the relief provided by the proposed Settlement Agreement;

6.1.2 Contain a short, plain statement of the background of the Litigation and the proposed Settlement;

6.1.3 Describe the proposed relief outlined in this Settlement Agreement;

6.1.4 Explain the impact the proposed Settlement will have on any existing or future litigation, arbitration, or other proceeding;

6.1.5 State that any relief to Settlement Class Members is contingent upon the Court's granting Final Approval of the Settlement; and

6.1.6 Disclose Class Counsel will seek an award of Class Counsel's Fees from the Settlement Fund.

6.2 Notice to the Settlement Class Members. Within thirty (30) days after entry of the Preliminary Approval Order, or on the date established by the Court in the Preliminary Approval Order, Defendant shall effect notice as set forth below:

6.2.1 Direct Notice. On the Notice Date, Defendant will cause the Notice, in the form attached hereto as **Exhibit A**, to be sent to all Settlement Class Members via electronic mail. If Defendant does not have a valid electronic mail address for Settlement Class Members, or if Defendant receives a “bounce-back” from a Settlement Class Member’s electronic mail address, then Defendant shall cause the Notice to be sent via U.S. Mail. If Defendant does not have a valid electronic mail address or a valid postal address for any Settlement Class Members, then Defendant shall use reasonable means to identify a valid postal address for the Settlement Class Members through use of skip tracing or otherwise.

6.2.2 Settlement Website. On or before the Notice Date, Defendant shall establish the Settlement Website, from which Settlement Class members may download or print the Notice, a complete copy of this Settlement Agreement, the Preliminary Approval Order, and material filings and Orders in the Litigation. The Settlement Website shall include the deadlines for submitting Requests for Exclusion from the Settlement Class, Objections, the date of the Final Approval Hearing, and other information pertaining to the Settlement. Defendant shall establish the Settlement Website using a website name to be mutually agreed upon by the Settling Parties. The Website shall be operative no later than the Notice Date and shall be accessible for a period of not fewer than sixty (60) days following the Effective Date. Following the expiration of sixty (60) days after the Effective Date, Defendant can choose to discontinue the operation of the Settlement Website.

6.3 Defendant shall pay for all costs associated with providing Notice to the Settlement Class and administering the Settlement separate and apart from the Gross Settlement Fund.

6.4 Declaration of Compliance and Class Counsel’s Audit Rights. Within twenty (20) calendar days after the Notice Date, Defendant shall provide Class Counsel with a declaration attesting to completion of the notice process set forth in this Section. Subject to agreement between the Settling Parties regarding measures sufficient to protect the confidential personal financial information of

Defendant's customers, Class Counsel shall have the right to audit and monitor Defendant's implementation of the notice process set forth in Section 6.

7. Settlement Consideration

7.1 Class Benefits. Class Counsel and Plaintiff believe the Settlement confers substantial benefits upon the Settlement Class, as identified below, particularly as weighed against the risks associated with the inherent uncertain nature of a litigated outcome; the complex nature of the Litigation in which Class Counsel have reviewed internal and confidential documents; the difficulty and complexity of calculating actual economic harm, if any, allegedly attributable to Defendant's conduct; and the length and expense of continued proceedings through additional fact depositions, expert depositions, third-party document productions and depositions, class certification and summary judgment briefing, trial, and appeals. Based on their evaluation of such factors, Class Counsel and Plaintiff have determined the Settlement, based on the terms set forth herein, is in the best interests of the Settlement Class.

7.2 Monetary Relief. Within thirty (30) days of the entry of the Final Approval Order by the Court, Defendant shall pay a non-reversionary amount of \$500,000 (Five Hundred Thousand Dollars 00/100) in settlement of the Litigation (the "Gross Settlement Fund"). From the Gross Settlement Fund, the following will be deducted upon approval by the Court (1) attorneys' fees of up to the amount approved by the Court and other costs associated with the settlement up to \$200,000 as set forth in Section 8.1 below; and (2) an Incentive Award in the amount of up to \$7,500 to Plaintiff as set forth in Section 8.3 below. The remainder (the "Net Settlement Fund"), estimated to be approximately \$292,500, will be paid out to Settlement Class Members as follows:

7.2.1 Each Settlement Class Member who held an escrow account with Defendant for less than one (1) year during the Class Period will receive \$25.

7.2.2 Each Settlement Class Member who held an escrow account with Defendant for at least one (1) year but less than two (2) years during the Class Period will receive \$50.

1 7.2.3 Each Settlement Class Member who held an escrow account with Defendant for
2 at least two (2) years but less than three (3) years during the Class Period will receive \$75.

3 7.2.4 Each Settlement Class Member who held an escrow account with Defendant for
4 at least three (3) years but less than four (4) years during the Class Period will receive \$100.

5 7.2.5 Each Settlement Class Member who held an escrow account with Defendant for
6 four (4) or more years during the Class Period will receive \$125.

7 7.2.6 If the Net Settlement Fund is not exhausted, then each payment to Settlement
8 Class Members will be proportionately increased pro rata. If the total amount to be paid to Settlement
9 Class Members pursuant to the formula set forth in Sections 7.2.1 through 7.2.5 exceeds the Net
10 Settlement Amount, then each payment to Settlement Class Members will be proportionately
11 decreased pro rata. If any amounts remain in the Net Settlement Fund following the pro rata
12 distribution to settlement class members described in this paragraph, then the remainder shall be
13 awarded cy pres to Public Citizen for work by Public Citizen whose benefit will be intended to include
14 California consumers (or some other non-profit, public benefit corporation nominated by Class
15 Counsel and approved by the Court).

16 7.2.7 Plaintiff and Class Counsel acknowledge that the Gross Settlement Fund is
17 based upon the aggregate escrow balances provided to Class Counsel on June 27, 2019, which reflect
18 the total escrow monthly balances from March 31, 2015 through March 31, 2019. If the Final Approval
19 Order is entered by the Court, Defendant shall change its policy for the operation of its escrow
20 accounts for loans secured by one to four family residential properties located in California as
21 described in Section 7.3 below.

