SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement" or "Settlement Agreement") is entered into by and between Simmons Bank, successor by merger to Landmark Bank (Simmons Bank known herein as "Simmons Bank," "Defendant," or "Landmark")), on the one hand, and Susanne Pace ("Pace"), and Patrick Flowers ("Flowers") (collectively Pace and Flowers known as "Plaintiffs," as defined herein), both individually and on behalf of the Settlement Class (as defined herein), and Dalton Pace ("Joint Owner"), on the other hand, subject to the Court's preliminary and final approval as required by Rule 52.08 of the Missouri Court Rules. As provided herein, Landmark, Class Counsel (as defined herein), Plaintiffs, and Joint Owner hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the court of a Final Approval Order and Judgment of Dismissal (as defined herein), all claims of the Settlement Class against Landmark in the action currently pending in the Circuit Court of Boone County, Missouri as *Susanne Pace v. Landmark Bank*, Case No. 20BA-CV00244 (the "*Pace* Litigation"), as well as the claims previously pending before the United States District Court for the Western District of Missouri as *Patrick Flowers v. Landmark Bank*, Case No. 2:20-cv-04025 (the "*Flowers* Litigation") (collectively *Pace* Litigation and *Flowers* Litigation known as the "Litigation" herein) shall be settled, compromised, and dismissed upon the terms and conditions contained herein.

I. RECITALS

The following recitals and the exhibits to this Agreement ("Exhibits") are material terms of this Settlement Agreement. Capitalized terms as used in these Recitals and the Exhibits hereto shall have the meaning ascribed to them herein and in the Definitions below. This Settlement Agreement is made with reference to, and in contemplation of, the following facts and circumstances:

1. On or about May 16, 2019, Pace added her son, Joint Owner, on her checking account at Landmark Bank.

2. Plaintiffs in this Litigation challenge overdraft fees charged on "Authorize Positive, Settle Negative" checking account transactions (APSN Transactions) (defined below) Landmark Bank used until February 14, 2020, to assess customers the Challenged Fees (defined below).

3. On January 14, 2020, Plaintiff Pace filed a Class Action Complaint (the "*Pace* Complaint") in the Circuit Court of Boone County, Missouri against Landmark Bank. The *Pace* Complaint alleges that, when a customer makes a purchase, Landmark Bank initially approves the transaction, "immediately reduces the consumer's checking account for the amount of the purchase, sets aside funds in the checking account to cover that transaction," (¶ 12), but then "charge[s] … [overdraft] Fees" if the transaction "purportedly settle[s] days later into a negative balance" due to intervening purchases. *Pace* Complaint, ¶ 62. Pace challenged six overdraft fees that she claims were improperly charged using this methodology. *Id.* ¶¶ 63, 65, 67. Based on these transactions, the *Pace* Complaint alleges one count for breach of contract (including breach of the implied duty of good faith and fair dealing). *Id.* ¶¶ 80–91. The *Pace* Complaint seeks to represent a putative class of "[a]ll citizens of Missouri who, during the applicable statute of limitations, were charged overdraft fees on the transactions that did not overdraw a Landmark Bank checking account." *Id.* ¶ 70.

4. On May 13, 2021, Pace filed a second class action complaint in the Circuit Court of Boone County, Missouri (Case No. 21BA-CV01667) against Landmark Bank (the "*Pace II* Litigation"), alleging that the bank purportedly charged multiple fees on an "item" processed on a checking account. With respect only to Pace and Joint Owner, this Settlement Agreement does not purport to settle or address the claims expressly asserted in the *Pace II* Litigation. Instead, Pace and Joint Owner separately entered into a

settlement agreement and release for the *Pace II* Litigation, which specifically releases, among other things, all claims expressly asserted in the *Pace II* Litigation.

5. On February 13, 2020, Plaintiff Flowers filed a complaint against Landmark Bank in the United States District Court for the Western District of Missouri ("*Flowers* Complaint"). The *Flowers* Complaint similarly alleged that: "[a]t the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Landmark immediately reduces account-holders' checking accounts for the amount of the purchase, sets aside funds in a checking account to cover that transaction, and as a result, the accountholder's displayed 'available balance' reflects that subtracted amount," (¶ 16); and that Landmark "later assesses [overdraft] Fees on those same transactions when they purportedly settle days later into a negative balance." *Flowers* Complaint, ¶ 18. Flowers identified one fee charged on November 26, 2019 as an "example" of an overdraft fee purportedly charged using this methodology (¶ 66), and on that basis alleged a single claim for Breach of Contract (including the covenant of good faith and fair dealing). *Id.* ¶¶ 78–86. The *Flowers* Complaint sought to represent a putative class of "Landmark Bank checking account holders who, within the applicable statute of limitations preceding the filing of this lawsuit, were charged [overdraft] Fees on [authorize positive, settle negative] [t]ransactions." *Id.* ¶ 67.

6. On February 14, 2020, Landmark Bank ("Landmark Bank") merged with and into Simmons Bank, with Simmons Bank as the surviving entity. Upon the consummation of such merger, the separate existence of Landmark Bank ceased; and as Landmark Bank's successor in interest as a result of the merger, Simmons Bank, assumed by operation of law Landmark Bank's position with respect to the Litigation.

7. On April 1, 2020, Landmark moved to dismiss the *Pace* Complaint on two grounds: (1) that Pace's claims were barred because she did not comply with her account agreement's notice and cure requirements; and (2) that Pace's account agreement unambiguously authorized the challenged fees.

8. On April 9, 2020, Landmark filed a motion to dismiss the *Flowers* Complaint or to stay that litigation. The motion asserted: (1) that the Court should abstain from adjudicating Flowers's claim because the same claim was already being addressed in the *Pace* Litigation, on behalf of a putative class of Missouri residents that included Flowers; (2) that Flowers's claim was barred because he failed to follow his account agreement's notice and cure provisions before filing suit; and (3) that Flowers's account agreement unambiguously authorized the challenged overdraft fee.

9. On April 16, 2020, Flowers filed a Non-Opposition to the Motion to Stay, explaining that, after Defendant filed its motion to dismiss or stay, counsel for Flowers and Landmark met and conferred and agreed that the *Flowers* Litigation should be stayed pending the resolution of the *Pace* Litigation.

10. On May 1, 2020, Flowers and Landmark appeared before the Honorable Nanette K. Laughrey and conveyed that they had agreed to dismiss the *Flowers* Complaint without prejudice. That same day, Flowers and Landmark filed—and the court in the *Flowers* Litigation granted—a joint motion to dismiss the *Flowers* Complaint without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2), and to toll the statute of limitations from February 13, 2020, through the earliest of the following events in *Pace*: (a) entry of judgment or dismissal; (b) denial of class certification; or (c) expiration of the time to opt-out of any certified class.

11. Meanwhile, in the *Pace* Litigation, the Court denied Landmark's motion to dismiss on May 31, 2020.

12. The parties in the *Pace* Litigation conducted discovery, including the exchange of written discovery responses and ESI, Landmark's production of a representative sample of transactional data for

its customers in Missouri, depositions of Pace and of Landmark's corporate representative, and exchange of the parties' respective expert reports (the reports of Arthur Olsen and Sonya Kwon). Prior to the *Pace* mediation in September 2021 and for purposes of facilitating a potential settlement of the Litigation, Landmark produced a representative sample of Landmark Bank transactional data for customers in the three states in which Landmark Bank operated.

13. On September 10, 2021, Pace filed a motion for class certification.

14. On September 22, 2021, Class Counsel and Landmark's Counsel participated in a full-day, good-faith mediation before the Honorable Wayne R. Andersen (Ret.), a JAMS mediator (the "Mediation"). At the conclusion of the Mediation, the Parties reached an agreement in principle to resolve both the *Pace* Litigation and the *Flowers* Litigation via a settlement fully, finally, and forever discharging and releasing all rights and claims of the Settlement Class Members on the terms as reflected herein—subject to a mutually acceptable written settlement agreement and preliminary and final approval by the Court as required by Rule 52.08 of the Missouri Court Rules.

15. The key terms of the Parties' proposed settlement were memorialized in an email prepared by Judge Andersen and sent to Class Counsel and Landmark's Counsel on September 22, 2021 (the "Settlement Email"). This Settlement Agreement supersedes the Settlement Email.

16. On September 27, 2021, Pace and Landmark appeared by video before the Court, and advised that they had reached a global settlement of the Litigation. The Court vacated all pretrial deadlines.

17. Plaintiffs' proposed Amended Class Action Complaint, a copy of which is attached hereto as Exhibit 1, and which Plaintiffs will file within five days of execution of this Agreement in the Circuit Court of Boone County, Missouri, shall serve as the operative complaint once approved by the Court. As with the *Pace* Complaint and *Flowers* Complaint, the Amended Class Action Complaint challenges Landmark Bank's historical use of the so-called "Authorize Positive, Settle Negative" methodology to assess customer overdraft fees. Landmark shall be under no obligation to answer the Amended Class Action Complaint.

18. Landmark denies any liability or wrongdoing of any kind associated with the alleged claims in the Litigation. Landmark has denied and continues to deny all claims asserted or that could have been asserted against it in the Litigation. Nothing herein shall constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Litigation. Nothing herein shall constitute an admission by Landmark that the Litigation has been properly brought on a class or representative basis, or that classes may be certified in the Litigation, other than for settlement purposes. To this end, the settlement of the Litigation, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the settlement: (i) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Landmark or of the truth of any of the allegations in the Litigation; (ii) are not and shall not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Landmark in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; and (iii) are not and shall not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

19. This Settlement Agreement resulted from good faith, arm's-length settlement negotiations, including the Mediation. Class Counsel have investigated the facts and the law regarding the Litigation. In connection with the underlying Litigation, Class Counsel reviewed and analyzed thousands of pages of documents and discovery responses produced in this Litigation. Class Counsel and their expert have also reviewed account data provided by Landmark.

20. Based on their investigation, Class Counsel have concluded that a settlement according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of Plaintiffs, Joint Owner, and the Class Members (as defined herein) recognizing: (1) the lack of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the Plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members.

21. The Parties shall use their best efforts to effectuate this Agreement, including, but not limited to, cooperating in promptly seeking the Court's approval of this Agreement, certification of the Settlement Class, and release by the Releasors of the Released Claims.

22. No Party shall be deemed the drafter of this Agreement or any provision thereof. No presumption shall be deemed to exist in favor of or against any Party as a result of the preparation or negotiation of this Agreement.

23. This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the state of Arkansas without regard to conflict of laws principles. If any dispute related to this Settlement Agreement arises, the Parties agree to attempt to resolve the dispute in the first instance via mediation before Judge Andersen (the "Mediator").

24. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Joint Owner, Released Parties, and Settlement Class Members any right or remedy under or by reason of this Agreement. Each of the Released Parties is an intended third-party beneficiary of this Agreement with respect to the Released Claims and shall have the right and power to enforce the release of the Released Claims in his, her, or its favor against all Releasors.

25. This Agreement may be executed in multiple counterparts, all of which taken together shall constitute one and the same Settlement Agreement.

26. This Agreement may not be modified or amended unless such modification or amendment is in writing executed by the Parties, except as specifically permitted by this Agreement.

27. Where this Agreement requires any Party to provide notice or any other communication or document to any other Party, such notice, communication, or document shall be provided by email or letter by overnight delivery to their Counsel in the Litigation using the mail and email addresses identified in this Agreement.

28. 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 by and among the undersigned that the Litigation be settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to the Released Parties, Plaintiffs, Joint Owner, Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

In addition to the terms defined at various points within this Agreement, the following defined terms ("Definitions"), as used in this Agreement and the attached Exhibits, apply and shall have the following meanings:

29. "Administrative Expenses" shall mean the expenses associated with the Settlement Administrator and the performance of the Settlement Administrator's duties hereunder, including but not limited to, costs in providing notice, maintaining the Settlement Website, maintaining or disbursing the Settlement Fund, communicating with Class Members or Counsel for the Parties, and disbursing Cash Award payments to the proposed Settlement Class Members, or disbursing any other payments called for hereunder.

30. "APSN Transactions" shall mean transactions in which a customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions.

31. "Available Balance" means the balance of a customer's checking account that is the result of the total debit and credit activity (including, without limitation, float, memo-posted debits, memo-posted credits, and holds) as of a specific date and time.

32. "Cash Award" means a cash payment to an eligible Settlement Class Member as described in Section VI of this Agreement.

33. "Challenged Fees" mean Overdraft Fees that Landmark Bank charged on alleged APSN Transactions during the Class Period.

34. "Class" or "Class Members" means all holders of a personal or business checking account originally established at Landmark Bank, including former holders and holders with accounts transitioned to Simmons Bank, regardless of the state of residence or citizenship of its account holder, who incurred one or more Challenged Fees. "Class" excludes all judicial officers presiding over the Litigation, their staff, and any of their immediate family members, as well as Plaintiffs' counsel and Landmark's officers and employees.

35. "Class Counsel" refers individually and collectively to John F. Garvey of Carey Danis & Lowe; Lynn A. Toops of Cohen & Malad, LLP; J. Gerard Stranch IV and Martin F. Schubert of Brannstetter, Stranch & Jennings, PLLC; Christopher D. Jennings of Johnson Firm; and Jeffrey D. Kaliel and Sophia Gold of Kaliel Gold PLLC.

36. "Class List" means a confidential (unredacted) compilation of Settlement Class Members, identified by name, mail address, and email address, denoting each Settlement Class Member's calculated Cash Award amount. The Class List shall be compiled by the Settlement Administrator, using information provided by Landmark and/or Landmark's expert as set forth in Section VI, *infra*. The Class List shall be kept and maintained by Landmark and Landmark's Counsel, and shall be disclosed only as described in Paragraph 91, *infra*. The Settlement Administrator shall prepare and provide to Class Counsel a redacted, anonymized version of the Class List ("Redacted Class List") denoting Class Members by a unique identifier number.

37. "Class Period" is defined as January 1, 2015, to and including February 14, 2020.

38. "Class Release" shall have the meaning set forth in Section VII of this Agreement.

39. "Class Representatives" or "Plaintiffs" refers collectively to Susanne Pace and Patrick Flowers, the named plaintiffs in the Amended Class Action Complaint.

40. "Counsel" refers collectively to both Class Counsel and Landmark's Counsel, as defined herein.

41. "Court" shall mean the Circuit Court of Boone County, Missouri, and the Honorable Jeff Harris, and his successors, if any.

42. "De-Identified Notice Database" means a de-identified version of the Notice Database (as defined herein) with the names, email addresses, and mail addresses of Class Members removed such that Members are identifiable solely by reference to the randomly generated numbers associated with each Class Member.

43. "Effective Date" shall mean five (5) business days after all of the following events or conditions have occurred:

a. the Court has approved the Amended Class Action Complaint to include the *Flowers* Litigation and putative class;

b. the Court has entered a Final order with respect to any attorneys' fees and expenses to be awarded to Class Counsel, and with respect to any Service Award to Plaintiffs, and any such order(s) is/are final and non-appealable;

c. the time for appeal has expired and no appeal has been timely filed; or the settlement is affirmed on appeal without material change; no other appeal or petition is pending, and the time period during which any petition for rehearing or certiorari could be filed has expired and relief from the failure to file such a petition is not available; and

d. the Final Approval Order and Judgment of Dismissal are Final as defined herein.

44. "Email Notice" means the notice of proposed class action settlement that will be provided to Landmark accountholders who have provided an email address to Landmark in accordance with Paragraph 120 of this Agreement, to be approved by the Court, and substantially in the form attached hereto as Exhibit 5.

45. "Escrow Account" means the escrow account established by the Settlement Administrator to hold the Settlement Fund following the Settlement Funding Deadline (defined in Paragraph 76 *infra*).