22 7.2.8 Defendant shall provide the payments to Settlement Class Members described in
23 Sections 7.2.1 through 7.2.6 above within thirty (30) days of the Effective Date of the settlement by
24 depositing the settlement payments directly into the escrow account(s) of each Settlement Class
25 Member. If a Settlement Class Member no longer holds an escrow account with Defendant, then
26 Defendant shall provide the settlement payment via check to the Settlement Class Member's postal
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address on record with Defendant. Any checks returned to Defendant unpaid will be distributed to Public Citizen pursuant to the provisions of Section 7.2.6 above.

7.3 Non-Monetary Relief. Within thirty (30) days of the Court's Final Approval Order, Defendant shall begin paying at least 2% simple interest per annum on the escrow accounts that have a positive balance for loans secured by one to four family residential properties located in California. However, in accordance with California Civil Code Section 2954.8, such interest shall be credited to borrower's account annually or upon termination of such account, whichever is earlier. Notwithstanding the foregoing, Defendant shall retain the right to revisit its policy of paying interest (including whether to pay interest and the amounts of such interest payments) on escrow accounts for loans secured by one to four family residential properties located in California at any time in accordance with changes in any applicable legal obligations of Defendant.

7.4 Defendant agrees to provide a declaration or another form of evidence demonstrating the monetary value associated with its change in policy to begin paying at least 2% simple interest per annum on the escrow accounts for loans secured by one to four family residential properties located in California.

7.5 Upon execution of this Settlement Agreement, Daniel McSwain shall be free to refinance his property loan currently held by Defendant.

8. Award of Fees and Expenses to Class Counsel and Incentive Award to Plaintiff

8.1 An award of Class Counsel's Fees shall be made from the Gross Settlement Fund to Class Counsel. Class Counsel may make an application for an award of Class Counsel's Fees in the Litigation not to exceed \$200,000. If this Court approves Class Counsel's Fees in an amount lower than \$200,000, then the difference shall become part of the Net Settlement Fund. Subject to the terms and conditions of this Settlement Agreement and any order of the Court, Class Counsel's Fees shall be paid by Defendant within ten (10) days after the Final Approval Order, notwithstanding an appeal. Should the Final Judgment approving the Settlement be reversed on appeal, Class Counsel shall repay Class Counsel's Fees to Defendant within ten (10) days of the order of reversal on appeal. Should

1 Class Counsel's Fees be reduced on appeal, Class Counsel shall repay into the Net Settlement Fund an
2 amount equal to the reduction ordered by the appellate court within ten (10) days of the order of
3 reversal on appeal.

4 8.2 Class Counsel shall have the sole and absolute discretion to allocate and distribute Class
5 Counsel's Fees among Plaintiff's Counsel and any other attorney for Plaintiff.

6 8.3 Class Counsel will ask the Court for an Incentive Award from the Gross Settlement
7 Fund to Plaintiff Daniel McSwain in the amount of up to \$7,500. Any Incentive Award approved by
8 the Court shall be paid from the Settlement Fund within ten (10) days after the Effective Date. If this
9 Court approves the Incentive Award in an amount lower than \$7,500, then the difference shall become
10 part of the Net Settlement Fund. Should the Final Judgment approving the Settlement be reversed on
11 appeal, Plaintiff shall immediately repay the Incentive Award to Defendant. Should the Incentive
12 Award be reduced on appeal, Plaintiff shall repay into the Net Settlement Fund an amount equal to the
13 reduction ordered by the appellate court within ten (10) days of the order of reversal on appeal.
14 Defendant makes no representations regarding the tax effect, if any, of the Incentive Award on
15 Plaintiff and is not responsible for payment of any such taxes.

16 **9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

17 9.1 In the event this Settlement Agreement is not approved by the Court or the Settlement
18 set forth herein is terminated or fails to become effective in accordance with its terms, the Settling
19 Parties shall be restored to their respective pre-settlement positions in the Litigation, including with
20 regard to any agreements concerning tolling and similar agreements, and this entire Settlement
21 Agreement shall become null and void. The class certification agreed to in this Settlement Agreement
22 shall be null and void and such class shall be decertified, without prejudice to Plaintiff's right to
23 petition the Court for class certification via a motion for class certification..

24 9.2 Defendant's Option to Cancel Settlement. If ten percent (10%) or more of the total
25 number of Settlement Class Members opt-out of the settlement of this Litigation as provided in Section
26 5.1 above, Defendant shall, at its sole and absolute discretion, have the option of cancelling each of the
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1 following: (i) this Settlement Agreement; (ii) the Memorandum of Understanding; and/or (iii) the
2 addendum to the Memorandum of Understanding. Should Defendant exercise its option to cancel the
3 aforementioned agreements, the class certification agreed to in those agreements shall be null and void
4 and such class shall be decertified, without prejudice to Plaintiff's right to petition the Court for class
5 certification via a motion for class certification.

6 9.3 The Settling Parties and their counsel agree to cooperate fully with one another and to
7 use their best efforts to effectuate the Settlement, including, without limitation, in seeking the
8 preliminary approval and final approval of the Settlement, carrying out the terms of this Settlement
9 Agreement, and promptly agreeing upon and executing all such other documentation as may be
10 reasonably required to obtain final approval by the Court of the Settlement. The Settling Parties shall
11 cooperate in good faith and undertake all reasonable actions and steps in order to accomplish the
12 events described in this Settlement Agreement.

13 10. Releases

14
15 10.1 Plaintiff Daniel McSwain. From the beginning of time to the date Final Judgment is
16 entered by the Court, Plaintiff fully and finally releases the Released Parties, from any and all claims,
17 known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law,
18 or other source of law ("Plaintiff's Released Claims"). Plaintiff's Released Claims include, but are not
19 limited to, all claims arising from or related to the Litigation. Plaintiff's Released Claims include, but
20 are not limited to, all claims for unpaid interest related to his escrow account with Defendant and/or for
21 violation of section 2954.8 of the California Civil Code.

22 Plaintiff's Released Claims include all claims, whether known or unknown. Even if Plaintiff
23 discovers facts in addition to or different from those that he now knows or believes to be true with respect
24 to the subject matter of Plaintiff's Released Claims, those claims will remain released and forever barred.
25 Thus, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of
26 the California Civil Code, which reads:
27
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
2 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
3 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN
4 BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
5 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

6 10.2 Settlement Class Members. As of the Effective Date, all Settlement Class Members
7 fully and finally release the Released Parties from any and all claims, known and unknown, under
8 federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law
9 arising from Defendant's alleged failure to comply with section 2954.8 of the California Civil Code
10 ("Class Released Claims"). The Class Released Claims include, but are not limited to, all claims
11 arising from or related to the Action. The Class Released Claims include, but are not limited to, all
12 claims for unpaid interest related to the Settlement Class Members' residential escrow accounts with
13 Defendant. The Class Released Claims exclude the release of claims the release of which is not
14 permitted by applicable law.

15 The Class Released Claims include all claims, whether known or unknown arising from
16 Defendant's alleged failure to comply with section 2954.8 of the California Civil Code. Even if Class
17 Members discover facts in addition to or different from those that they now know or believe to be true
18 with respect to the subject matter of the Settlement Class Members' Released Claims, those claims will
19 remain released and forever barred. Thus, Settlement Class Members expressly waive and relinquish
20 the provisions, rights and benefits of section 1542 of the California Civil Code, which reads

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
22 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
23 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN
24 BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
25 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

1 **11. Confirmatory Discovery**

2 11.1 Defendant shall provide a declaration, under oath, of an appropriate employee at Axos
3 Bank that sets forth, *inter alia*, information concerning (i) the aggregate number of escrow accounts
4 within the Settlement Class; (ii) the aggregate number of Class Members; (iii) the aggregate escrow
5 balances for escrow accounts within the Settlement Class, calculated for each month of the Class
6 Period; (iv) the number of Class Members who fall within each of the settlement payment tiers
7 described in Sections 7.2.1 through 7.2.5 of this Agreement; and (v) the estimated future value of
8 Defendant's policy to being paying interest pursuant to Section 7.4 of this Agreement.

9 **12. Applicable Law**

10 12.1 This Agreement shall be governed by and interpreted, construed, and enforced pursuant
11 to the laws of the State of California.

12 **13. Representations**

13 13.1 The Settling Parties represent that they have each read this Settlement Agreement and
14 are fully aware of and understand all of its terms and the legal consequences thereof. The Settling
15 Parties represent that they have consulted or have had the opportunity to consult with and have
16 received or have had the opportunity to receive advice from legal counsel in connection with their
17 review and execution of this Settlement Agreement.

18 13.2 The Settling Parties have not relied on any representations, promises or agreements
19 other than those expressly set forth in this Settlement Agreement.

20 13.3 The Plaintiff, on behalf of the Settlement Class Members, represents that he has made
21 such inquiry into the terms and conditions of this Settlement Agreement as he deems appropriate, and
22 that by executing this Settlement Agreement, he believes the Settlement Agreement and all the terms
23 and conditions set forth herein, are fair and reasonable to all Settlement Class Members.

24 13.4 The Plaintiff represents that he has no conflicts or other personal interests that would in
25 any way impact his representation of the Class in connection with the execution of this Settlement
26 Agreement.

1 13.5 Defendant represents and warrants that it has obtained all corporate authority necessary
2 to execute this Settlement Agreement.

3 **14. Severability**

4
5 14.1 With the exception of the releases set forth in Section 10 above, in the event any one or
6 more of the provisions of this Settlement Agreement is determined to be invalid, illegal or
7 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions
8 contained in this Agreement will not in any way be affected or impaired thereby. If Section 10 of this
9 Agreement is found to be invalid, illegal or unenforceable, then the entire Settlement Agreement shall
10 be null and void. Class Counsel and Plaintiff shall be required to return to Defendant the Class
11 Counsel Fees and/or the Incentive Award within ten (10) days of any Court determination that Section
12 10 of the Settlement Agreement is invalid, illegal or unenforceable.

13 **15. Miscellaneous Proceedings**

14 15.1 Pending entry of the Preliminary Approval Order and the entry of Final Judgment, the
15 Settling Parties agree to stay all proceedings in this Litigation, except those incident to the Settlement
16 itself.

17 15.2 The Settling Parties agree to use their best efforts to prevent, stay, or seek dismissal of,
18 or to oppose entry of any interim or final relief in favor of, any claim by any member of the Settlement
19 Class in any litigation that would be barred by the releases contemplated by this Settlement
20 Agreement, and any other litigation against any of the Parties challenging the Settlement, or that
21 otherwise involves, directly or indirectly, a Class Released Claim.

22 15.3 The Settling Parties and their undersigned counsel agree to undertake their best efforts
23 and mutually cooperate to promptly effectuate this Settlement Agreement and the terms of the
24 Settlement set forth herein, including taking all steps and efforts contemplated by this Settlement
25 Agreement and any other steps and efforts which may become necessary by order of the Court or
26 otherwise.
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1 15.4 The undersigned represent that they are fully authorized to execute and enter into the
2 terms and conditions of this Settlement Agreement.

3 15.5 This Settlement Agreement contains the entire agreement among the Settling Parties
4 and supersedes any prior agreements or understandings between them (including, without limitation,
5 the MOU and the addendum thereto). All terms of this Settlement Agreement are contractual and not
6 mere recitals and shall be construed as if drafted by all Settling Parties. The presumption found in
7 California Civil Code Section 1654 that uncertainties in a contract are interpreted against the party
8 causing an uncertainty to exist is hereby waived by all Settling Parties.

9 15.6 The terms of this Settlement Agreement are and shall be binding upon each of the
10 Settling Parties, successors and assigns, and upon all other persons claiming any interest in the subject
11 matter through any of the Settling Parties, including any Settlement Class member.

12 15.7 Whenever this Settlement Agreement requires or contemplates that one Settling Party
13 shall or may give notice to the other, notice shall be provided by email, or next day (excluding Sunday)
14 express delivery service as follows:

15 If to Plaintiff, then to:

16 Ronald A. Marron

17 **LAW OFFICES OF RONALD A. MARRON, APLC**

18 651 Arroyo Drive

19 San Diego, California 92103

20 ron@consumersadvocates.com

21
22 If to Defendant, then to:

23 Alejandro E. Moreno

24 **SHEPPARD, MULLIN, RICHTER & HAMPTON LLP**

25 501 West Broadway, 19th Floor

26 San Diego, California 92101

27 AMoreno@sheppardmullin.com
28

1 15.8 The time periods and dates described in this Settlement Agreement with respect to the
2 giving of notices and hearings are subject to approval and change by the Court or by the written
3 agreement of Class Counsel and Defendant's counsel, without notice to Settlement Class Members.
4 The Settling Parties reserve the right, by agreement and subject to the Court's approval, to grant any
5 reasonable extension of time that might be needed to carry out any of the provisions of this Settlement
6 Agreement.