46. "Execution Date" shall mean the date on which this Agreement is fully executed by all Parties.

47. "Final" means the Final Approval Order and Judgment of Dismissal have been entered on the Court's docket in the *Pace* Litigation following the Court's acceptance of the Amended Class Action Complaint to include the *Flowers* Litigation and: (a) the time to appeal from such order and judgment has expired and no appeal has been timely filed; or (b) (i) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order and Judgment of Dismissal; and (ii) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

48. "Final Approval Hearing" means the hearing before the Court in which Plaintiffs will request the Final Approval Order be entered by the Court approving the Settlement Agreement, approving Class Counsel's request for an award of attorneys' fees and costs, and approving a Service Award to the Class Representatives. The Parties will request that the Court schedule the Final Approval Hearing no fewer than one hundred twenty (120) days after entry of the Preliminary Approval Order.

49. "Final Approval Order and Judgment of Dismissal" shall mean the final approval order and Judgment of Dismissal substantially in the form as shown in Exhibit 3, or as otherwise agreed to by the Parties, to be entered by the Court, granting final approval of the settlement. The Final Approval Order and Judgment of Dismissal shall contain such provisions as set forth in Exhibit 3 and described in Section XIV. The form of the Final Approval Order and Judgment of Dismissal as attached hereto as Exhibit 3 is a material term of this Settlement Agreement.

50. "Landmark's Counsel" or "Defendant's Counsel" refers collectively to Debra Bogo-Ernst and Joshua D. Yount of Mayer Brown LLP.

51. "Long Form Notice" means the notice of proposed class action settlement that will be posted on the Settlement Website pursuant to Section X, *infra*, to be approved by the Court, and substantially in the form as Exhibit 6 to this Agreement.

52. "Net Settlement Fund" shall have the meaning set forth in Paragraph 83 of this Agreement.

53. "Notice" or "Settlement Class Notice" means the notice of proposed class action settlement that will be provided: (i) via email for current Class Members who have provided their email address to Landmark; (ii) via U.S. mail to Class Members who have not provided an email address or to whom the Email Notice is not successfully delivered; and/or (iii) via posting of the Long Form Notice on the Settlement Website, all pursuant to Section X of this Settlement Agreement, which the Parties will ask the Court to approve in connection with the motion for preliminary approval of the settlement, substantially in the forms attached hereto as Exhibits 4 (Postcard Notice), 5 (Email Notice), and 6 (Long Form Notice).

54. "Notice Database" means a file containing data sufficient to identify, to the extent reasonably available in Landmark's records, each Class Member's name, last known email address, and last known mail address.

55. "Notice Program" means the method provided for in this Settlement Agreement for giving Notice to Class Members, as provided in Section X, *infra*, of this Settlement Agreement.

56. "Opt-Out" shall mean a written request for exclusion from the Settlement Class as provided in Section XI of this Settlement Agreement.

57. "Opt-Out Period" shall have the meaning set forth in Section XI of this Settlement Agreement.

58. "Overdraft Fees" are paid item fees that Landmark Bank charged customers when the Available Balance in the customer's account was insufficient to fully cover the amount of the customer's transaction but Landmark Bank paid the item.

59. "Party" or "Parties" shall mean Landmark, Plaintiffs, Joint Owner, and the proposed Settlement Class Members.

60. "Postcard Notice" means the notice of proposed class action settlement that will be provided via U.S. Mail in accordance with the procedures set forth in Paragraph 120 of this Agreement, to be approved by the Court, substantially in the form attached hereto as Exhibit 4.

61. "Preliminary Approval Order" shall mean an order substantially in the form as shown in Exhibit 2 to be entered by the Court preliminarily approving the Settlement Agreement. The Preliminary Approval Order shall contain such provision as set forth in Exhibit 2 and described in Section VIII.

62. "Protective Order" means the Agreed Protective Order entered by the Court in the *Pace* Litigation on June 29, 2020.

63. "Released Claims" shall mean the claims against the Released Parties described in Paragraph 104 of this Agreement.

64. "Released Parties" means Simmons Bank and each of its respective past, present, and future parents; subsidiaries; affiliates; successors; predecessors (including, but not limited to, Landmark Bank); assigns; related entities; and acquired, acquiring, and affiliated companies and corporations (including, but not limited to, Landmark Bank); and each of all of the foregoing's respective past, present, and future directors, officers, managers, employees, agents, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, assigns, or related entities, and each of their respective executors, successors, and legal representatives.

65. "Releasors" shall refer, jointly and severally, and individually and collectively, to Plaintiffs, Joint Owner, the Settlement Class Members, and each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

66. "Residual Funds" shall refer to all proceeds remaining in the Net Settlement Fund following the initial Cash Award distributions provided for in Section VI(b), *infra*.

67. "Service Award" means the award that the Court may individually provide to Plaintiffs in connection with their participation in the Litigation to be paid solely from the Settlement Fund.

68. "Settlement Administrator" means the entity (which will be mutually selected and retained by the Parties), to administer the settlement and perform all settlement, escrow, notice, fund distribution, and such other administration functions set forth in this Agreement. Landmark will also execute an Non-Disclosure Agreement ("NDA") with the Settlement Administrator to protect Class Members's personally identifiable financial and other confidential information. Landmark's Counsel and Class Counsel may, by agreement, substitute a different organization to perform some or all of the functions of the Settlement Administrator, subject to approval by the Court if the Court has previously granted Preliminary Approval or Final Approval of the settlement.

69. "Settlement Class" or "Settlement Class Members" shall mean all persons who are members of the Class who do not timely and validly request exclusion from the Settlement Class. The persons comprising the Settlement Class shall be identified by name and mail address on the confidential Class List to be created by the Settlement Administrator.

70. "Settlement Amount" means the total sum of $2,750,000 (Two Million, Seven Hundred and Fifty Thousand Dollars) that Landmark will pay to settle the Litigation and obtain a release of all Released Claims.

71. "Settlement Website" means the website that the Settlement Administrator will establish as soon as practicable following the Preliminary Approval Order, and prior to issuance of the Email Notice and Postcard Notice, as a means for Class Members to obtain notice and information about the settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, the Email Notice, the Postcard Notice, the Preliminary Approval Order, Class Counsel's motion for attorneys' fees, costs, and Service Award, and such other documents as Counsel together agree to post or that the Court orders posted on the Settlement Website. An additional description of the contemplated Settlement Website and its contents is provided in Section X, *infra*.

III. SETTLEMENT CLASS CERTIFICATION

72. Landmark disputes that any litigation class could be certified on the claims asserted in the Litigation. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Landmark does not oppose the certification of the Class for settlement purposes only. Preliminary certification of the Class for settlement purposes shall not be deemed a concession that certification of a litigation class is appropriate, nor would Landmark be precluded from challenging class certification in further proceedings in the Litigation or in any other action if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, any certification of the Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted against Landmark in any litigated certification proceedings in the Litigation. No agreements made by or entered into by Landmark in connection with the Settlement Agreement may be used by Plaintiffs, Joint Owner, Class Members, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Litigation or any other judicial proceeding.

73. Subject to Court approval, and for settlement purposes only, the following Settlement Class shall be certified: All holders of a personal or business checking account originally established at Landmark Bank, including former holders and holders with accounts transitioned to Simmons Bank, regardless of the state of residence or citizenship of its account holder, who, during the Class Period, incurred one or more Challenged Fees based on APSN Transactions.

74. If for any reason this settlement is not granted preliminary and final approval, or if this Agreement is terminated in accordance with its terms, the Parties, pleadings and proceedings will return to the status quo ante as if no settlement had been negotiated or entered into, and as if no Amended Class Action Complaint had been filed (such amendment being solely for settlement purposes). Plaintiffs shall file such motions and pleadings as are necessary to return this case to the Litigation posture that existed before this settlement was reached, and to ensure that the Parties are postured in the Litigation as they were before the Amended Class Action Complaint was filed. Landmark's agreement herein to certification of the Settlement Class as described in the Amended Class Action Complaint or otherwise shall not be used for any purpose, including in resolving Plaintiffs' motion for class certification in the Litigation or any request for certification in any other proceeding.

IV. SETTLEMENT OF LITIGATION AND ALL CLAIMS AGAINST THE RELEASED PARTIES

75. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of Plaintiffs and the Settlement Class Members, the Litigation and the Released Claims.

V. ESTABLISHMENT OF SETTLEMENT FUND AND NET SETTLEMENT FUND

In consideration of a full, complete, and final settlement and dismissal of the Litigation with prejudice as set forth herein and of the Release provided in Section VII below, and, subject to Court approval as provided herein, the Parties agree to the following relief.

(a) ESTABLISHMENT OF SETTLEMENT FUND

76. Within fourteen (14) business days after entry of the Preliminary Approval Order by the Court, the Settlement Amount of $2,750,000 (Two Million, Seven Hundred and Fifty Thousand Dollars) less any amounts already advanced by Landmark for Administrative Expenses as per Paragraph 116 of this Agreement, shall be held by Landmark at a separate internal account at Simmons ("Simmons Holding

Account"), as the settlement fund ("Settlement Fund"). Landmark will transfer the Settlement Fund, less the total amount that will be credited to Settlement Class Members by Landmark as provided in Paragraph 93 below, to the Escrow Account no later than seven (7) business days after the Effective Date ("Settlement Funding Deadline"). Notwithstanding anything in this Agreement to the contrary, Landmark shall not be required to pay more than a total of $2,750,000 towards the Settlement Fund, inclusive of all attorneys' fees, costs, expenses, notice expenses, any Service Award, any other amounts ordered by the Court, and any and all Administrative Expenses. For the avoidance of doubt, Landmark shall not bear any other fees, costs, charges, or expenses incurred by Plaintiffs, Joint Owner or Class Counsel, including but not limited to, those of any experts retained by Plaintiffs or by Class Counsel.

77. The Settlement Fund shall be used for the following purposes:

a. payment and distribution of all Cash Awards (including, without limitation and for the avoidance of doubt, *de minimis* Cash Awards) to Settlement Class Members, pursuant to Section VI, *infra*;

b. payment of the Court-ordered Service Award to the Class Representatives, pursuant to Section XVII, *infra*;

c. payment of any of Class Counsel's attorneys' fees, costs, and expenses, that are awarded by the Court, pursuant to Section XVII, *infra* (subject to Landmark reserving its rights with respect to attorneys' fees that exceed one-third of the Settlement Amount);

d. payment of all costs, expenses, fees, and invoices associated with the Administrative Expenses, including but not limited to, all costs, expenses, and fees of the Settlement Administrator in performing any and all settlement administration, notice, or escrow related functions under this Agreement;

e. payment of all costs, expenses, fees, and taxes associated with establishing and maintaining the Settlement Fund as a Qualified Settlement Fund as set forth in Section XIX, or otherwise, including but not limited to any payments to any escrow agent providing services hereunder; and disposition of Residual Funds after the initial distribution of Cash Awards to Settlement Class Members pursuant to Section VI, Paragraphs 94 and 98 of this Agreement, including without limitation payment of the Administrative Expenses associated with such disposition of Residual Funds; and

f. additional fees, costs, and expenses not specifically enumerated in subparagraphs (a) through (e) above, subject to agreement and approval of Class Counsel and Landmark's Counsel.

78. Notwithstanding the foregoing, any other award of attorneys' fees, Administrative Expenses, or any other fees, costs, expenses, or benefits otherwise awarded by the Court in connection with the Settlement Agreement shall be payable solely out of the Settlement Fund.

79. As more fully set forth below in Section XIX, after the Settlement Funding Deadline, the Settlement Fund payments provided by Landmark to the Settlement Administrator will be maintained by the Settlement Administrator in an Escrow Account to be held as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1 *et seq*. of the Treasury Regulations promulgated under Section 468B

of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing escrow account.

80. Provided that this Agreement is finally approved by the Court without material modification or amendment, the Net Settlement Fund (defined in Paragraph 83 of this Agreement) will be used to satisfy the Cash Award for Settlement Class Members in exchange for a release and covenants set forth in this Agreement, including, without limitation, a full, fair, and complete release of all the Released Parties from Released Claims, and dismissal of the *Pace* Litigation and the *Flowers* Litigation with prejudice.

81. The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not materially altered, including but not limited to the scope of the Release, the Class Period, and the amount of the Settlement Fund.

82. Landmark's contribution to the Settlement Fund shall be fixed under this Section and be final. Landmark shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the settlement beyond establishing the Settlement Fund. If the Settlement Agreement is not finally approved, or is terminated in accordance with this Agreement, the Settlement Fund belongs to and shall be returned to Landmark, less any Administrative Expenses paid to date.

(b) NET SETTLEMENT FUND

83. The net settlement fund ("Net Settlement Fund") is equal to the Settlement Fund plus any interest earned on that fund, less the following:

a. the amount of the Court-ordered Service Award to the Class Representatives;

b. the amount of any Court-ordered award of Class Counsel's attorneys' fees, costs, and expenses;

c. the amount of any other Court-ordered award of fees in connection with the settlement;

d. the amount of all Administrative Expenses, including but not limited to, all costs, expenses, and fees of the Settlement Administrator in performing any and all settlement administration, notice, distribution, or escrow related functions hereunder;

e. the amount of all costs, expenses, fees, and taxes associated with establishing or maintaining the Settlement Fund as a Qualified Settlement Fund as set forth in Section XIX, or otherwise, including but not limited to any payments to any Escrow Agent providing services hereunder;

f. the amount of all Administrative Expenses associated with issuance of Cash Awards, and/or disposition of Residual Funds after distribution of Cash Awards to Settlement Class Members; and

g. additional fees, costs, and expenses not specifically enumerated in subparagraphs (a) through (f) above, subject to agreement and approval of Class Counsel and Landmark's Counsel.

VI. PAYMENTS TO CLASS

Cash Awards shall be determined and calculated as set forth herein.

(a) Cash Award Calculations

84. Subject to the Protective Order, Landmark shall make the De-Identified Notice Database (as defined in paragraph 42) available to Landmark's expert, Ankura, so that Ankura may determine and implement the allocation of the Net Settlement Fund as provided in this Section of this Agreement (Section VI). The identification and allocation methodologies set forth in this Section VI shall be applied as consistently, sensibly, and conscientiously as reasonably practicable recognizing and taking into consideration the nature and completeness of the data and the purpose of the computation. Any Settlement Class Member for whom account data is provided under this Agreement shall be identified solely by reference to the random identifier number assigned to the Account.

85. To identify Class Members, Ankura will examine Landmark data from the Class Period to identify customers who established checking accounts at Landmark Bank and who incurred Challenged Fees.

86. The following methodology shall be used by Landmark's expert to calculate Cash Awards to Settlement Class Members who paid Challenged Fees: (i) to be credited to Settlement Class Members who are current Simmons Bank accountholders; or (ii) paid by check to Settlement Class Members who are former accountholders ("Qualifying Settlement Class Members"):

a. Identify all Challenged Fees charged to Settlement Class Members ("Gross Fees");

b. Reduce the Gross Fees, on an individual Settlement Class Member basis, to account for any refunds or similar credits of Challenged Fees to those accountholders ("Net Fees");

c. Quantify each Settlement Class Member's relative proportion of the total Net Fees charged to the Settlement Class;

d. Determine whether: (i) a Cash Award is appropriate; or (ii) a *de minimis* Cash Award to a Settlement Class Member is necessary of $5 if the calculated Cash Award is too small for distribution to a Settlement Class Member so they will not qualify for a Cash Award; and

e. Determine Cash Award based on each Settlement Class Member's proportion of the Net Fees charged to the Settlement Class or determine if a *de minimis* Cash Award is appropriate, per Paragraph 86(d), *supra*.