7 15.9 All time periods set forth herein shall be computed in calendar days unless otherwise
8 expressly provided. In computing any period of time prescribed or allowed by this Settlement
9 Agreement or by order of the Court, the day of the act, event, or default from which the designated
10 period of time begins to run shall not be included. The last day of the period so computed shall be
11 included, unless it is a Saturday, Sunday, or legal holiday or, when the act to be done is the filing of a
12 paper in Court, a day in which weather or other conditions have made the Office of the Clerk or the
13 Court inaccessible, in which event the period shall run until the end of the next day.

14 15.10 The Settling Parties, their successors and assigns, and their attorneys undertake to
15 implement the terms of this Settlement Agreement in good faith and to use good faith in resolving any
16 disputes that may arise in the implementation of the terms of this Settlement Agreement.

17 15.11 This Settlement Agreement may be amended or modified only by a written instrument
18 signed by Class Counsel and Defendant's counsel. Amendments and modifications may be made
19 without additional notice to the Settlement Class Members unless such notice is required by the Court.

20 15.12 Neither this Settlement Agreement nor any act performed or document executed
21 pursuant to or in furtherance of this Settlement Agreement: (a) is or may be deemed to be or may be
22 used as an admission or evidence of the validity of any Released Claim, or of any wrongdoing or
23 liability of Defendant, or of the propriety of Class Counsel maintaining the Litigation as a class action;
24 or (b) is or may be deemed to be or may be used as an admission or evidence of any fault or omission
25 of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency,
26 or other tribunal, except that Defendant may file this Settlement Agreement or the Final Judgment in
27 any action that may be brought against any Released Party in order to support a defense or
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1 counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement,
2 judgment bar, or reduction, or any other theory of claim preclusion, issue preclusion, or similar defense
3 or counterclaim.

4 15.13 Neither Plaintiff nor Plaintiff's counsel shall issue any press release or announcement of
5 any kind related in any way to the Settlement. Plaintiff and Plaintiff's counsel agree that, prior to
6 preliminary approval of the settlement, they will keep the terms of this settlement confidential except
7 for purposes of communicating with Plaintiff only. Plaintiff shall be informed that the settlement is
8 confidential and shall be advised to keep the settlement confidential. From and after preliminary
9 approval of the settlement, the Class Members (including Plaintiff and Class Counsel) may: (1) as
10 required by law; (2) as required under the terms of the settlement; or (3) as required under counsel's
11 duties and responsibilities as Class Counsel, comment regarding the specific terms of the settlement.
12 Nothing in this Paragraph is intended to interfere with Class Counsel's duties and obligations to
13 faithfully discharge their duties as Class Counsel, including but not limited to, communicating with
14 Class Members regarding the Settlement.

15 15.14 The Court shall retain jurisdiction with respect to the implementation and enforcement
16 of the terms of this Settlement Agreement, and all Settling Parties hereto submit to the jurisdiction of
17 the Court for purposes of implementing and enforcing the settlement embodied in this Settlement
18 Agreement.

19 15.15 Notwithstanding the dates of execution by the undersigned, this Settlement Agreement
20 shall be deemed to have been executed and go into force on June 26, 2020, so long as all signatories
21 below have affixed their signature.

22 15.16 This Settlement Agreement may be executed in counterparts, each of which shall
23 constitute an original.
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1 **IN WITNESS THEREOF**, the Settling Parties hereto have caused this Settlement Agreement
2 to be executed by their duly authorized representatives.

3
4 **UNDERSTOOD AND AGREED:**

5 Dated: 6/15/2020

6 By: Eilo
Representative of Defendant Axos Bank

7
8
9 Dated: 6/16/2020

10 By: Daniel McSwain
Plaintiff Daniel McSwain

11
12 **LAW OFFICES OF RONALD A. MARRON**

13 Dated: 6/16/2020

14 By: Ronald A. Marron
Ronald A. Marron
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Email: ron@consumersadvocates.com
Counsel for Plaintiff and the Class

15
16
17
18
19 **LAW OFFICE OF MICHAEL G. OLINIK**

20
21 Dated: 6/16/2020

22 By: Michael G. Olinik
Michael G. Olinik
3443 Camino Del Rio South, Ste. 101
San Diego, California 92108
Telephone: (619) 780-5523
Email: michael@oliniklaw.com
Counsel for Plaintiff and the Class

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Dated: June 17, 2020

By: 

Alejandro E. Moreno
501 West Broadway, 19th Floor
San Diego, California 92101
Telephone: (619) 338-6500
Email: AMoreno@sheppardmullin.com
Counsel for Defendant Axos Bank

EXHIBITS

EXHIBIT A: Notice

EXHIBIT B: [Proposed] Preliminary Approval Order

EXHIBIT A

NOTICE OF PROPOSED CLASS LITIGATION SETTLEMENT

Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012 v. Axos Bank, fka Bank of the Internet, USA, Case No. 37-2019-00015784-CU-BC-CTL
Superior Court of the State of California for the County of San Diego

THIS NOTICE CONCERNS YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.

*A court authorized this Notice. It is not a solicitation from a lawyer. **YOU ARE NOT BEING SUED.***

IF YOU obtained a loan from Defendant Axos Bank (“Axos”) and/or had a loan serviced by Axos at any time from March 25, 2015 until [date] (the “Class Period”), which was secured by a one-to-four-family residential property located in the State of California and had an escrow or impound account on such loan that received money in advance for payment of taxes and assessments on the property, for insurance, or for other purposes relating to the property, and which at any time within the Class Period had a positive balance in such account, not including escrow accounts for loans held by Axos employees, officers, or directors, **YOU MAY BE ENTITLED TO A CASH PAYMENT.**

This Settlement resolves a lawsuit against Axos alleging that Axos violated section 2954.8(a) of the California Civil Code because it failed to pay borrowers a minimum of 2% simple interest per annum on the amounts in its borrowers’ escrow accounts for loans secured by 1-4 unit residential properties located in California.

Axos denies the allegations, denies engaging in any wrongdoing and specifically contends that section 2954.8(a) of the California Civil Code is preempted by federal law. Nonetheless, it has agreed to settle this action to avoid the cost and uncertainty of litigation. The parties have reached a settlement that would provide monetary recovery as detailed below in exchange for a waiver and release of your claims. By participating in the Settlement, you waive and release any claims against Axos concerning the allegations in the lawsuit.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	<u>If you do nothing, you will automatically receive a payment pursuant to the terms of the Settlement Agreement</u> and you will also give up your right to sue Axos on your own regarding any claims that are part of the Settlement.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY [DATE]	If you ask to be excluded, you will not be bound by what the Court does in this case and will keep any right you might have to sue Axos separately about the legal claims in this lawsuit. If there is a recovery in this case, including under the proposed Settlement, you will not share in that recovery.
OBJECT OR COMMENT BY [DATE]	You may file a written Objection no later than [date] and/or appear at the Final Approval Hearing to tell the Court why you believe the proposed Settlement is unfair, unreasonable, or inadequate. If you ask to be excluded from the Class (i.e., “opt out”), you may not file an Objection.

- These rights and options, **and the deadlines to exercise them**, are further explained in this Notice.
- The Court is in charge of this Litigation and still has to decide whether to approve the Settlement. The settlement benefits will be made available if the Court approves the Settlement and after any appeals are resolved.
- The terms of the Settlement may be subject to change and persons that remain in the Settlement Class will be bound by those changes.
- If you have any questions, then please read on and visit www.xxxx.com.

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BASIC INFORMATION

1. Why did I receive this Notice?

If you obtained a loan from Axos and/or had a loan serviced by Axos at any time from March 25, 2015 until [date] (the “Class Period”) which was secured by a one-to-four-family residential property located in the State of California and had an escrow or impound account on such loan that received money in advance for payment of taxes and assessments on the property, for insurance, or for other purposes relating to the property, and which at any time within the Class Period had a positive balance in such account (not including escrow accounts for loans held by Axos employees, officers, directors or any other persons who have participated in Axos’s internal employee loan program), then you have a right to know about a proposed settlement in this class action lawsuit and your options.

You also may have received this Notice because you were identified by Axos as being a member of the Settlement Class.

The Court ordered that you be given this Notice because you have a right to know about a proposed settlement of this class action lawsuit and your options in relation to that lawsuit before the Court decides whether to give its final approval to the settlement. If the Court approves the settlement, and after objections and appeals are resolved, you may be entitled to a monetary payment.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What is this lawsuit About?

The Plaintiff who filed the lawsuit alleges that Axos violated section 2954.8(a) of the California Civil Code because it failed to pay borrowers a minimum of 2% simple interest per annum on the amounts in its borrowers’ escrow accounts for loans secured by 1-4 unit residential properties located in California.

Axos denies the allegations, denies engaging in any wrongdoing and specifically contends that section 2954.8(a) of the California Civil Code is preempted by federal law. The Court has not made any ruling on the merits of the lawsuit. To avoid the expense of further litigation, the parties have reached a settlement that is further described in this Notice.

3. What Is a Class Action and Who Is Involved?

In a class action lawsuit, one or more people, called Class Representatives (in this case Plaintiff Daniel McSwain) represent the interests of similarly situated people who may have the same claims in common, but have not filed a lawsuit. All of these people are collectively referred to as a class. The people who file the lawsuit are called Plaintiffs. The company or persons they sue are called the Defendants. A single court resolves the issues for everyone in the class—except for those people who choose to exclude themselves from the class.

4. Why Is There a Proposed Settlement?

The Court has not decided in favor of either side. Axos denies all allegations in the lawsuit. Axos is settling simply to avoid the expense, inconvenience, and inherent risk of litigation, as well as the related disruption to its business. The Class Representative and his attorneys assert that the proposed Settlement is in the best interests of the Class because it provides an appropriate recovery now while avoiding the risk, expense, and delay of pursuing a lawsuit through trial and any appeals. There would be no guarantee of success for either side if the lawsuit were pursued through trial and any appeals.

WHO IS COVERED BY THE PROPOSED SETTLEMENT

To see if you are entitled to a monetary payment, you first have to determine if you are a member of the Settlement Class.

5. How Do I Know If I Am Part of the Proposed Settlement?

You are a part of the Settlement Class if you obtained a loan from Axos and/or had a loan serviced by Axos at any time from March 25, 2015 until [date] (the “Class Period”) which was secured by a one-to-four-family residential property located in the State of California and had an escrow or impound account on such loan that received money in advance for payment of taxes and assessments on the property, for insurance, or for other purposes relating to the property, and which at any time within the Class Period had a positive balance in such account.

You are not a part of the Settlement Class if you are (1) are a judicial officer presiding over the Litigation, (2) Axos and any of the Released Parties defined in this notice, and each of their current or former officers, directors, and employees; (2) legal representatives, successors, or assigns of any such excluded person, and (4) if you properly execute and send a timely Request for Exclusion.

THE PROPOSED SETTLEMENT BENEFITS

6. What Does the Proposed Settlement Provide?

Settlement Fund

The proposed settlement will provide for the non-reversionary amount of \$500,000 to be paid into a Gross Settlement Fund.

From the Gross Settlement Fund, the following will be deducted upon approval by the Court (1) attorneys’ fees of up to the amount approved by the Court and other costs associated with the settlement no greater than \$200,000; and (2) an Incentive Award in the amount of up to \$7,500 to Plaintiff Daniel McSwain. After these deductions, a Net Settlement Fund will total approximately \$292,500 and the Net Settlement Fund will be used to make Settlement Payments to Settlement Class Members.

Payments to Settlement Class Members

Subject to Court approval, the entire Net Settlement Fund shall be available for distribution to the Settlement Class Members and distributed as follows:

- Each Settlement Class Member who held an escrow account with Axos for less than one (1) year during the Class Period will receive \$25.
- Each Settlement Class Member who held an escrow account with Axos for at least one (1) year but less than two (2) years during the Class Period will receive \$50.
- Each Settlement Class Member who held an escrow account with Axos for at least two (2) years but less than three (3) years during the Class Period will receive \$75.
- Each Settlement Class Member who held an escrow account with Axos for at least three (3) years but less than four (4) years during the Class Period will receive \$100.
- Each Settlement Class Member who held an escrow account with Axos for four (4) or more years during the Class Period will receive \$125.