87. After Landmark's Cash Award calculations are complete, the Settlement Administrator shall update the Class List to reflect the corresponding Cash Award amounts for Settlement Class Members and provide the Redacted Class List to Class Counsel upon completion of the Cash Award calculations as described in Paragraph 86 above.

88. Plaintiffs may retain an expert to review and approve Landmark's expert's calculation of the Cash Awards. Both Plaintiffs' expert and Ankura will be paid from the Settlement Fund for their services to calculate and confirm Cash Awards.

89. Subject to the Protective Order in the Litigation, Landmark and/or Ankura shall make available to Plaintiffs' expert: (i) an anonymized list identifying Settlement Class Members and calculated Cash Awards ("Cash Award File"), and (ii) a file containing de-identified transactional data necessary for

Plaintiffs' expert to review and approve Landmark's expert's calculations set forth in the Cash Award File ("Supporting Data File"). The Cash Award File and Supporting Data File shall be provided as soon as reasonably feasible after the deadline to opt out of the Settlement. For the avoidance of confusion, any Settlement Class Member for whom account data is provided under this Agreement shall be identified solely by reference to the random identifier number assigned to the Account. Plaintiffs' expert shall then have twenty-one (21) days from receipt to review Landmark's Cash Award File and Supporting Data File to assess whether the allocation methodology was performed and applied by Landmark's expert in accordance with this Agreement ("Review Period"). In the event Plaintiffs' expert raises any concerns, the Parties shall cooperate in good faith to resolve any concerns as expeditiously as possible. If the Parties cannot reach agreement, then the dispute shall be submitted to the Mediator for assisting the Parties with resolution. The Parties shall cooperate together to ensure that the Cash Awards are calculated in advance of final approval time and sufficiently in advance so as to permit payment in accordance with the time schedule set forth in Section VI(b), *infra*.

90. Upon expiration of the Review Period, and subject to resolution of any objections, the final allocation results shall be transmitted to the Settlement Administrator for purposes of effectuating payment of Cash Awards and for purposes of creating the confidential Class List. The Settlement Administrator shall prepare the Class List within five (5) business days of receipt of the final allocation results.

91. The confidential Class List shall be maintained by Landmark and provided to the Settlement Administrator for the sole purpose of facilitating the notice and payments contemplated herein. The confidential Class List and identities of Settlement Class Members shall *not* be disclosed to anyone else, including Class Counsel, except that Landmark shall disclose information about the identity of Settlement Class Members to the limited extent required for Class Counsel to provide necessary assistance in response to a question from a Settlement Class Member. Such disclosure shall be subject to the Protective Order entered in this Litigation.

92. The Parties agree the foregoing methodologies are exclusively for purposes of computing Cash Awards retrospectively, in a reasonable and efficient fashion. The fact that the methodologies are used herein is not intended and shall not be used for any other purpose or objective whatsoever.

(b) <u>Distribution of Cash Awards & Residual Funds</u>

93. Within forty-five (45) days of the Effective Date and subject to applicable tax reporting or withholding requirements, every Settlement Class Member shall be paid as follows:

a. For Settlement Class Members who are current Simmons Bank accountholders, Simmons Bank shall credit the Cash Award payments to the Settlement Class Members' Simmons Bank accounts, using funds within the Simmons Holding Account defined in Paragraph 76 *supra*.

b. For Settlement Class Members who are former accountholders, the Settlement Administrator shall cause a check from the Net Settlement Fund to be mailed to the former accountholder's last known mail address (as updated by the Settlement Administrator).

   Checks shall be made payable to the accountholder, and where applicable, jointly to the joint accountholders during the Class Period. Cash Award checks shall be mailed to the mail addresses of record used for Class Notice purposes, or such other mail addresses as the Settlement Administrator identifies as valid Settlement Class Member mail addresses

through the Notice Program. The Settlement Administrator will make reasonable efforts to locate the proper mail address for any Settlement Class Member whose check is returned by the Postal Service as undeliverable, and will re-mail it once to the updated mail address.

Checks shall be valid for one hundred and twenty (120) days from the date of the check and the check shall state that it is invalid after one hundred and twenty (120) days of issuance. If any Settlement Class Member fails to negotiate their check within that time period, such Settlement Class Member shall forever waive his/her claim for payment hereunder. In the event that checks sent to Settlement Class Members are not cashed within one hundred and twenty (120) days of their initial mailing date, whether because the checks were not received or otherwise, those checks will become null and void as provided for herein.

94. If it is administratively feasible to do so, unclaimed Residual Funds in the Settlement Fund held in the Escrow Account shall be used to make a second distribution, on a pro rata basis, to all Settlement Class Members who received an account credit or cashed a Settlement Award check ("Second Cash Award Distribution"). The Parties will confer as to whether a Second Cash Award Distribution is administratively feasible, with input from the Settlement Administrator. If the Parties dispute whether there should be a Second Cash Award Distribution, they will jointly ask the Mediator to assist with resolution of the issue. In the event that any redistributed checks are not cashed within one hundred and twenty (120) days of their mailing date, whether because the checks were not received or otherwise, those checks will become null and void.

95. Cash Awards shall be distributed and paid solely from the Net Settlement Fund. If this Settlement Agreement is not approved, or for any reason the Effective Date does not occur, no Cash Award payments or distribution of any kind shall be made to Settlement Class Members under this Agreement.

96. The Parties make no representation regarding the tax treatment of Cash Awards received by Settlement Class Members. The Parties will defer to the Settlement Administrator's recommendation regarding when Settlement Class Members must provide a W-9 form and/or a Taxpayer Identification or Social Security Number, as may be required by applicable Internal Revenue Service reporting requirements. Class Counsel, Plaintiffs, and Joint Owner shall timely furnish to the Settlement Administrator any required tax information or forms before any payments are made to them from the Settlement Fund.

97. The Parties agree that the Settlement Administrator has permission to seek reasonable documentation before distributing settlement funds to an estate.

(c) *Cy Pres* Distribution

98. Any funds in the Net Settlement Fund following a Second Cash Award Distribution, or any Residual Funds in the Net Settlement Fund held in the Escrow Account if a Second Cash Award Distribution is not feasible ("*Cy Pres* Funds"), shall be paid through *cy pres* to non-profit charities that assist low-income consumers and/or provide consumer financial education in the geographic area of the Settlement Class Members, subject to Court approval. The Parties shall confer in good faith about appropriate *cy pres* beneficiaries after the stale date on checks to Settlement Class Members passes, and shall each propose beneficiaries for Court approval. Plaintiffs will propose a beneficiary for 50% of the *Cy Pres* Funds, subject to approval by Defendant. Landmark intends to propose that the remaining 50% of *Cy Pres* Funds be paid to the Simmons First Foundation, with an earmark that the money be used

specifically for financial literacy. Plaintiffs do not agree that Simmons First Foundation is an appropriate *cy pres* beneficiary. If the Court rejects Simmons First Foundation as a *cy pres* beneficiary, Landmark will propose Go Forward Pine Bluff as an alternate *cy pres* beneficiary.

99. The Court may revise this *cy pres* provision as necessary without terminating or otherwise impacting this settlement, provided the Court's revision does not increase the amount that Defendant would otherwise pay under this Agreement.

(d) Other Relief

100. Landmark Bank merged with, and into, Simmons Bank in February 2020, and Simmons Bank represents that it does not assess Overdraft Fees on APSN Transactions.

101. Plaintiffs and Joint Owner are entitled to no specific relief under this Agreement.

VII. RELEASE

102. In addition to the effect of any Final Judgment of Dismissal entered by the Court in accordance with this Agreement, upon the Effective Date, and for other valuable consideration as described herein, the Released Parties shall be completely released, acquitted, and forever discharged from any and all Released Claims ("Class Release").

103. As of the Effective Date, and with the approval of the Court, Plaintiffs, Joint Owner, and each Settlement Class Member, as well as their respective heirs, assigns, executors, administrators, beneficiaries, successors, and agents, hereby release, resolve, relinquish, and discharge each and all of the Released Parties from each of the Released Claims (as defined below). The Settlement Class Members further agree that they will not institute any action or cause of action (in law, in equity, or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal, or local government agency or with any administrative or advisory body, arising from the Released Claims. The release does not apply to members of the Class who timely opt-out of the settlement.

104. "Released Claims" means any and all claims, demands, damages, costs, attorneys' fees, disputes, liabilities, actions, rights, suits or causes of action, losses or remedies of any kind or nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or any legal or equitable theory, right of action or otherwise, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of, or relate to, or are based upon or in any manner related or connected with: (i) any Challenged Fee incurred in any personal or business checking account; (ii) any claim that Landmark Bank improperly assessed Challenged Fees for any personal or business checking account; and (iii) any alleged failure to adequately or clearly disclose any of Landmark Bank's practices and policies related to assessing Challenged Fees. Such release concerning Challenged Fees applies regardless of how such claims are pled. This Agreement does not imply that any such claims exist or are valid.

105. Provided that the Plaintiffs have been paid a Service Award, in such amount as the Court approves and consistent with the terms of this Agreement, and without in any way limiting the generality of the foregoing release, and in addition to the Release provided by Plaintiffs and Joint Owner in Paragraphs 102-104 *supra* as to the Released Claims, Plaintiffs, Joint Owner, as well as their respective

heirs, assigns, executors, administrators, beneficiaries, successors, and agents, hereby release, resolve, relinquish, and discharge each and all of the Released Parties from any and all claims, demands, damages, costs, attorneys' fees, disputes, liabilities, actions, rights, suits or causes of action, and losses or remedies of any kind or nature whatsoever related to Plaintiffs' checking accounts, that Plaintiffs and/or Joint Owner may have, whether on their own behalf and on behalf of their heirs, assigns, executors, administrators, beneficiaries, successors and agents, and whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or any legal or equitable theory, right of action or otherwise, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the Execution Date, against the Released Parties.

106. Plaintiffs, Joint Owner or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of this Section VII, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, and contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Section VII. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases contained in this Section VII, and that all of their claims in the Litigation shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the settlement or never receives a distribution of Cash Award, or other funds from the settlement.

107. Without limiting the foregoing, the Released Claims specifically extend to claims that Plaintiffs, Joint Owner, and Settlement Class Members do not know or suspect to exist in their favor at the time that the settlement and the releases contained therein become effective. Each Releasor hereby further waives and releases California Civil Code Section 1542 and similar provisions in other states. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"):

> 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.

108. The provisions of the Class Release shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction.

109. Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Agreement.

110. The Parties and each member of the proposed Settlement Class agree that the amounts to be paid under this Settlement Agreement to each Settlement Class Member represent the satisfaction of that Settlement Class Member's claims for the Released Claims. No portion of such settlement represents the payment of punitive or exemplary damages. In consideration for the satisfaction of each Settlement

Class Member's claim for compensatory damages, claims for punitive or exemplary damages arising from the Released Claims shall be released. Without limiting the foregoing, Plaintiffs and Joint Owner agree and covenant, and each Settlement Class Member shall be deemed to have agreed and covenanted, not to sue any Released Party with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity or any other forum. In addition, Plaintiffs, Joint Owner, and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a set-off or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

VIII. PRELIMINARY APPROVAL AND SETTLEMENT CLASS CERTIFICATION

111. This settlement shall be subject to approval of the Court. As set forth in this Agreement, Landmark shall have the right to withdraw from the settlement and the Settlement Agreement if the Court does not issue the Preliminary Approval Order or the Final Approval Order or if the Class is not certified for settlement purposes or as otherwise permitted under this Agreement.

112. Within no later than seven (7) days following execution of this Agreement by all Parties, Plaintiffs through Class Counsel shall submit to the Court a motion (the "Preliminary Approval Motion"), consistent with the terms of this Agreement: (a) for certification of the Settlement Class; and (b) for preliminary approval of the Agreement, and authorization to disseminate notice of class certification and settlement, contemplated by this Settlement Agreement, to all potential Class Members. Consistent with the terms of this Agreement, the Preliminary Approval Motion shall apply for entry of the Preliminary Approval Order in the form attached hereto Exhibit 2. The Preliminary Approval Motion shall also request that Plaintiffs be appointed as class representatives for the Class and that Class Counsel be appointed as counsel for the Class.

The Preliminary Approval Order shall contain such provisions as set forth in Exhibit 2, including provisions:

a. preliminarily certifying the Class for settlement purposes only;

b. preliminarily approving this settlement and finding this settlement sufficiently fair, reasonable, and adequate to allow Notice to be disseminated to the Class;

c. approving the form, content and manner of Settlement Class Notice;

d. appointing KCC Class Action Services LLC as the Settlement Administrator;

e. setting a schedule for proceedings with respect to final approval of this settlement, including scheduling a Final Approval hearing for no earlier than 120 days from the date of the Preliminary Approval Order;

f. providing that, pending entry of a Final Approval Order and Judgment of Dismissal, no member of the Settlement Class (either directly or in any representative or other capacity) shall commence or continue any action against Defendant or any of the Released Parties asserting any of the Released Claims;

g. staying the Litigation, other than such proceedings as are related to this settlement; and

h. providing that no admissions have been made by Landmark.

IX. SETTLEMENT ADMINISTRATOR

113. Class Counsel and Landmark's Counsel have jointly selected and retained KCC Class Action Services LLC to serve as the Settlement Administrator. The Settlement Administrator shall administer various aspects of the settlement as described in Paragraph 114 of this Agreement, and perform such other functions as are specified for the Settlement Administrator elsewhere in this Settlement Agreement including, but not limited to, establishing the Settlement Fund, providing mailed notice or other required notices to Class Members, distributing settlement funds as provided herein, and returning the Settlement Fund to Landmark in the event of termination of this Agreement, as set forth in Section XVI of this Agreement.

114. The duties of the Settlement Administrator, in addition to other responsibilities that are described elsewhere in this Agreement, include:

a. obtaining from Landmark's Counsel the names, last known email addresses, and last known mail addresses for the Class Members in the Notice Database; verifying and updating the mail addresses so received through the National Change of Address database; and completing Class Notice as provided in Section X of this Agreement;

b. establishing and maintaining a Post Office box for Opt-Out requests as set forth in Section XI of this Agreement, as well as for correspondence from Class Members;

c. establishing and maintaining a Settlement Website that will contain and make available to Class Members certain information regarding the Litigation and the settlement through that website;

d. responding to any mailed Class Member inquiries;

e. processing all requests for exclusion from Class Members;

f. providing to Counsel written monthly reports, and a written final report no later than five (5) business days after the end of the Opt-Out Deadline, that lists all timely and valid Opt-Outs from the Settlement, and other pertinent information;

g. interfacing with any escrow agents who may assist with the Qualified Settlement Fund (if different from the Settlement Administrator);

h. preparing and providing to Landmark's Counsel the confidential Class List and the Redacted Class List to Class Counsel;

i. at Class Counsel and/or Landmark's Counsel request in advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that identifies each Class Member who timely and properly requested exclusion from the Settlement Class and that confirms that the Notice Program as set forth in this Agreement was completed in a timely manner;

j. processing and transmitting Cash Award checks from the Net Settlement Fund to the Settlement Class Members who are former accountholders in accordance with the terms of this Agreement;

k. providing its recommendation concerning whether sufficient Residual Funds remain in the Net Settlement Fund for a Second Cash Award Distribution (defined *supra*) to

Qualifying Settlement Class Members, as set forth in Paragraph 94 of this Agreement, and providing a report and/or affidavit of such pertinent information to Counsel;

l. if sufficient funds remain, processing and transmitting a Second Cash Award Distribution to Qualifying Settlement Class Members and providing a report and/or affidavit of such pertinent information to Counsel;

m. qualifying under, and agreeing to comply with, all applicable confidentiality, privacy, and security protocols required by Landmark;

n. complying with the terms of the Protective Order and all applicable provisions of this Agreement;

o. establishing an escrow account and maintaining the Settlement Fund therein as a Qualified Settlement Fund and performing such duties and functions as associated therewith, including without limitation the duties and functions set forth in Section XIX *infra*, or elsewhere in this Agreement; and

p. performing any other tasks reasonably required to effectuate the settlement.