If the Net Settlement Fund is not exhausted, then each payment to Settlement Class Members will be proportionately increased pro rata. If the total amount to be paid to Settlement Class Members pursuant to the formula above exceeds the Net Settlement Fund, then each payment to Settlement Class Members will be proportionately decreased pro rata. If any amounts remain in the Net Settlement Fund following the pro rata distribution to settlement class members described in this paragraph, then the remainder shall be awarded cy pres to Public Citizen for work by Public Citizen whose benefit will be intended to include California consumers (or some other non-profit, public benefit corporation nominated by Class Counsel and approved by the Court).

Class Members who do not opt-out of the Settlement will automatically receive a share of the Net Settlement Fund.

Non-Monetary Relief

Within thirty (30) days of the Court's Final Approval Order, Axos shall begin paying at least 2% simple interest per annum on the escrow accounts that have a positive balance for loans secured by one-to-four-family residential properties located in California. However, in accordance with California Civil Code Section 2954.8(a), such interest shall be credited to borrower's account annually or upon termination of such account, whichever is earlier. Notwithstanding the foregoing, Axos shall retain the right to revisit its policy of paying interest (including whether to pay interest and the amounts of such interest payments) on escrow accounts for loans secured by one-to-four-family residential properties located in California at any time in accordance with changes in any applicable legal obligations of Axos.

Incentive Award to Class Representative Daniel McSwain

Subject to Court approval, Class Counsel is seeking an Incentive Award from the Gross Settlement Fund to Plaintiff Daniel McSwain in the amount of \$7,500.

SETTLEMENT CLASS MEMBERS WILL AUTOMATICALLY RECEIVE A PAYMENT

7. How Can I Obtain a Portion of the Settlement?

Settlement Class Members will automatically receive a settlement payment from Axos. Axos must provide the payments to Settlement Class Members within thirty (30) days of the Effective Date of the settlement by depositing the settlement payments directly into the escrow account(s) of each Settlement Class Member. If a Settlement Class Member no longer holds an escrow account with Axos, then Axos will provide the settlement payment via check to the Settlement Class Member's last known postal address on record with Axos. Any checks returned to Axos unpaid will be distributed *cy pres* to Public Citizen.

8. Do I Need to Fill Out a Claim Form?

No, Settlement Class Members do not need to fill out a claim form. Settlement Class Members will automatically receive a settlement payment from Axos as described in Section 7 above.

YOUR RIGHTS AND CHOICES - EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT

If you do not want to receive any of the benefits from the Settlement, and you want to preserve the right to sue Axos about the subject matter of this lawsuit, then you must take affirmative steps to opt out of the Settlement.

9. How Do I Exclude Myself From the Settlement?

To exclude yourself from the Settlement Class, you must submit a Request for Exclusion to Class Counsel stating your intention to be "excluded" from the Settlement. The Request for Exclusion must contain your name, current address, and telephone number. The Request for Exclusion must be personally signed by you and dated, mailed, and postmarked to Class Counsel at the following address on or before [date]:

LAW OFFICES OF RONALD A. MARRON, APLC

ATTN: Axos Settlement

651 Arroyo Drive

San Diego, California 92103

You cannot exclude yourself by telephone or by e-mail. Your Request for Exclusion must be on behalf of yourself. You may not include multiple persons on a single Request for Exclusion.

If you ask to be excluded, you will not get any payment from the Settlement Fund, and you cannot object to the Settlement. You will not be legally bound by anything that happens in the Settlement

or this lawsuit. You may be able to sue (or continue to sue) Axos in the future on the claims asserted in this action.

10. If I Don't Exclude Myself, Can I Sue Axos Later?

If you do not properly and timely submit a Request for Exclusion, you waive your right to opt out, you will be deemed to be a member of the Settlement Class, you give up the right to sue Axos for the claims the Settlement resolves, and you will be bound by the terms of the Settlement Agreement. If you have a pending lawsuit against Axos, other than this lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Settlement Class to continue your own lawsuit. Remember, any Request for Exclusion must be signed, mailed, and postmarked or submitted online by no later than [REDACTED], 2020.

11. If I Exclude Myself, Can I Get a Payment from the Settlement Fund?

No. If you exclude yourself, you are not eligible for any payment from the Settlement Fund.

YOUR RIGHTS AND CHOICES - OBJECTING TO THE PROPOSED SETTLEMENT

You can tell the Court that you object to the Settlement or any particular part of it.

12. How Do I Tell the Court That I Object to the Proposed Settlement?

If you are a member of the Settlement Class, you may object to the Settlement. In doing so, you must give reasons why you think the Court should not approve it, and the Court will consider your views.

To object, you must file an objection accompanied by documents or other evidence, as well as any factual or legal argument you intend to rely upon in making your Objection. Your objection must include the following:

- (i) a reference, in its first sentence, to the Litigation, *McSwain v. Axos Bank*, Case No. 37-2019-00015784-CU-BC-CTL;
- (ii) Your full, legal name, residential address, telephone number, and email address (and the Your lawyer's name, business address, telephone number, and email address if objecting through counsel);
- (iii) a statement describing your membership in the Settlement Class, including a verification under oath as to your escrow account number(s);
- (iv) a written statement of all grounds for the Objection, accompanied by any legal support for such Objection;
- (v) copies of any papers, briefs, or other documents upon which the Objection is based;

- (vi) a list of all persons who will be called to testify in support of the Objection;
- (vii) a statement of whether you intend to appear at the Final Approval Hearing, and if you are objecting through counsel, you must also state the identity of all attorneys who will appear at the Final Approval Hearing on your behalf;
- (viii) a list of the exhibits you will offer during the Final Approval Hearing, along with copies of such exhibits; and
- (ix) your signature.

In addition, if applicable, you must include with your Objection (i) the identity of all counsel who represent you, including former or current counsel who may be entitled to compensation for any reason related to the Objection; (ii) a detailed list of any other objections you or your counsel have submitted to any other class actions submitted in any court, whether state or federal, in the United States, in the previous five (5) years.

If you choose to object through a lawyer, you must pay for the lawyer yourself.

Your Objection must be signed and mailed to the Court, along with any supporting documents, so that it is received no later than [REDACTED], 2020 by the Court at:

Clerk of Court
Superior Court of California
County of San Diego
330 West Broadway
San Diego, CA 92101

A copy of your Objection **must** also be signed and mailed, along with any supporting documents to each of the following two addresses, so **that is received by each of them no later than** [REDACTED], 2020:

Counsel for Plaintiff and the Settlement Class

LAW OFFICES OF RONALD A. MARRON, APLC

ATTN: Axos Settlement
651 Arroyo Drive
San Diego, California 92103

THE LAW OFFICES OF MICHAEL G. OLINIK

ATTN: Michael G. Olinik
3443 Camino Del Rio S., Ste. 101
San Diego, CA 92108
Tel: (619) 780-5523

Counsel for Axos Bank

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

ATTN: Alejandro E. Moreno
RE: Axos Settlement
501 West Broadway, 19th Floor
San Diego, California 92101

13. What's the Difference Between Objecting and Excluding?

Objecting is explaining to the Court why you do not believe it should approve the Settlement. You can object only if you stay in the Settlement Class.

Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you will not be eligible to file an Objection or to appear at the Final Approval Hearing.

YOUR RIGHTS AND CHOICES - APPEARING IN THIS LAWSUIT

14. Can I Appear or Speak in the lawsuit About the Proposed Settlement?

As long as you do not exclude yourself, you can (*but do not have to*) participate and speak for yourself in the lawsuit about the proposed Settlement. This is called making an appearance. You can also have your own lawyer appear in court and speak for you, but you must pay for the lawyer yourself.

15. How Can I Appear in this lawsuit?

If you want to participate or speak in this lawsuit, either individually or through your own lawyer (*instead of Class Counsel*), you must file a "Notice of Appearance" with the Court. The Notice of Appearance must contain the title of this lawsuit, a statement that you wish to appear at the Final Approval Hearing, and the signature of you or your lawyer.

Your Notice of Appearance can also state that you or your lawyer would like to speak at the Court's Final Approval Hearing on the proposed Settlement. If you submit an Objection (*see Question 12 above*) and would like to speak about the Objection at the Court's Final Approval Hearing, both your Notice of Appearance and your Objection should include that information.

Your Notice of Appearance must be signed, mailed, and postmarked by [REDACTED], 2020, to the Court at:

Clerk of Court
Superior Court of California
County of San Diego
330 West Broadway
San Diego, CA 92101

Copies of your Notice of Appearance **must also be mailed to** each of the individuals at the same two addresses appearing in Question 12.

IF YOU DO NOTHING

16. What Happens If I Do Nothing At All?

If you do nothing, you will automatically be included in the Settlement Class and receive a payment from the Settlement Fund. But unless you timely excluded yourself, you also will not be able to start a new lawsuit, continue with a lawsuit, or be part of any other lawsuit against Axos about the subject matter of this lawsuit ever again.

THE LAWYERS REPRESENTING YOU

17. Do I Have a Lawyer in this Case?

The Court has appointed the Law Offices of Ronald A. Marron, APLC and the Law Office of Michael G. Olinik as legal counsel for the Settlement Class. These law firms are called Class Counsel. You will not be charged for these lawyers.

18. How Will The Lawyers Be Paid?

Class Counsel has not yet received any payment for prosecuting this lawsuit, nor have they been reimbursed for any out-of-pocket expenses they have incurred. When they ask the Court to approve the Settlement, Class Counsel will also make a motion to the Court to approve and award attorneys' fees and a reimbursement of expenses to Class Counsel, in a total amount not to exceed \$200,000.00. No matter what the Court decides with regard to the requested attorneys' fees, members of the Settlement Class will never have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the Settlement on behalf of all members of the Settlement Class. You may hire your own lawyer to represent you in this lawsuit if you wish, but it will be at your own expense.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. Unless you have excluded yourself from the Class, you may have the right to attend or speak at the hearing, but do not have to do so.

19. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court overseeing this case will hold a Final Approval Hearing in Department 73 of the Superior Court of California for the County of San Diego located at 330 West Broadway, San Diego, CA 92101 on [REDACTED], 2020 to decide whether the Settlement is fair, reasonable, and adequate, as well as to determine the amount of attorneys' fees and costs and incentive fees to

award. If there are objections, the Court will consider them at the Final Approval Hearing. After the Final Approval Hearing, the Court will decide whether to approve the Settlement and whether to grant Class Counsel's request for attorneys' fees and expenses. We do not know how long it will take the Court to make these decisions.

20. Do I Have to Come to the Hearing?

You are not required to attend the hearing, but you are welcome to attend at your own expense. If you send an Objection, you do not have to appear in Court to present it. As long as you mailed your written Objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

FINAL SETTLEMENT APPROVAL

21. What Is The Effect of Final Settlement Approval?

If the Court grants final approval of the Settlement, all members of the Settlement Class will fully and finally release the Released Parties (as defined in the Settlement Agreement), including Axos, from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law arising from Axos' alleged failure to comply with section 2954.8 of the California Civil Code ("Class Released Claims"). The Class Released Claims include, but are not limited to, all claims arising from or related to the Litigation. The Class Released Claims include, but are not limited to, all claims for unpaid interest related to the Settlement Class Members' residential escrow accounts with Axos. The Class Released Claims exclude the release of claims the release of which is not permitted by applicable law.

The Class Released Claims include all claims, whether known or unknown arising from Axos's alleged failure to comply with section 2954.8 of the California Civil Code. Even if Class Members discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Settlement Class Members' Released Claims, those claims will remain released and forever barred. Thus, Settlement Class Members expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

If the Court does not approve the Settlement, this lawsuit will proceed as if no settlement had been attempted.

If the Settlement is not approved and litigation resumes, there is no guarantee of payment to the Settlement Class.

GETTING MORE INFORMATION

22. Are There More Details About the Settlement?

This Notice is only intended to provide a summary of the proposed Settlement. You may obtain the complete text of the Settlement Agreement at www.xxxx.com or from the court file, which is available for your inspection during regular business hours at the Superior Court of California for the County of San Diego, 330 West Broadway, San Diego, CA 92101, under the Civil Action Number 37-2019-00015784-CU-BC-CTL.