115. In the event of termination as provided in Section XVI of this Agreement, the Settlement Administrator shall return the Settlement Fund to Landmark within seven days of termination, less any money that the Settlement Fund has already paid, or incurred an obligation to pay, in accordance with the terms of this Agreement for Administrative Expenses. Plaintiffs and Joint Owner shall have no financial responsibility for any Administrative Expenses paid out of the Settlement Fund in the event that the Settlement Agreement is not finally approved or terminated.

X. NOTICE TO PROPOSED CLASS MEMBERS

(a) Payment of Administrative Expenses Relating to Notice

116. Landmark shall pay the reasonable Administrative Expenses incurred prior to the creation of the Settlement Fund, and Landmark will be given credit for all such payments which shall be deducted from the Settlement Fund as set forth below. The Settlement Administrator shall provide the Parties with an estimate of the initial Administrative Expenses, *e.g.*, costs of sending Postcard Notice, establishing the Settlement Website, etc. ("Initial Administrative Expenses"). Landmark shall pay the estimated Initial Administrative Expenses to the Settlement Administrator within ten (10) business days after the entry of the Preliminary Approval Order. After that upfront payment of Initial Administration Expenses by Landmark, the Settlement Administrator shall bill Landmark monthly for any reasonable additional Administrative Expenses, until such time as the Settlement Fund is established. Any amounts paid by Landmark for the estimated costs of administration which are not incurred by the Settlement Administrator shall be used for other Administrative Expenses, or shall be deducted from future billings by the Settlement Administrator. The Settlement Administrator estimates that Initial Administrative Expenses will be $39,000, and Administrative Expenses overall shall be approximately $60,340.

117. The Settlement Administrator shall maintain detailed records of the Administrative Expenses and shall provide those to Counsel monthly. At such time that Landmark funds the Settlement Fund, all amounts previously paid to the Settlement Administrator by Landmark shall be deducted from the total payment which it is required to pay to create the Settlement Fund under Section V. After Landmark has created the Settlement Fund, Landmark shall have no further obligation to pay any amount

under this Settlement Agreement, and any additional Administrative Expenses shall be paid out of the Settlement Fund.

(b) Form of Notice

118. In the event the Court enters the Preliminary Approval Order, Notice shall be provided to Class Members via email, mail, and/or website, as provided herein:

a. For Class Members who have provided their email address to Landmark, the Settlement Administrator will provide Email Notice substantially in the Form shown in Exhibit 5, subject to approval by the Court, to the most recent email address provided by the customer to Landmark.

b. For Class Members who have not provided an email address or, if the Email Notice is not successfully delivered (as shown by an undeliverable message back to the Settlement Administrator), the Settlement Administrator will provide Postcard Notice substantially in the form shown in Exhibit 4, subject to approval by the Court.

c. Notice of the settlement (substantially in the form of Exhibit 6, the Long Form Notice) shall also be posted by the Settlement Administrator on the Settlement Website by the Notice Deadline. The Settlement Administrator shall establish and administer the Settlement Website, which website shall contain information about the settlement, including electronic copies of Exhibits 4 & 5 (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all court documents related to the settlement or otherwise agreed to by Counsel. The URL of the Settlement Website shall be **www.PaceFeesSettlement.com** or such other URL as Counsel may subsequently agree upon in writing, provided the URL shall not include the name "Landmark," "Landmark Bank," "Simmons" or "Simmons Bank". The Settlement Website shall not include any advertising and shall not bear or include the logo or trademarks for Landmark Bank, Simmons Bank, or any other Released Party. Ownership of the Settlement Website URL shall be transferred to Landmark within 10 days of the date on which operation of the Settlement Website ceases. The Settlement Website shall remain operational until sixty days past the stale date of any check mailed to Settlement Class Members. Other than the Settlement Website, there shall be no publication notice (except as Landmark or its affiliates may be required or advised to make under applicable law), and there shall be no press release or other public communication by or on behalf of Plaintiffs, Joint Owner, and/or Class Counsel.

119. The Notice shall be used for the purpose of informing proposed Class Members, prior to the Final Approval Hearing, that there is a pending settlement, and to further: (i) inform Class Members as to how they may obtain a copy of the Settlement Agreement; (ii) protect their rights regarding the settlement; (iii) request exclusion from the Settlement Class and the proposed settlement, if desired; (iv) object to any aspect of the proposed settlement, if desired; and (v) participate in the Final Approval Hearing, if desired. The Notice shall make clear the binding effect of the settlement on all Class Members who do not timely request exclusion from the Settlement Class.

120. **Email & Postcard Notice**. Email Notice and Postcard Notice will be provided by the Settlement Administrator, as follows:

a. To facilitate the provision of Email Notice and Postcard Notice, Landmark will provide to the Settlement Administrator, within twenty-one (21) business days of entry of the

Preliminary Approval Order, in an electronically searchable and readable format, a Notice Database containing data sufficient to identify, to the extent reasonably available in Landmark's records, each Class Member's name, last known email address, and last known mail address. Landmark is obligated to provide only such information as is contained and reasonably available in its computerized account records for the applicable Class Period. The Settlement Administrator will prepare and provide a De-Identified Notice Database to Class Counsel.

b. Any personal information relating to members of the Class that is provided to the Settlement Administrator pursuant to this Settlement Agreement shall be provided solely for the purpose of providing Settlement Class Notice to members of the Class and allowing them to recover under this settlement. Such information shall be kept in strict confidence, shall be used only for purposes of this settlement, and shall not be disclosed to any third party.

c. Prior to mailing the Postcard Notice, the Settlement Administrator shall run the last known mail addresses for Class Members (as contained in the Notice Database) through the United States Postal Services' National Change of Address Database, and shall update the mail addresses accordingly for mailing and other settlement administration purposes in the Notice Database. Once this process is complete, the Settlement Administrator shall cause individual Postcard Notice (substantially in the form of Exhibit 4) to be sent by the Notice Deadline (as defined in Paragraph 124 of this Agreement), through U.S. Mail to potential Class Members ("Initial Postcard Notices").

d. The Settlement Administrator shall cause Email Notice (substantially in the form of Exhibit 4) to be sent to the last known email address in Landmark's records by the Notice Deadline (as defined in Paragraph 124 of this Agreement).

e. For all Initial Postcard Notices that are returned undeliverable and without a forwarding mail address and for Email Notices that are not successfully delivered, the Settlement Administrator shall perform reasonable address traces. No later than 15 days after the Notice Deadline in Paragraph 124 of this Agreement, the Settlement Administrator shall mail Postcard Notices to those Class Members: (i) whose new mail addresses were identified as of that time through address traces; (ii) whose initial emails were not successfully delivered and the Settlement Administrator located a mail address; or (iii) for whom there was a forwarding mail address ("Notice Remailing Process"). Except as set forth herein, there shall be no further obligation or attempt to obtain a forwarding mail address for any such returned mail or to further re-mail any such Postcard Notices or returned mail after this Notice Remailing Process is complete.

f. Within seven days after the Objection Deadline, the Settlement Administrator shall provide Class Counsel and Landmark's Counsel with an affidavit that confirms that the Notice Program as set forth in this Agreement was completed in a timely manner, reports the details of any returned and undeliverable notices, and reports any objections or Opt-Outs received by the Settlement Administrator.

g. Within seven days after the date the Settlement Administrator completes the later of the Email Notice and the Notice Remailing Process, the Settlement Administrator shall provide Landmark's counsel with an updated Notice Database reflecting any new mail address information.

121. Class Counsel shall file the affidavits of completion that it receives from the Settlement Administrator pursuant to Paragraph 120(f), *supra*, with the Court as exhibits to or in conjunction with Plaintiffs' motion for Final Approval of the Settlement.

122. Before Class Notice is commenced, Counsel for the Parties shall first be provided with proof copies of the final form of the Class Notices and shall have the right to inspect and approve the same for compliance with the Settlement Agreement and with the Court's orders.

123. The Parties agree that compliance with the procedures described in this Section X is the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency the Litigation, certification of the Settlement Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and shall satisfy the requirements of the Missouri Court Rules, the Missouri and United States Constitutions, and any other applicable rule or regulation.

(c) Notice Deadline

124. Both the Email Notice and Initial Postcard Notices shall be sent directly to all identified potential Class Members as soon as reasonably practicable following transmission of the Notice Database to the Settlement Administrator and no later than forty-five (45) days after the date that the Court enters the Preliminary Approval Order, or such other date that the Court may set ("Notice Deadline").

XI. OPT-OUTS

125. **Opt-Out Period.** Class Members will have up to and including approximately forty-five (45) days following the Notice Deadline to opt out of the settlement in accordance with this Section (the "**Opt-Out Deadline**"). If the settlement is finally approved by the Court, all Settlement Class Members who have not opted out by the Opt-Out Deadline will be bound by the Settlement Agreement and the Class Release, and the relief provided by the settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

126. **Opt-Out Process**

a. Any Class Member who wishes to be excluded from the Settlement Class must provide a written request for exclusion to the Settlement Administrator, known as an "Opt-Out." The Opt-Out must be mailed, by first class mail, postage prepaid, and postmarked and addressed to the address of the Settlement Administrator indicated in the Notice on or before the Opt-Out Deadline. The Settlement Administrator will provide Counsel for the Parties copies of each request for exclusion it receives.

b. In order to be valid, the Opt-Out must be in writing and include: (i) the Class Member's name, address, telephone number, and the last four digits of the account number; (ii) the name and/or number of this Litigation; and (iii) a statement that the Class Member wishes to be excluded from the Settlement Class. An Opt-Out must be signed by the Class Member. An Opt-Out request that does not contain the required information, is not signed, or is not postmarked by the Opt-Out Deadline, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound by the settlement, if approved.

c. Except as provided in this Section XI, no Class Member may purport to exercise any exclusion rights of any other person, or purport to exclude other persons as a group, aggregate, or class involving more than one person, or as an agent or representative. Any

such purported exclusion shall be invalid and any Class Member that does not submit an opt-out request on his or her own behalf shall be a Settlement Class Member and be bound as a Settlement Class Member for all purposes. If an accountholder for any joint account submits a valid-opt out request, the request will be effective for all accountholders or signatories to such account.

d. A list reflecting all timely and valid Opt-Outs shall also be filed with the Court at the time of the motion for final approval of the settlement.

XII. OBJECTIONS

127. Class Members who have not validly opted-out of the settlement in accordance with its terms may object to this Agreement up to and including the date set by the Court in the Preliminary Approval Order, which shall be approximately forty-five (45) days following the Notice Deadline ("Objection Deadline").

128. The Parties will request that the Court order that any Class Member who has any objection to certification of the Settlement Class, to approval of this Settlement Agreement or any of its terms, or to the approval process must send his, her, or its objection to the Settlement Administrator providing the following elements ("Required Objection Elements"):

a. the case name and case number(s) of this Litigation;

b. the objector's full name, current address, and the last four digits of the account number of any Landmark account the objector claims was charged Challenged Fees in this Litigation;

c. a statement that the Settlement Class Member objects to the Settlement, in whole or in part;

d. the reasons why the objector objects to the settlement along with any supporting materials;

e. the identity of any lawyer who assisted, provided advice, or represents the objecting Class Member as to this case or such objection, if any;

f. the objector's signature; and

g. a statement indicating whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing either *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

129. The Parties will request that the Court set the Objection Deadline approximately forty-five (45) days after the Notice Deadline. The Parties will request that the Court order that failure to comply timely and fully with these procedures shall result in the invalidity and rejection of an objection. The Parties will request that the Court order that no Class Member shall be entitled to object to certification of the Class or to the Settlement Agreement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Final Approval Hearing, unless the Class Member provides written notice with the Required Objection Elements no later than the Objection Deadline.

130. The Parties will request that the Court order that no Class Member shall be entitled to appear at the Final Approval Hearing unless the Class Member states in his or her objection that he or she intends to appear at the Final Approval Hearing, either personally or through counsel.

131. The Parties will request that the Court order that Class Members who fail to file and serve timely written objections in accordance with this Section shall be deemed to have waived any objections and shall be foreclosed from making any objection to the certification of the Settlement Class or to the Settlement Agreement.

XIII. FINAL APPROVAL HEARING

132. The Parties will request that the Court hold a Final Approval Hearing. The date for the Final Approval Hearing shall be set for approximately one hundred twenty (120) days after entry of the Preliminary Approval Order, or at such other later time as the Court determines.

133. At the Final Approval Hearing, the Parties will request that the Court consider whether the Class should be certified pursuant to Missouri Court Rule 52.08 for settlement, and, if so: (i) consider and rule on any properly filed objections to the Settlement Agreement; (ii) determine whether the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connection therewith; and (iii) enter the Final Approval Order and Judgment of Dismissal, including final approval of the Settlement Class and the Settlement Agreement and any award of attorneys' fees and expenses and Service Awards.

XIV. FINAL APPROVAL ORDER AND JUDGMENT OF DISMISSAL

134. If the settlement is approved preliminarily by the Court, and all other conditions precedent to the settlement have been satisfied, no later than fourteen (14) calendar days prior to Final Approval Hearing, the Parties shall jointly seek entry of a Final Approval Order. Class Counsel shall file a memorandum of points and authorities in support of the motion for Final Approval of the Class Settlement. Class Counsel and/or Landmark may file a memorandum addressing any Objections submitted to the settlement. The dismissal orders, motions, or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waive any rights of appeal. The motion for entry of a Final Approval Order will include a declaration from the Settlement Administrator stating that the Notice required by the Agreement has been completed in accordance with the terms of the Court's Preliminary Approval Order.

135. The Parties shall jointly submit to the Court a proposed Final Approval Order and Judgment of Dismissal, in the form attached hereto as Exhibit 3, that, without limitation, approves the settlement and certifies the Settlement Class pursuant to Missouri Court Rule 52.08 and:

a. finds that this Agreement is fair, reasonable, and adequate and was entered into in good faith and without collusion, and approves and directs consummation of this Agreement according to its terms;

b. finds that the Class Notice provided satisfied the requirements of due process and of Missouri Court Rule 52.08(c)(2);

c. approves the Class Release provided in Section VII and finds that, as of the Effective Date, the Settlement Class Members will each be bound by this Agreement, including the Release and Covenant not to sue set forth in Section VII;

d. dismisses, on the merits and with prejudice, all Released Claims of Plaintiffs, Joint Owner, and of the Settlement Class Members against Simmons Bank and its predecessor-in-interest, Landmark Bank in the Litigation, without costs and fees except as ordered by the Court;

e. permanently enjoins each and every Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claim, or from asserting as a defense, including as a set-off or for any other purpose, any argument that if raised as an independent claim would be a Released Claim, against Landmark or any of the Released Parties;

f. reserves continuing and exclusive jurisdiction over the settlement and this Agreement, including but not limited to the Litigation, the settlement, the Settlement Class Members, and Landmark, for the purposes of administering, consummating, supervising, construing, and enforcing the Settlement Agreement and the Settlement Fund; and

g. finds that there is no just reason for delay of entry of Final Approval Order and Judgment of Dismissal with respect to the foregoing.

136. This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order that grants final approval of this Agreement and enters a Final Judgment of Dismissal as set forth in this Agreement. Class Counsel shall use their best efforts to assist Landmark in obtaining dismissal with prejudice of the *Pace* Litigation and the *Flowers* Litigation accordingly and take all steps necessary and appropriate to otherwise effectuate all aspects of this Agreement. Class Counsel will work with Landmark's Counsel to file a stipulation or agreed motion to convert the dismissal in the *Flowers* Litigation to a dismissal with prejudice in the United States District Court for the Western District of Missouri within seven (7) business days of the entry of the Final Approval Order and Judgment of Dismissal in the *Pace* Litigation.

XV. FINAL ORDER

137. As part of the Final Approval Order and Judgment of Dismissal, the Court's order shall operate to permanently enjoin any and all pending or future claims by Settlement Class Members against the Released Parties raising or arising out of any Released Claim.

138. The Court's Final Approval Order and Judgment of Dismissal shall enjoin and forever bar any and all Settlement Class Members from commencing and/or maintaining any action, legal or otherwise, against the Released Parties raising or arising out of any Released Claim.

139. This provision is not intended to prevent or impede the entitlement to Cash Awards under this Settlement Agreement.

XVI. TERMINATION OF THE SETTLEMENT

140. Plaintiffs and Landmark shall have the right to unilaterally terminate this Agreement by providing written notice of its election to do so ("Termination Notice") to each other hereto within ten (10) calendar days of any of the following occurrences:

a. the Court rejects, materially modifies, materially amends or changes, or declines to approve the Amended Class Action Complaint including the modifications to add Flowers and the *Flowers* Litigation putative class to the *Pace* Litigation;

b. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;

c. an appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;

d. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order and Judgment of Dismissal, or the Settlement Agreement in a way that is material, unless such modification or amendment is accepted in writing by all Parties;

e. notification from the Settlement Administrator that more than one percent (1%) or 500 of the Class Members Opt-Out, whichever is less;

f. the Effective Date does not occur; or

g. any other ground for termination provided for elsewhere in this Agreement occurs.

141. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, no Amended Class Action Complaint had been filed, and the Parties will negotiate in good faith to establish a new schedule for the Litigation. In such event, the Parties' rights and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement will be vacated.

142. In the event of a termination as provided for herein or elsewhere in this Agreement, the Settlement Administrator shall return the Settlement Fund to Landmark within seven days of termination, less any money that the Settlement Fund has already paid or incurred an obligation to pay in accordance with the terms of this Agreement for Administrative Expenses.

XVII. ATTORNEYS' FEES AND SERVICE AWARD

143. Class Counsel shall file any petition to the Court for an award of attorneys' fees and costs from the Settlement Fund at least fifteen (15) days prior to the Objection Deadline. Landmark will take no position on a request for attorneys' fees that is one-third or less of the Settlement Amount, but Landmark reserves the right to object to any request for attorneys' fees that exceeds one-third of the Settlement Amount.

144. In no event will Landmark have any financial responsibility or liability whatsoever for attorneys' fees, expenses, or costs beyond its obligation to establish the Settlement Fund as set forth in this Agreement. In particular and without limiting the foregoing, Landmark shall have no financial responsibility or liability for attorneys' fees and costs sought by any member of the Class or by any counsel representing or working on behalf of one or more Class Members or the Settlement Class, and no obligation for allocation of fees and costs among Class Counsel or attorneys representing or working on behalf of Class Members.

145. At the same time Class Counsel seeks approval of their attorneys' fees and costs, Class Counsel shall petition the Court for a Service Award for the Class Representatives in an amount not to exceed $10,000 each. The Service Award shall be paid solely from the Settlement Fund and no interest shall accrue or otherwise be due or payable in connection with any such award. The Service Award shall

be paid to Plaintiffs in addition to any Cash Award, and Plaintiffs shall not be entitled to any Cash Award or any other Settlement Class Member payment. The Parties warrant that they commenced negotiations on the proposed Service Award only after they reached agreement on all other material terms of this Settlement Agreement.

146. The payments of attorneys' fees, costs, and the Service Award set forth in Paragraphs 143 and 145 above are subject to and dependent upon the Court's approval of the settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class. However, this settlement is not dependent or conditioned upon the Court approving Plaintiffs' and/or Class Counsel's request for such payments or awarding the particular amounts sought by Plaintiffs and/or Class Counsel. In the event the Court declines Plaintiffs' and/or Class Counsel's requests or awards less than the amounts sought, this settlement, including but not limited to the Releases provided herein, shall continue to be effective and enforceable by the Parties.

XVIII. REPRESENTATIONS

147. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Settlement Class Member related to the Released Claims.

148. Class Counsel represent and agree that, upon request by Defendant, within seventy (70) days after the dismissal of the Litigation ("Final Disposition"), they will certify compliance with Paragraph 5(b) of the Stipulated Protective Order entered in the *Pace* Litigation.

149. The Parties shall use their best efforts to conclude the settlement and obtain the Final Approval Order and Judgment of Dismissal, including affirmatively supporting the settlement in the event of an appeal or an objection.

150. The Parties specifically acknowledge, agree, and admit that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of Missouri Court Rule 17.06 and Federal Rule of Evidence 408, and any other equivalent or similar rule of evidence of any state, and shall not: (a) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party; or (b) be used to establish a waiver by Landmark of any defense or right, or to establish or contest jurisdiction or venue in other litigation. Notwithstanding the foregoing, any Party shall be entitled to use this Settlement Agreement and its Exhibits in connection with enforcement of the obligations and waivers set forth herein and for all other purposes set forth below at Paragraph 153.

151. In consideration of the agreements made herein, Class Counsel hereby warrant and represent to Landmark that as of the execution date of this Agreement: (a) Class Counsel are not aware that any current clients have claims against Landmark similar to the claims alleged in the Litigation; and (b) Class Counsel are not actively soliciting clients to bring cases specifically against Landmark for violations similar to those alleged in the Litigation.

152. The Parties also agree that this Settlement Agreement and its Exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this

Settlement Agreement are not intended to establish grounds for certification of any class involving any Class Member other than for certification of the Class for settlement purposes.

153. The provisions of this Settlement Agreement, and any orders, pleadings, or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely: (i) to enforce the terms and provisions hereof or thereof; (ii) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto; (iii) in order to establish payment, or an affirmative defense of preclusion or bar in a subsequent case; (iv) in connection with any motion to enjoin, stay or dismiss any other action; or (v) to obtain Court approval of the Settlement Agreement.

154. Subject to settlement notice process set forth in Section X, the Parties agree that they will not initiate any publicity of the settlement and will not respond to requests by any media (whether print, online, or any traditional or non-traditional form), except to say "no comment" and direct any inquiries to information on the settlement website about the settlement. Notice of the settlement will be delivered exclusively through the notice process set forth in Section X above. Nothing in this provision shall be interpreted to limit representations that the Parties or their attorneys may make to the Court to assist it in its evaluation of the proposed settlement, nor shall this provision prohibit Class Counsel from having communications about the settlement directly with the Settlement Administrator or with Class Members.

155. This Agreement shall be deemed executed as of the date that the last Party signatory signs the Agreement. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties and shall fully supersede any previous agreement entered into by the Parties and represent the full and final agreement between the Parties.

156. The Parties agree to request that the Court approve the Amended Class Action Complaint attached hereto as Exhibit 1, as well as the forms of the Preliminary Approval Order attached hereto as Exhibit 2, the Final Approval Order and Judgment of Dismissal attached as Exhibit 3, the Postcard Notice attached as Exhibit 4, the Email Notice attached as Exhibit 5, and the Long Form Notice attached as Exhibit 6. The fact that the Court may require non-substantive changes to any of these documents does not invalidate this Settlement Agreement.

XIX. TAXES

157. **Qualified Settlement Fund.** The Parties agree that the escrow account into which the Settlement Fund is deposited, following the Settlement Funding Deadline, is intended to be and will at all times constitute a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B 1 ("Qualified Settlement Fund'). The Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of Section VI. It shall be the responsibility of the Settlement Administrator to cause the timely and proper preparation and delivery of the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

158. **The Settlement Administrator is "Administrator."** For the purpose of §1.468B of the Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the "administrator" of the Settlement Fund. The Settlement Administrator shall cause to be timely and properly filed all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B 2(k)). Such returns shall reflect that all Taxes (including any estimated taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

159. **Taxes Paid by Administrator.** All taxes arising in connection with income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendant or any of the other Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a Qualified Settlement Fund for federal or state income tax purposes shall be paid by the Settlement Administrator from the Settlement Fund.

160. **Expenses Paid from Fund.** Any Administrative Expenses reasonably incurred by the Settlement Administrator in carrying out its duties, including fees of tax attorneys and/or accountants, shall be paid by the Settlement Administrator from the Settlement Fund.

161. **Responsibility for Taxes on Distribution.** Any person or entity that receives a distribution from the Settlement Fund shall be solely responsible for any taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund.

162. **Landmark Is Not Responsible.** In no event shall Landmark or any of the other Released Parties have any responsibility or liability to Plaintiffs, Joint Owner, Settlement Class Members, or to Class Counsel for taxes or tax-related expenses arising in connection with the payment or distribution of the Settlement Fund to Plaintiffs, Joint Owner, Settlement Class Members, or Class Counsel. The Settlement Fund shall indemnify and hold Landmark and the other Released Parties harmless for all such taxes and tax-related expenses (including, without limitation, taxes, and tax-related expenses payable by reason of any such indemnification).

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, dated as of August ____, 2022.

DATED: _____ Plaintiff Pace

_____

DATED: _____ Joint Owner Dalton Pace

_____

DATED: _____ Plaintiff Flowers

_____

DATED: 8/28/22 Defendant Simmons Bank, successor by merger to Landmark Bank

By: Bob Fehl

Name: Bob Fehlman

Title: President & COO

APPROVED AS TO FORM AND CONTENT

COHEN & MALAD, LLP

DATED: _____

By: _____
Lynn A. Toops

DATED: _____ CAREY DANIS & LOWE

By: _____
John F. Garvey

DATED: _____ KALIEL GOLD

By: _____
Jeffrey Kaliel

DATED: _____ JOHNSON FIRM

By: _____
Christopher D. Jennings

DATED: _____

BRANSTETTER, STRANCH & JENNINGS PLLC

By: _____
J. Gerard Stranch, IV

Counsel for Plaintiffs, Joint Owner, and Class Counsel

DATED: 8/29/22

MAYER BROWN LLP

By: _____
Debra Bogo-Ernst

Attorneys for Defendant

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, dated as of August ____, 2022.

DATED: 8/29/2022

Plaintiff Pace

Susanne Pace
52B0EC4FCD3846C...

DATED: 8/29/2022

Joint Owner Dalton Pace

Dalton Pace
E3AE954C9CAF4EE...

DATED: _____

Plaintiff Flowers

_____

DATED: _____

Defendant Simmons Bank, successor by merger to Landmark Bank

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND CONTENT

DATED: 8/29/2022

COHEN & MALAD, LLP

By: Lynn A. Toops
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Lynn A. Toops

DATED: 8/29/2022

CAREY DANIS & LOWE

By: John F. Garvey
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John F. Garvey

DATED: 8/30/2022

KALIEL GOLD

By: Jeffrey Kaliel
CDF00BF50DFA489...
Jeffrey Kaliel

DATED: 8/29/2022

JOHNSON FIRM

By: DocuSigned by: Chris Jennings FE9B80CE7DE3455...
Christopher D. Jennings

DATED: 8/29/2022

BRANSTETTER, STRANCH & JENNINGS PLLC

By: DocuSigned by: 98BB7EB7F080426...
J. Gerard Stranch, IV

Counsel for Plaintiffs, Joint Owner, and Class Counsel

DATED: _____

MAYER BROWN LLP

By: _____
Debra Bogo-Ernst

Attorneys for Defendant

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, dated as of August ____, 2022.

DATED: _____ Plaintiff Pace

_____

DATED: _____ Joint Owner Dalton Pace

_____

DATED: 8/30/2022 Plaintiff Flowers

DocuSigned by:
Patrick Flowers
4F0BCF1969CB47B...

DATED: _____ Defendant Simmons Bank, successor by merger to Landmark Bank

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND CONTENT

COHEN & MALAD, LLP

DATED: _____

By: _____
Lynn A. Toops

DATED: _____ CAREY DANIS & LOWE

By: _____
John F. Garvey

DATED: 8/30/2022 KALIEL GOLD

By: _____
Jeffrey Kaliel

DATED: 8/30/2022 JOHNSON FIRM

EXHIBIT 1

[PROPOSED] AMENDED CLASS ACTION COMPLAINT

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

SUSANNE PACE and PATRICK FLOWERS, individually and on behalf of all others similarly situated, Plaintiffs, v. LANDMARK BANK, Defendant.	Cause No. 20BA-CV00244 **JURY DEMAND**

AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Susanne Pace and Patrick Flowers, individually and on behalf of the class of persons preliminarily defined below (the "Class"), make the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiffs, which are based on personal knowledge.

NATURE OF THE ACTION

1. Plaintiffs bring this action individually and on behalf of a Class of all similarly situated consumers against Defendant, Landmark Bank ("Landmark"), arising from its routine practices of assessing Overdraft Fees ("OD Fees") on transactions that did not actually overdraw checking accounts.

2. Landmark misleadingly and deceptively misrepresented its OD Fee practices, including in its own account contracts.

3. This is a civil action seeking monetary damages, restitution, and declaratory relief.

4. As described herein, Landmark's practices violated Missouri common law, as well as Landmark's own form contracts.

5. Landmark's improper scheme to extract funds from account holders victimized Plaintiffs and hundreds of other similarly situated consumers.

PARTIES

6. Plaintiff Susanne Pace is an individual and resident of Fulton, Missouri and has had a checking account with Landmark at all times material hereto.

7. Plaintiff Patrick Flowers is an individual and resident of Columbia, Missouri and has had a checking account with Landmark at all times material hereto.

8. Defendant Landmark Bank was a nationally chartered bank with its headquarters in Columbia, Missouri. Landmark had over $3.1 billion in assets and maintained several branches throughout Missouri, Oklahoma, and Texas.

9. In February 2020, Landmark was acquired by Simmons Bank. Simmons Bank is a nationally chartered bank with its headquarters in Pine Bluff, Arkansas. Simmons Bank has more than $23 billion in assets and continues to maintain and operate Landmark's branches throughout Missouri, Oklahoma, and Texas. In addition to its branches in these states, Simmons Bank also maintains and operates branches throughout Arkansas, Kansas, and Tennessee.

JURISDICTION AND VENUE

10. Landmark regularly and systematically conducted business and provided retail banking services in this State and provides retail banking services to customers in this State, including Plaintiffs and members of the putative Class. As such, it is subject to the jurisdiction of this Court.

11. Venue is likewise proper in this district pursuant to Mo. Ann. Stat. § 508.010 because Landmark maintained its principal office in this County, conducted business in this

County, and a substantial part of the acts and omissions giving rise to this lawsuit occurred in this County.

BACKGROUND FACTS

I. Landmark Charged OD Fees on Transactions that Did Not Actually Overdraw the Account

A. Overview of Claim

12. Plaintiffs bring this action challenging Landmark's practice of charging OD Fees on what are referred to in this complaint as "Authorize Positive, Settle Negative Transactions," or "APSN Transactions."

13. Here's how it works. At the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Landmark immediately reduced the consumer's checking account for the amount of the purchase, set aside funds in the checking account to cover that transaction, and adjusted the consumer's displayed "available balance" to reflect that subtracted amount. As a result, customers' accounts always had sufficient funds available to cover these transactions because Landmark already sequestered the funds for payment.

14. However, Landmark still assessed crippling $29 OD Fees on many of these transactions and mispresented its practices in its Account Documents (as defined below).

15. Despite putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, Landmark later assessed OD Fees on those same transactions when they purportedly settled days later into a negative balance. These types of transactions are APSN Transactions.