By visiting the website located at www.xxxx.com, you will find the Plaintiff's operative First Amended Complaint along with other material filings and orders entered in the Action.

PLEASE DO NOT CALL OR DIRECT ANY INQUIRIES TO THE COURT.

This Notice is given with the approval and at the direction of the Court.

EXHIBIT B

1 **LAW OFFICES OF RONALD A. MARRON**

2 RONALD A. MARRON (SBN 175650)

3 *ron@consumersadvocates.com*

4 MICHAEL T. HOUCHIN (SBN 305541)

5 *mike@consumersadvocates.com*

6 LILACH HALPERIN (SBN 323202)

7 *lilach@consumersadvocates.com*

8 651 Arroyo Drive

9 San Diego, California 92103

10 Telephone: (619) 696-9006

11 Facsimile: (619) 564-6665

12 Michael G. Olinik (SBN # 291020)

13 The Law Office of Michael G. Olinik

14 3443 Camino Del Rio South, Ste. 101

15 San Diego, CA 92108

16 Phone: (619) 780-5523

17 E-mail: michael@oliniklaw.com

18 *Attorneys for Plaintiff Daniel McSwain and*
19 *the Proposed Class*

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF SAN DIEGO - CENTRAL DIVISION**

22 DANIEL MCSWAIN, TRUSTEE OF THE
23 DANIEL S. MCSWAIN TRUST DATED JULY
24 17, 2012, on behalf of the trust and all others
25 similarly situated, and the general public;

26 Plaintiff,

27 v.

28 AXOS BANK, fka BANK OF INTERNET USA;
and DOES 1-10, INCLUSIVE,

Defendant.

Case No: 37-2019-00015784-CU-BC-CTL

[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL

Date: **DATE**

Time: 9:00 a.m.

Dept.: C-73

Judge: Hon. Joel R. Wohlfeil

On **DATE** at 9:00 a.m., in Department C-73 of the San Diego Superior Court, Plaintiff Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012's Unopposed Motion for Certification of the Settlement Class & Preliminary Approval of Class Settlement was heard. Based on the papers filed by the parties and oral argument, for good cause shown,

1 **IT IS HEREBY ORDERED:**

2 1. The Court preliminarily approves the Settlement Agreement of the parties and finds
3 that the range of the settlement is reasonable and merits final approval;

4 2. The Parties are directed to send Notice of this settlement to the Settlement Class in the
5 manner specified in Section 6 of the Settlement Agreement, which is attached as **Exhibit 1** to this
6 proposed order and incorporated herein;

7 3. Plaintiff Daniel McSwain, Trustee of the Daniel S. McSwain Trust Dated July 17, 2012
8 is determined to be a member of the Settlement Class and is provisionally appointed Class
9 Representative pursuant to Cal. Code Civ. P. § 382 to represent the members of the Settlement Class
10 in this action;

11 4. The Court hereby certifies the Settlement Class pursuant to Cal. Code Civ. P. § 382 for
12 the purposes of settlement only. Should the Court, for any reason, refuse to enter an order of final
13 approval of this class action settlement, or if such order is reversed or otherwise modified on appeal,
14 then the certification of the Settlement Class shall be null and void. Should this case proceed to
15 litigation, Plaintiff shall bear the burden of proving each of the elements necessary to certify the
16 proposed class and Axos reserves all of its rights to contest class certification. The Settlement Class is
17 defined as: all persons who obtained a loan from Defendant and/or had a loan serviced by Defendant
18 from March 25, 2015 until the date of this preliminary approval (the "Class Period"), which was
19 secured by a one-to-four-family residential property located in the State of California and had an
20 escrow or impound account on such loan that received money in advance for payment of taxes and
21 assessments on the property, for insurance, or for other purposes relating to the property, and which at
22 any time within the Class Period had a positive balance in such account. The Settlement Class
23 specifically excludes (1) any judicial officer presiding over the Litigation, (2) Defendant and Released
24 Parties, and each of their current or former officers, directors, and employees; (2) legal
25 representatives, successors, or assigns of any such excluded person, and (4) any person who properly
26 executes and sends a timely Request for Exclusion.

27 5. The Court hereby appoints The Law Offices of Ronald A. Marron, APLC and the Law
28 Office of Michael G. Olinik as class counsel for purposes of this settlement;

1 6. The Final Approval Hearing in this matter shall be scheduled for _____, 2020
2 at 9:00 a.m. in Department C-73 of the San Diego Superior Court, Hall of Justice, 330 West
3 Broadway, San Diego, CA 92101;

4 7. The briefing schedule for the Final Approval Hearing is as follows:

5 Moving Papers must be filed and served no later than _____, 2020.

6 Any opposition must be filed and served no later than _____, 2020.

7 Any and all objections must be filed and served no later than _____, 2020.

8 Any reply papers must be file and served no later than _____, 2020;

9 8. The Notice to the Class must be sent pursuant to Paragraph 6 of the Settlement
10 Agreement no later than 30 days from the date that this order is signed;

11 9. The proposed Notice to the Settlement Class is hereby approved. The Notice meets the
12 requirements of California Law and the Due Process Clause of the United States Constitution; is the
13 best practicable notice under the circumstances, and is reasonably calculated to apprise Settlement
14 Class members of the pendency of the Litigation and their right to object or opt out of participation in
15 the Settlement;

16 10. All Settlement Class members who wish to opt out of this Settlement Agreement must
17 submit their Requests for Exclusion to Class Counsel timely on or before _____, the
18 Objection/Exclusion Deadline, as specified in Section 5 of the attached Settlement Agreement;

19 11. Any Settlement Class member who wishes to object to the fairness, reasonableness, or
20 adequacy of the Settlement, Class Counsel's Fees, or the Incentive Award must file with the Court and
21 deliver to Class Counsel and Defendant's counsel a written statement of their Objection, as well as the
22 specific reason for such Objection, including legal support the Settlement Class Member wishes to
23 bring to the Court's attention, and evidence the Settlement Class Member wishes to introduce in
24 support of their Objection no later than _____, the Objection/Exclusion
25 Deadline;

26 12. Any Settlement Class member that does not timely submit a written Request for
27 Exclusion or Objection shall be bound by all proceedings, orders, and judgments in this action;

1
2 Dated: _____

Hon. Joel R. Wohlfeil
JUDGE OF THE SUPERIOR COURT