16. Landmark maintained a running account balance, tracking funds consumers have for immediate use. This running account balance was adjusted, in real-time, to account for debit card transactions at the precise instance they were made. When a customer made a purchase with

a debit card, Landmark sequestered the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available balance. Such funds were not available for any other use by the account holder and were specifically associated with a given debit card transaction.

17. Indeed, the entire purpose of the immediate debit and hold of positive funds is to ensure that there are enough funds in the account to pay the transaction when it settles:

> When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is commonly referred to as a "debit hold." During the time the debit hold remains in place, which may be up to three days after authorization, those funds may be unavailable for the consumer's use for other transactions.

Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498 (Jan. 29, 2009).

18. That means when any subsequent, intervening transactions were initiated on a checking account, they were compared against an account balance that had already been reduced to account for any earlier debit card transactions. Therefore, many subsequent transactions incurred OD Fees due to the unavailability of the funds sequestered for debit card transactions.

19. Still, despite always reserving sufficient available funds to cover the transactions and keeping the held funds off-limits for other transactions, Landmark improperly charged OD Fees on APSN Transactions.

20. The Consumer Financial Protection Bureau ("CFPB") has expressed concern with this very issue, flatly calling the practice "unfair" and/or "deceptive" when:

> [A] financial institution authorized an electronic transaction, which reduced a customer's available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer's available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because

> of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive.
>
> At one or more institutions, examiners found deceptive practices relating to the disclosure of overdraft processing logic for electronic transactions. Examiners noted that these disclosures created a misimpression that the institutions would not charge an overdraft fee with respect to an electronic transaction if the authorization of the transaction did not push the customer's available balance into overdraft status. But the institutions assessed overdraft fees for electronic transactions in a manner inconsistent with the overall net impression created by the disclosures. Examiners therefore concluded that the disclosures were misleading or likely to mislead, and because such misimpressions could be material to a reasonable consumer's decision-making and actions, examiners found the practice to be deceptive. Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing the fees under these circumstances was found to be unfair.

Consumer Financial Protection Bureau, "Supervisory Highlights" (Winter 2015).

21. There is no justification for these practices, other than to maximize Landmark's OD Fee revenue. APSN Transactions only exist because intervening checking account transactions supposedly reduce an account balance. But Landmark was free to protect its interests and either reject those intervening transactions or charge OD Fees on those intervening transactions—and it did the latter to the tune of millions of dollars each year. But Landmark was not content with these millions in OD Fees. Instead, it sought millions more in OD Fees on APSN Transactions.

22. Besides being deceptive, these practices breached promises made in Landmark's adhesion contracts, which fundamentally misconstrued and misled consumers about the true nature

of Landmark's processes and practices. Landmark also exploited its contractual discretion by implementing these practices to gouge its customers.

23. In plain, clear, and simple language, the checking account contract documents covering OD Fees promised that Landmark would only charge OD Fees on transactions that have insufficient funds to cover those transactions.

24. Landmark was not authorized by contract to charge OD Fees on transactions that have not overdrawn an account, but it has done so.

B. Mechanics of a Debit Card Transaction

25. A debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from Landmark. When a merchant or customer physically or virtually "swipes" a customer's debit card, the credit card terminal connects, via an intermediary, to Landmark, which verified that the customer's account was valid and that sufficient available funds existed to cover the transaction amount.

26. At this step, if the transaction is approved, Landmark immediately decremented the funds in a consumer's account and sequestered funds in the amount of the transaction but did not yet transfer the funds to the merchant.

27. Sometime thereafter, the funds were actually transferred from the customer's account to the merchant's account.

28. Landmark (like all banks and credit unions) decided whether to "pay" debit card transactions at authorization. After that, Landmark was obligated to pay the transaction no matter what. For debit card transactions, that moment of decision could only occur at the point of sale, when the transaction was authorized or declined. It was at that point—and only that point—that Landmark chose to either pay the transaction or to decline it. When the time came to actually

transfer funds for the transaction to the merchant, it was too late for the bank to deny payment—the bank had no discretion and must pay the charge. This "must pay" rule applies industry wide and requires that, once a financial institution authorizes a debit card transaction, it "must pay" it when the merchant later makes a demand, regardless of other account activity. *See* Electronic Fund Transfers, 74 Fed. Reg. 59033-01, 59046 (Nov. 17, 2009).

29. There was no change—no impact whatsoever—to the available funds in an account when this transfer occurred.

C. Landmark's Account Contract

30. Plaintiffs had Landmark checking accounts, which were governed by Landmark's standardized Account Agreement, Ex. A, and Schedule of Fees ("Fee Schedule"), Ex. B (collectively, the "Account Documents").

31. The Account Documents promised that Landmark would not charge OD Fees on transactions that had sufficient funds to cover them at the time they were initiated.

32. The Account Agreement promised that Landmark would use a customer's "available" balance to determine overdrafts:

> If your account lacks sufficient funds available to pay a check, preauthorized transfer or other debit activity presented for payment **as determined by the available balance in your account**, we may (1) return the item, or (2) pay the item at our discretion. The available balance is the amount of funds that you have in your account to spend without incurring an overdraft fee. **The available balance reflects pending credits or debits and transactions and checks that have not yet cleared your account.** For example, you have $100 in your account and spend $25 on groceries. The $25 may show as a pending transaction, and your available balance is $75. **If you spend more than the available balance, then you may incur an overdraft fee.**

Ex. A at 3-4 (emphasis added).

33. Because Landmark explicitly promised that a customer's available balance reflected pending debits, Landmark thus promised to immediately deduct funds required to pay

transactions authorized on a positive balance *at the time those transactions were authorized*. Landmark further promised that those held funds would not be used to pay any transaction other than the transaction for which they were held and could not be applied to any subsequent, intervening transactions.

34. For APSN Transactions, which are immediately deducted from a positive account balance and held aside for payment of that same transaction, there were always sufficient funds to cover those transactions—yet Landmark assessed OD Fees on them anyway.

35. The above promises indicate that transactions are only overdraft transactions when they were authorized and approved into a negative account balance. Of course, that is not true for APSN Transactions.

36. In fact, Landmark actually authorized transactions on positive funds, set those funds aside on hold, then failed to use those same funds to post those same transactions. Instead, it used a secret posting process described below.

37. The above representations and contractual promises are untrue. In fact, Landmark charged OD Fees even when sufficient funds existed to cover transactions that were authorized into a positive balance. No express language in any document states that Landmark may impose OD Fees on any APSN Transactions.

38. The Account Documents also misconstrued Landmark's true debit card processing and overdraft practices.

39. First, and most fundamentally, Landmark charged OD Fees on debit card transactions for which there were sufficient funds available to cover the transactions.

40. Landmark assessed OD Fees on APSN Transactions that did have sufficient funds available to cover them throughout their lifecycle.

41. Landmark's practice of charging OD Fees even when sufficient available funds existed to cover a transaction violated its contractual promise not to do so. This discrepancy between Landmark's actual practice and the contract caused consumers like Plaintiffs to incur more OD Fees than they should.

42. Next, sufficient funds for APSN Transactions were actually debited from the account immediately, consistent with standard industry practice.

43. Because these withdrawals take place upon initiation, the funds could be re-debited later. But that is what Landmark did when it re-debited the account during a secret batch posting process.

44. In reality, Landmark's actual practice was to attempt the same debit card transaction twice to determine if the transaction overdraws an account—both at the time of authorization and later at the time of settlement.

45. At the time of settlement, however, an available balance *does not change at all* for transactions previously authorized into positive funds and for which sufficient funds were held. As such, Landmark could not then charge an OD Fee on these transactions because the available balance had not been rendered insufficient due to the pseudo-event of settlement.

46. Upon information and belief, something more is going on: at the moment a debit card transaction was about to settle, Landmark did something new and unexpected during its middle of the night batch posting process. Specifically, Landmark released the hold placed on funds for the transaction for a split second, putting money back into the account, then re-debited the same transaction a second time.

47. This secret step allowed it to charge OD Fees on transactions that never should have gotten them—transactions that were authorized into sufficient funds, and for which Landmark specifically set aside money to pay them.

48. This discrepancy between Landmark's actual practices and the Account Documents caused consumers to incur more OD Fees than they should.

D. Landmark Abused Contractual Discretion

49. Landmark's practice of charging OD Fees on APSN Transactions was not simply a breach of the express terms of the Account Documents; Landmark's OD Fee practices also exploited contractual discretion to the detriment of account holders.

50. The term "to pay" a transaction is used but not defined in the Account Documents. Ex. A at 3-4. Landmark used its discretion to define "to pay" in a manner contrary to any reasonable, common sense understanding of that term. In Landmark's implied definition, a balance was insufficient "to pay" a transaction even if Landmark sequestered sufficient available funds for that transaction at the time it was made.

51. Landmark also used its contractual discretion to cause APSN Transactions to incur OD Fees by knowingly authorizing later transactions that it allowed to consume available funds previously sequestered for APSN Transactions.

52. Moreover, the Account Agreement stated that transactions that purportedly overdrew an account "may" incur OD Fees. *Id.* at 3. Landmark abused its contractual discretion by *always* charging OD Fees on transactions that purportedly overdrew an account at the time of posting even though the transactions were authorized on positive funds and sufficient funds were reserved to pay them.

53. Landmark used all of these contractual discretion points unfairly to extract OD Fees on transactions that no reasonable consumer would believe could cause OD Fees.

E. Reasonable Consumers Understand Debit Card Transactions Are Debited Immediately

54. The assessment of OD Fees on APSN Transactions is fundamentally inconsistent with the immediate withdrawal of funds for debit card transactions. That is because if funds are immediately debited, they cannot be depleted by intervening transactions. If funds are immediately debited, they are necessarily applied to the debit card transactions for which they are debited.

55. Landmark was aware that this is precisely how account holders reasonably understand debit card transactions to work.

56. Landmark knew that many consumers prefer debit cards for these very reasons. Consumer research indicates that consumers prefer debit cards as a budgeting device because they do not allow debt like credit cards do and because the money comes directly out of a checking account.

57. Consumer Action, a national nonprofit consumer education and advocacy organization advises consumers determining whether they should use a debit card that "[t]here is no grace period on debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of 'float' time that a check usually takes to clear." *What Do I Need to Know About Using a Debit Card?*, ConsumerAction (Jan. 14, 2019), https://bit.ly/3DEFXhQ.

58. Further, Consumer Action informs consumers that "Debit cards offer the convenience of paying with plastic without the risk of overspending. When you use a debit card, you do not get a monthly bill. You also avoid the finance charges and debt that can come with a

credit card if not paid off in full." *Understanding Debit Cards*, ConsumerAction, https://bit.ly/3DDuI9m (last visited Oct. 14, 2021).

59. This understanding is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States has increased by approximately 1.4 million in the last five years, and with that increasing ubiquity, consumers have viewed debit cards (along with credit cards) "as a more convenient option than refilling their wallets with cash from an ATM." Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch (Mar. 23, 2016), https://on.mktw.net/3lEiPK6.

60. Not only have consumers increasingly substituted debit cards for cash, but they believe that a debit card purchase is the fundamental equivalent of a cash purchase, with the swipe of a card equating to handing over cash, permanently and irreversibly.

61. Landmark was aware of the consumer perception that debit transactions reduce an available balance at a specified time and in a specified order—namely, at the moment and in the order that they are actually initiated—and Landmark's Account Agreement only supported this perception.

F. Plaintiffs' Debit Card Transactions

62. On numerous occasions, Landmark charged Plaintiffs OD Fees on transactions that were authorized on sufficient funds but purportedly settled days later into a negative balance.

63. As an example, on July 15, 2019, Plaintiff Pace's account was assessed *four* $29 OD Fees—or *$116 total*—for transactions that settled that day. However, the transactions that purportedly caused the fees were previously authorized into a positive account balance on July 12, 2019 and July 13, 2019, at which time Plaintiff Pace's account had sufficient funds to pay all four transactions.

64. Because Landmark had previously sequestered the funds to cover those transactions, Plaintiff Pace's account had sufficient funds to cover the transactions and should not have been assessed the fees.

65. On August 6, 2019, Plaintiff Pace's account was assessed a $29 OD Fee for a transaction that settled that day. However, the transaction that purportedly caused the fee was previously authorized into a positive account balance on August 5, 2019.

66. Because Landmark had previously sequestered the funds to cover that transaction, Plaintiff Pace's account had sufficient funds to cover the transaction and should not have been assessed a fee.

67. On September 9, 2019, Plaintiff Pace's account was assessed a $29 OD Fee for a transaction that settled that day. However, the transaction that purportedly caused the fee was previously authorized into a positive account balance on September 6, 2019.

68. Because Landmark had previously sequestered the funds to cover that transaction, Plaintiff Pace's account had sufficient funds to cover the transaction and should not have been assessed a fee.

69. As a result of these improper fee practices, Plaintiff Pace has been forced to pay Landmark more than $3,000 in OD Fees in 2019 alone.

70. Similarly, on November 25, 2019, Plaintiff Flowers' account was assessed a $29 OD Fee for a transaction that settled that day. However, the transaction that purportedly caused the fee was previously authorized into a positive account balance on November 24, 2019.

71. Because Landmark had previously sequestered the funds to cover that transaction, Plaintiff Flowers' account had sufficient funds to cover the transaction and should not have been assessed a fee.

72. As a result of these improper fee practices, Plaintiff Flowers has been forced to pay Landmark nearly $1,000 in OD Fees in 2019 alone.

73. The improper fees charged by Landmark were not "problems" or "errors" by the bank, such as "unauthorized signatures, alterations [or] forgeries," but rather were intentional charges made by Landmark as part of its standard processing of transactions.

74. Plaintiffs therefore had no duty to report the fees as "problems" or "errors."

75. Moreover, any such reporting would have been futile as Landmark had made a decision to charge the fees in this specific manner to maximize profits at the expense of customers.

CLASS ACTION ALLEGATIONS

76. *Description of the Class*: Plaintiffs bring this action individually and on behalf of the following class of persons:

> All holders of a personal or business checking account originally established at Landmark Bank, including former holders and holders with accounts transitioned to Simmons Bank, regardless of the state of residence or citizenship of its account holder, who, from January 1, 2015, to and including February 14, 2020, incurred one or more paid item fees when the customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions.
>
> "Class" excludes all judicial officers presiding over the Litigation, their staff, and any of their immediate family members, as well as Plaintiffs' counsel and Landmark's officers and employees.

77. Excluded from the Class are Landmark's officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Class are any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

78. *Numerosity*: The members of the proposed Class are so numerous that individual joinder of all members is impracticable. The exact number and identities of the members of the proposed Class are unknown at this time and can be ascertained only through appropriate discovery. Plaintiffs estimate the number of members in each Class to be in the thousands.

79. *Commonality and Predominance*: There are many questions of law and fact common to Plaintiffs and the Class, and those questions substantially predominate over any questions that may affect individual Class members. Common questions of law and fact include:

a. Whether Landmark charged OD Fees on transactions that did not overdraw an account;

b. Whether Landmark breached its own contract by charging OD Fees on transactions that did not overdraw an account;

c. Whether Landmark breached the covenant of good faith and fair dealing;

d. The proper method or methods by which to measure damages; and

e. The declaratory and injunctive relief to which the Class is entitled.

80. *Typicality:* Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class have been similarly affected by Landmark's actions.

81. *Adequacy of Representation*: Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting complex and consumer class action litigation. Plaintiffs and Plaintiffs' counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

82. *Superiority of Class Action*: Plaintiffs and the members of the Class suffered harm as a result of Landmark's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impractical. Even if individual Class members had the

resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Landmark's common course of conduct. The class action device allows for unitary adjudication, judicial economy, and the fair and equitable handling of all class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the Class members.

83. *Risk of Inconsistent or Varying Adjudication*: Class action treatment is proper, and this action should be maintained as a class action because the risks of separate actions by individual members of the Class would create a risk of: (a) inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Landmark as the party opposing the Class; and/or (b) adjudications with respect to individual Class members would, as a practical matter, be dispositive of the interests of other Class members not party to the adjudication or would substantially impair or impede their ability to protect their interests.

84. *Action Generally Applicable to Class as a Whole*: Landmark, as the party opposing the Class, acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

FIRST CLAIM FOR RELIEF
Breach of Contract, Including Breach of the Covenant of Good Faith and Fair Dealing
(On Behalf of Plaintiffs and the Class)

85. Plaintiffs incorporate by reference the preceding paragraphs.

86. Plaintiffs and Landmark contracted for banking services, as embodied in the Account Documents.

87. All contracts entered by Plaintiffs and the Class are identical or substantively identical because Landmark's form contracts were used uniformly.

88. Landmark breached the express terms of its own agreements as described herein.

89. Under Missouri law, good faith is an element of every contract between banks and/or credit unions and their customers because banks and credit unions are inherently in a superior position to their checking account holders and, from this superior vantage point, they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.

90. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

91. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the bargain and abuse of a power to specify terms.

92. Landmark abused the discretion it granted to itself when it charged OD Fees on transactions that did not overdraw an account.

93. In these and other ways, Landmark violated its duty of good faith and fair dealing.

94. Landmark willfully engaged in the foregoing conduct for the purpose of (1) gaining unwarranted contractual and legal advantages; and (2) unfairly and unconscionably maximizing fee revenue from Plaintiffs and other members of the Class.

95. Plaintiffs and members of the Class have performed all, or substantially all, of the obligations imposed on them under the agreements.

96. Plaintiffs and members of the Class have sustained damages as a result of Landmark's breaches of the parties' contracts and breaches of contract through violations of the covenant of good faith and fair dealing.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class, respectfully request that the Court:

a. Certify this case as a class action, designating Plaintiffs as class representatives and designating the undersigned as Class Counsel;

b. Award Plaintiffs and the Class actual, statutory, and punitive damages in an amount to be proven at trial;

c. Award Plaintiffs and the Class restitution in an amount to be proven at trial;

d. Award Plaintiffs and the Class pre-judgment interest in the amount permitted by law;

e. Award Plaintiffs and the Class attorneys' fees and costs as permitted by law;

f. Declare Landmark's practices outlined herein to be unlawful and a breach of contract;

g. Grant Plaintiffs and the Class a trial by jury;

h. Grant leave to amend these pleadings to conform to evidence produced at trial; and

i. Grant such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs, by counsel, demand trial by jury.

Dated:

_____

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Attorneys for Plaintiffs and the Putative Class

EXHIBIT 2

PROPOSED ORDER RE: PRELIMINARY APPROVAL

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

SUSANNE PACE and PATRICK FLOWERS, individually and on behalf of all others similarly situated, Plaintiffs, v. LANDMARK BANK, Defendant.	Cause No. 20BA-CV00244

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT; CERTIFYING CLASS; APPROVING NOTICE; AND SETTING DATE FOR FINAL APPROVAL HEARING

WHEREAS, Plaintiffs Susanne Pace and Patrick Flowers ("Plaintiffs") and Defendant Landmark Bank ("Landmark" or "Defendant") (together the "Parties"), have reached a proposed settlement of this Litigation, which is set forth in the Settlement Agreement and Release filed with the Court on [**DATE**] ("Settlement Agreement"); and

WHEREAS, Plaintiffs have applied to the Court for preliminary approval of the proposed settlement, the terms and conditions of which are set forth in the Settlement Agreement, and for conditional certification of a Settlement Class; and

WHEREAS, Defendant joins in the request for preliminary approval of the settlement and conditional certification of a Settlement Class; and

WHEREAS, the Court has fully considered the record of these proceedings, the Settlement Agreement and all exhibits thereto, the representations, arguments, and recommendation of counsel for the Parties and the requirements of law; and

WHEREAS, it appears to the Court upon preliminary examination that adequate investigation and research has been conducted such that the counsel for the Parties at this time are able to reasonably evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be presented by the further prosecution of this Litigation; and

WHEREAS, it appears to the Court upon the preliminary examination that the proposed settlement is fair, reasonable, and adequate, and that a hearing should be held after notice to the Class of the proposed settlement to finally determine whether the proposed settlement is fair, reasonable and adequate and whether a Final Approval Order and Judgment of Dismissal should be entered in this Litigation.

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. The capitalized terms used in this Preliminary Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

2. Pursuant to Missouri Rule 52.08(b)(3), the court has conducted "a preliminary examination of the record before it" and on that basis determined that—for settlement purposes only—"it appears that a settlement class should be tentatively certified." *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 378 (Mo. Ct. App. 1997).[1]

3. In particular, the Court finds "probable cause" that the settlement satisfies the standards set forth in Missouri Supreme Court Rule 52.08 because it appears that (A) the Class Representatives and Class Counsel have adequately represented the Class; (B) the settlement was negotiated at arm's length; (C) the settlement is fair and provides adequate relief for the Class; (D)

[1] The Court considers only whether "the class can be certified for the purposes of settlement; it is not making a determination as to whether the case could be maintained as a class action if the settlement fell through and litigation were required, nor is it making a final determination of certification for purposes of settlement." *Chadwick*, 956 S.W.2d at 384 (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, (1997)).

there are no apparent conflicts of interest between the representatives and the class or among the class for settlement purposes. The Settlement Agreement was entered into by experienced counsel after substantial adversarial proceedings, including significant discovery and motions, and only after extensive arm's-length negotiations, including a full-day private mediation conducted by Judge Wayne Andersen (ret.), an experienced mediator, and free of any apparent collusion.

4. Moreover, the Court finds that the Settlement Agreement's Notice Program is reasonably calculated to ensure that Class Members will received the "best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort," because the notice provided for in the Settlement Agreement "advise[s] each member that: (A) the court will exclude the member from the class if requested by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if desired, enter an appearance through counsel." Mo. Rule 52.08(c)(2). Accordingly, the Court orders the Parties to direct notice of the proposed settlement to the Class, in the manner set forth below and in the Settlement Agreement.

5. The Court has also considered the six factors for determining whether a settlement is fair, reasonable, and adequate, *see Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. Ct. App. 2011), and concludes that they support preliminary approval of the settlement. Specifically, the Court finds that the settlement is likely to be fair, reasonable, and adequate in light of "(1) the [absence] of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members." *Id.* (quoting *Ring v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. Ct. App. 2000)).

6. Accordingly, for purposes of the Settlement only and subject the Settlement Agreement, the Court conditionally certifies the following Class:

> All holders of a personal or business checking account originally established at Landmark Bank, including former holders and holders with accounts transitioned to Simmons Bank, regardless of the state of residence or citizenship of its account holder, who, from January 1, 2015, to and including February 14, 2020, incurred one or more paid item fees when the customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions.

The Court excludes from the Class all judicial officers presiding over this Litigation and their staff, and any of their immediate family members as well as Plaintiffs' counsel and Landmark officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. The persons potentially comprising the Class and to whom Notice is to be mailed are identified in the Notice Database, as defined in the Settlement Agreement, which data will be maintained as indicated in the Settlement Agreement.

7. For purposes of settlement only and subject to the Settlement Agreement, the Court further finds that "Class Period" means January 1, 2015 to and including February 14, 2020.

8. The Court preliminarily finds, for Settlement purposes only and subject to the Settlement Agreement, that the proposed Settlement Class satisfies the prerequisites for a settlement class action under Missouri Rule 52.08 and conditionally certifies the Settlement Class. In particular, the Court finds, for purposes of settlement only, that the following requirements are met:

a. The above-described Class is so numerous that joinder of all members is impracticable;

b. There are questions of law or fact common to the Class;

c. The claims of the Class Representatives are typical of the claims of the Class;

d. The Class Representatives will fairly and adequately protect the interests of the Class;

e. The questions of fact or law common to the members of the Class predominate over the questions affecting only individual members; and

f. Certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of the controversy; provided, however, that the Court has not considered whether the Settlement Class could "pass the requirements of Rule 23(a) or (b)(3) if considered "without regard to settlement" and if the Settlement Class were *not* "relieved of manageability issues, and other issues which are relevant only if the case were to be tried." *Chadwick*, 956 S.W.2d at 384.

9. The Court finds that it has personal jurisdiction over the subject matter of the Litigation and personal jurisdiction over the Parties and all Class Members, including the absent Class Members.

10. Plaintiffs Susanne Pace and Patrick Flowers are hereby preliminarily appointed and designated as Class Representatives. This Court preliminarily finds that each will fairly and adequately represent and protect the interests of the absent Class Members.

11. The Court conditionally appoints John F. Garvey of Carey Danis & Lowe; Lynn A. Toops of Cohen & Malad, LLP; J. Gerard Stranch IV and Martin F. Schubert of Brannstetter, Stranch & Jennings, PLLC; Christopher D. Jennings of Johnson Firm; and Jeffrey D. Kaliel and Sophia Gold of Kaliel Gold PLLC, as settlement Class Counsel. This Court preliminarily finds

that they are competent, capable of exercising all responsibilities as Class Counsel, and will fairly and adequately represent and protect the interests of the absent Class Members.

12. Class Counsel is authorized to act on behalf of the Class Members with respect to all acts or consents required by, or which may be given pursuant to, the Settlement Agreement, and such other acts reasonably necessary to consummate the Settlement Agreement. Any Class Member may enter an appearance through counsel of his or her own choosing and at his or her own expense. Any Class Member who does not enter an appearance or appear on his or her own will be represented by Class Counsel.

13. The Court approves KCC Class Action Services LLC to serve as the Settlement Administrator in this Litigation, and to fulfill the functions, duties, and responsibilities of the Settlement Administrator as set forth in the Settlement Agreement and this Order. By accepting this appointment, the Settlement Administrator has agreed to the Court's jurisdiction solely for purpose of enforcement of the Settlement Administrator's obligations under the Settlement Agreement.

14. Any information comprising or derived from the Notice Database or Class List provided to the Settlement Administrator pursuant to the Settlement Agreement shall be provided solely for the purpose of providing Notice, or following final approval, Cash Awards, to the Class Members and informing such Class Members about their rights further to this settlement, shall be kept in strict confidence, shall not be disclosed to any third party other than as set forth in the Settlement Agreement to effectuate the terms of the Agreement or the administration process, shall be used for no other cases, and shall be used for no other purpose. To the extent that a Settlement Class Member has a question, Landmark shall disclose information about the identity of Settlement

Class Members to the limited extent required for Class Counsel to provide necessary assistance in response to such a question.

15. To the extent that any federal or state law governing the disclosure and use of consumers' financial information (including but not limited to "nonpublic personal information" within the meaning of the Graham–Leach–Bliley Act, 15 U.S.C. § 6801 *et seq*., and its implementing regulations) permits such disclosure only as required by an order of a court, this order—

(a) qualifies as "judicial process" under 15 U.S.C. § 6802(e)(8), and

(b) authorizes the production of such information subject to this order's protections, in which case the producing party's production of such information in accordance with this order constitutes compliance with the applicable law's requirements. To the extent that any such law requires a producing or requesting party to give prior notice to the subject of any consumer financial information before disclosure, the Court finds that the limitations in this order furnish good cause to excuse any such requirement, which the Court hereby excuses.

16. Plaintiffs have filed, with Defendant's consent, the Amended Class Action Complaint for purposes of effecting the settlement.

17. If the settlement is terminated or is not consummated for any reason, the foregoing conditional certification of the Class and appointment of the Class Representatives and Class Counsel, and the filing of the Settlement Agreement and the Amended Class Action Complaint shall be void and of no further effect, and the Parties to the proposed settlement shall be returned to the status each occupied before entry of this Order and before the filing of the Amended Class Action Complaint, without prejudice to any legal argument that any of the parties to the Settlement Agreement might have asserted but for the settlement.

18. A Final Approval Hearing shall be held before this Court on _____, 2022, at ____ _.m.,[2] to address, among other things: (a) whether the Court should finally certify the Settlement Class and whether the Class Representatives and Class Counsel have adequately represented the Settlement Class; (b) whether the proposed Settlement Agreement should be finally approved as fair, reasonable, and adequate and whether the Final Approval Order and Judgment should be entered; (c) whether the Released Claims of the Settlement Class in this Litigation should be dismissed on the merits and with prejudice; (d) whether Class Counsel's Attorneys' Fees and Costs application and the Service Award for the Plaintiffs/Class Representatives should be approved; and (e) such other matters as the Court may deem necessary or appropriate.

19. Papers in support of final approval of the Settlement Agreement, and in support of or opposition to the Service Award to the Class Representatives and Class Counsel's Attorneys' Fees and Costs application shall be filed with the Court according to the schedule set forth in Paragraph 31 below. The Final Approval Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a Final Approval Order and Judgment of Dismissal in accordance with the Settlement Agreement that will adjudicate the rights of all Settlement Class Members with respect to the Released Claims being settled. The Court may finally approve the Settlement Agreement at or after the Final Approval Hearing with any modifications agreed to by Landmark and the Class Representatives and without further notice to the Settlement Class, except such notice as may be provided through the Settlement Website.

[2] A date not earlier than 120 days following entry of the Preliminary Approval Order as detailed in Paragraph 31 *infra.*

20. The Court approves, as to form and content, the use of a short-form Email Notice and Postcard Notice (together, the "Notice") substantially similar to the forms attached as Exhibits 4 and 5 to the Settlement Agreement, respectively. The Postcard Notice will be provided to members of the Class by first-class U.S. mail using Landmark's records as well as other investigations deemed appropriate by the Settlement Administrator, updated by the Settlement Administrator in the normal course of business. The Postcard Notice shall be mailed within 45 days of the date of entry of this Preliminary Approval Order (the Notice Deadline). The Email Notice will be emailed to Landmark accountholders who have provided their email address to Landmark, within 45 days of the date of entry of this Preliminary Approval Order. The Long Form Notice, Exhibit 6 to the Settlement Agreement, will be posted on the Settlement Website established by the Settlement Administrator, as set forth under the Settlement Agreement, within 45 days of the date of the entry of this Preliminary Approval Order (the Notice Deadline). Prior to the Final Approval Hearing, the Settlement Administrator will submit to the Court a declaration of compliance with these notice provisions.

21. In the event the Postcard Notice is returned undeliverable with a forwarding address, the Settlement Administrator shall promptly re-mail the Postcard Notice to the indicated forwarding address. In the event the Postcard Notice is returned undeliverable without a forwarding address, the Settlement Administrator shall promptly perform reasonable address traces for such returned notices in accordance with the Settlement Agreement. The Settlement Administrator shall complete the remailing of mailed Notices to those Class Members who were identified as of that time through address traces or forwarding addresses promptly and within no later than 15 days after the initial Notice Deadline. In the event that the Email Notice is returned as undeliverable or invalid, the Settlement Administrator shall promptly mail the Postcard Notice

via first-class U.S. mail to the most recent known address, based on Landmark's records as well as other investigations deemed appropriate by the Settlement Administrator, within 15 days after the initial Notice Deadline. Except as set forth herein, there shall be no further obligation or attempt to obtain a forwarding address for any such returned mail or to further re-mail any such Postcard Notice, Email Notice, or returned mail. Prior to the Final Approval Hearing, the Settlement Administrator will submit to the Court a declaration of compliance with these notice re-mailing provisions.

22. The Settlement Administrator shall have the discretion to make revisions to the format of the Notice in a reasonable manner to reduce mailing or administrative costs. Non-substantive changes may be made to the Notice by agreement of the Parties without further order of the Court.

23. The Notice, as directed in this Order and set forth in the Settlement Agreement, constitutes the best notice practicable under the unique circumstances of this case and is reasonably calculated to apprise the members of the Settlement Class of the pendency of this Litigation, their right to object to the Settlement or exclude themselves from the Settlement Class, the binding effect of the judgment on all Class Members who do not request exclusion, and the right of any Class Member who does not request exclusion to enter an appearance through counsel. The Court further finds that the Notice Program is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive such notice and that it meets the requirements of due process and of Missouri Rule 52.08.

24. The cost of Notice and Administrative Expenses shall be paid from the Settlement Fund, as provided for in the Settlement Agreement.

25. Any member of the Class who desires to be excluded from the Settlement Class, and therefore not bound by the terms of the Settlement Agreement, must submit to the Settlement Administrator, pursuant to the instructions and requirements set forth in the Notice, a timely and valid written request for exclusion postmarked no later than 45 days following the Notice Deadline.

26. Each request for exclusion, or "Opt-Out", must be personally signed by the individual Class Member. Further, to be valid and treated as a successful exclusion or "Opt-Out" the request must include: (i) the requester's full name, mailing address, contact telephone number or email address, and the last four digits of the Landmark account number for any account that the Class Member claims was charged Challenged Fees; (ii) the case name and number of the *Pace* Litigation; (iii) an unequivocal statement that the Requestor desires to be excluded from the Settlement Class, and (iv) the requestor's signature.

27. No person shall purport to exercise any exclusion rights for any other person, or purport to exclude any other Class Member as a group, aggregate, or class involving more than one Class Member, or as an agent or representative; any so-called "mass" or "class" opt-outs shall not be allowed. Any such purported exclusion shall be void and the person that is the subject of the purported opt-out shall be treated as a member of the Settlement Class and shall be bound by the Settlement Agreement.

28. Any member of the Settlement Class who elects to be excluded shall not be entitled to receive any of the benefits of the settlement, shall not be bound by the release of any claims pursuant to the Settlement Agreement, and shall not be entitled to object to the settlement or appear at the Final Approval Hearing.

29. Any Class Member who does not submit a valid and timely request for exclusion may object to the proposed settlement. Any such Class Member shall have the right to appear and

be heard at the Final Approval Hearing, either personally or through an attorney retained at the Class Member's own expense. Any such Class Member must file with the Court and mail or hand-deliver to the Settlement Administrator a written notice of intention to appear together with supporting papers, including a detailed statement of the specific objections made, delivered or postmarked no later than the Objection Deadline. Each Objection must state (a) the case name and number of the *Pace* Litigation; (b) the objector's full name, current address, and the last four digits of the account number of any Landmark account the objector claims was charged Challenged Fees; (c) a statement that the Settlement Class Member objects to the Settlement, in whole or in part; (d) the reasons why the objector objects to the Settlement along with copies any documents or other supporting materials; (e) the identity of any lawyer who assisted, provided advice, or represents the objector as to this case or such objection, if any; and (f) whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either *pro se* or through counsel, and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing; and (g) the objector's original signature. Persons wishing to speak at the hearing must file by the same Objection Deadline a notice of intent to appear containing such information as explained fully in the approved Notices. Any Settlement Class Member that fails to object in the manner set forth herein shall be deemed to have waived, and shall forever be foreclosed from raising, any objection or opposition, by appeal, collateral attack, or otherwise and shall be bound by all of the terms of the Settlement Agreement upon Final Approval and by all proceedings, orders, and judgments, including but not limited to the Release in the Litigation.

30. Pending entry of the Final Approval Order and Judgment, the Plaintiffs, Class Members, and any person or entity purporting to act on their behalf, are preliminarily enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) any

Released Claim against any of the Released Parties in any action, arbitration, or proceeding in any court, arbitration forum, or tribunal; provided, however, that this injunction shall not apply to individual claims of any Class Members who timely exclude themselves in a manner that complies with this Order and the Settlement Agreement. This injunction is necessary to protect and effectuate the settlement, this Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

31. Further settlement proceedings in this matter shall proceed according to the following schedule:

EVENT	SCHEDULED DATE
Notice deadline (short-form Postcard Notice, Email Notice, and Long Form website posting)	45 days after entry of Preliminary Approval Order
Attorney's Fees and Costs and Service Award application	15 days before the Objection Deadline
Last day for Class Members to opt out of Settlement (the Opt-Out Deadline)	45 days after the Notice Deadline
Last day for Class Members to Object to the Settlement (the Objection Deadline)	45 days after the Notice Deadline
Briefs in support of Final Approval or Opposition to any Objections due by	14 days prior to the Final Approval Hearing
Final Approval Hearing	On the date set in Paragraph 18, but no earlier than 120 days after entry of Preliminary Approval Order

32. Service of all papers on counsel for the parties shall be made as follows: for settlement Class Counsel to Lynn A. Toops, Cohen & Malad, LLP, One Indiana Square, Suite

1400, Indianapolis, Indiana 46204; for Defendant to Debra Bogo-Ernst, Mayer Brown LLP, 71 S. Wacker Dr., Chicago, IL 60606.

33. The address of this Court for purposes of any Objection as set forth in Paragraph 29 is: Judge Jeff Harris, Boone County Courthouse for the Circuit Court of Boone County, Missouri, 705 E. Walnut St., Columbia, MO 65201.

34. In the event that a Final Approval Order and Judgment of Dismissal is not entered by the Court, or the Effective Date of the Settlement does not occur, or the Settlement Agreement otherwise terminates according to its terms, this Order and all orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever, including without limitation for any evidentiary purpose (including but not limited to class certification), in this Litigation or any other action. In such event the Settlement Agreement, exhibits, attachments, Amended Class Action Complaint, and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all of the parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement and the filing of the Amended Class Action Complaint.

35. Any deadlines set in this Preliminary Approval Order may be extended, or other aspects of the settlement modified, by order of the Court, for good cause shown, without further notice to the Settlement Class, except that notice of any such orders shall be posted by the Settlement Administrator to the Settlement Website that the Settlement Administrator will establish and maintain in accordance with the Agreement. Class Members should check the Settlement Website regularly for updates, changes, and/or further details regarding extensions of deadlines, orders entered by the Court, and other information regarding the settlement.

36. The Parties are hereby authorized to establish the means necessary to administer the Settlement Agreement.

37. All discovery and other litigation activity and proceedings in this Litigation, other than as necessary to carry out the terms and conditions of the Settlement Agreement or the responsibilities related thereto, are hereby suspended and stayed pending final approval of the settlement and further order of this Court.

38. The settlement shall not constitute an admission, concession, or indication of the validity of any claims or defenses in the Litigation, or of any wrongdoing, liability, or violation by Landmark, which vigorously denies all of the claims and allegations raised in the Litigation.

It is SO ORDERED.

Date: _____ _____

Honorable Jeff Harris

Judge for the Circuit Court of
Boone County, Missouri

EXHIBIT 3

PROPOSED ORDER RE: FINAL APPROVAL & JUDGMENT OF DISMISSAL

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

SUSANNE PACE and PATRICK FLOWERS, individually and on behalf of all others similarly situated, Plaintiffs, v. LANDMARK BANK, Defendant.	Cause No. 20BA-CV00244

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

WHEREAS, on _____ 2022, this Court entered an Order Granting Preliminary Approval of Proposed Settlement Agreement (the "Preliminary Approval Order"), preliminarily approving the proposed settlement of this Litigation pursuant to the terms of the Parties' Settlement Agreement and Release ("Settlement Agreement") and directing that notice be given to the Class Members;

WHEREAS, pursuant to the Parties' plan for providing notice to the Class (the "Notice Program"), the Settlement Class was notified of the terms of the proposed settlement and of a Final Approval Hearing to determine, *inter alia*, whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release and dismissal of the Released Claims against the Released Parties as contemplated in the Settlement Agreement, and whether judgment should be entered dismissing the Litigation with prejudice; and

WHEREAS, a Final Approval Hearing was held on _____ ___, 2022. Prior to the Final Approval Hearing, proof of completion of the Notice Program was filed with the Court, along with declarations of compliance. Class Members were therefore notified of the terms of the

proposed settlement and their right to appear at the hearing in support of or in opposition to the proposed settlement, the amount of attorney's fees and costs requested by Class Counsel, and the Service Award requested for the Class Representatives;

NOW, THEREFORE, the Court, having heard the oral presentations made at the Final Approval Hearing, having reviewed all of the submissions presented with respect to the proposed settlement, having determined that the settlement is fair, adequate, and reasonable, having considered Class Counsel's Motion for Attorney's Fees and Costs and the Class Representatives' Service Award, together with any briefing and argument in support thereof or in opposition thereto, and having reviewed the materials in connection therewith, and good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The capitalized terms used in this Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be ordered.

2. The Court has jurisdiction over the subject matter of this Litigation, all claims raised therein, and all Parties thereto, including Settlement Class Members.

3. The Court finds, solely for purposes of considering this settlement and this Final Approval Order, that the requirements of Missouri Rule 52.08 are met, including requirements for the existence of numerosity, commonality, typicality, adequacy of representation, and manageability of the Settlement Class for settlement purposes, that common issues of law and fact predominate over individual issues, and that settlement and certification of the Settlement Class is superior to alternative means of resolving the claims and disputes at issue in this Litigation.

4. The Settlement Class, which will be bound by this Final Approval Order, shall include all Class Members who did not submit a timely and valid Opt-Out request. The individuals who have timely requested exclusion from the Settlement Class are identified in **Exhibit A**

attached hereto. The individuals listed on **Exhibit A** are hereby excluded from the Settlement Class, are not bound by the Settlement Agreement, and shall not be entitled to any of the benefits afforded to Settlement Class Members under the Settlement Agreement.

5. For purposes of settlement and this Final Approval Order only, Plaintiffs Susanne Pace and Patrick Flowers ("Plaintiffs") are appointed and shall serve as Class Representatives of the Settlement Class.

6. For purposes of settlement and this Final Approval Order only, the Court appoints the following as Class Counsel on behalf of Plaintiffs and the Settlement Class: John F. Garvey of Carey Danis & Lowe; Lynn A. Toops of Cohen & Malad, LLP; J. Gerard Stranch IV and Martin F. Schubert of Brannstetter, Stranch & Jennings, PLLC; Christopher D. Jennings of Johnson Firm; and Jeffrey D. Kaliel and Sophia Gold of Kaliel Gold PLLC.

7. For purposes of settlement and this Final Approval Order only, the Court hereby certifies the following Settlement Class:

> All holders of a personal or business checking account originally established at Landmark Bank, including former holders and holders with accounts transitioned to Simmons Bank, regardless of the state of residence or citizenship of its account holder, who, from January 1, 2015, to and including February 14, 2020, incurred one or more paid item fees when the customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions.

The Settlement Class excludes all judicial officers presiding over this Litigation and their staff, and any of their immediate family members as well as Plaintiffs' counsel and Landmark's officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns.

8. The persons comprising the certified Settlement Class are identified in the Class List, as defined in the Settlement Agreement, which list will be maintained as indicated in the

Settlement Agreement. The Settlement Class does not include the individuals listed on **Exhibit A**.

9. For purposes of settlement only, certification of the Settlement Class and this Final Approval Order, the Court further finds that "Class Period" means January 1, 2015, to and including February 14, 2020.

10. The Court finds for purposes of settlement only that the Settlement Class satisfies the prerequisites for a class action under Missouri Rule 52.08. The Court finds, for purposes of settlement only, that the following requirements are met: (a) the above-described Settlement Class Members are so numerous that joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) Plaintiffs' claims are typical of Settlement Class Members' claims; (d) Plaintiffs have fairly and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiffs have retained experienced Class Counsel; (e) the questions of law and fact common to the Settlement Class Members predominate over any affecting any individual Settlement Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 52.08(b)(3) and is superior to alternative means of resolving the claims and disputes at issue in this Litigation.

11. Notwithstanding the certification of the foregoing Settlement Class and the appointment of Class Counsel and of the Class Representatives for purposes of effecting the settlement, if this Order is reversed on appeal, or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of Class Counsel and of the Class Representatives shall be void and of no further effect, and the Parties to the proposed settlement shall be returned to the status each occupied before entry of this Order as if no Class was certified and no Amended Class Action Complaint had been filed, and

without prejudice to any legal argument that any of the Parties to the settlement might have asserted but for the settlement.

12. The Court finds that the Notice Program set forth in Section X of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute—and was reasonably calculated to provide and did provide—due and sufficient notice to the Settlement Class of the pendency of this Litigation, of the right to exclude themselves from the Settlement Class, of the fact that the judgment will include all members who do not request exclusion, and of the right to appear at the Final Approval hearing, including through counsel, to object to any part of the settlement; the Notice Program therefore satisfies the requirements of the Missouri Supreme Court Rules, the Missouri and United States Constitutions, and any other applicable law.

13. The Court hereby approves the settlement, including the plan for the calculation and distribution of the Cash Awards, and finds that the settlement, as set forth in the Settlement Agreement and this Order, satisfies each of the requirements of Missouri Rule 52.08 and is in all respects fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account (1) the existence [or absence] of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members." *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. Ct. App. 2011) (quoting *Ring v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. Ct. App. 2000)). The Court further finds that the Class Representatives and Class Counsel have at all times adequately represented the Class and the settlement negotiations that resulted in the settlement were at all

times conducted at arm's length. For all of these reasons, the Court grants final approval of the settlement.

14. The Parties shall effectuate the Settlement Agreement according to its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

15. Provided the Effective Date has occurred, distribution of the Cash Awards to Settlement Class Members provided for in the Settlement Agreement shall be paid to Settlement Class Members, pursuant to the terms and conditions of the Settlement Agreement and Sections V and VI thereof.

16. The Court has considered all objections to the settlement, including the objections of _____. The Court finds these objections do not counsel against settlement approval and they are hereby overruled in all respects. [*IF NO OBJECTIONS, modify:* Settlement Class Members were duly afforded an opportunity to object to the settlement, and there were no objections to the settlement].

17. Upon the Effective Date, the Releasors shall have, by operation of this Final Approval Order, fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released Claims pursuant to Section VII of the Settlement Agreement.

18. Releasors are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either individually or as a class, or in any other capacity, any Released Claims against any of the Released Parties. In addition, Plaintiffs and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a set-off or for any other purpose, any argument that if raised as an independent claim would be part of the Released Claims.

19. This Final Approval Order and Judgment of Dismissal, the Settlement Agreement, the settlement which it reflects, the Amended Class Action Complaint, and any and all acts, statements, documents, or proceedings relating to the settlement are not, and shall not be construed as or used as an admission by or against Landmark Bank or any other Released Party of any fault, wrongdoing, or liability on their part, or of the validity of any Released Claim or of the existence or amount of damages. This Final Approval Order and Judgment of Dismissal and the Settlement Agreement do not constitute a concession and shall not be used as an admission or indication of any wrongdoing, fault, or omission by Landmark Bank or any of the other Released Parties or any other person in connection with any transaction, event or occurrence, and neither this Final Approval Order and Judgment of Dismissal nor the Settlement Agreement nor any related documents in this proceeding, nor any reports or accounts thereof, shall be offered or received in evidence in any civil, criminal, or administrative action or proceedings, other than such proceedings as may be necessary to consummate or enforce this Final Approval Order and Judgment of Dismissal, the Settlement Agreement, and all releases given thereunder, or to establish the affirmative defenses of *res judicata* or collateral estoppel barring the pursuit of claims released in the Settlement Agreement. This Final Approval Order and Judgment of Dismissal also does not constitute any opinion or position of the Court as to the merits of the claims and defenses related to this Litigation.

20. The claims of the Class Representatives and all Settlement Class Members in the Litigation, and as defined as Released Claims in Section VII of the Settlement Agreement, are hereby dismissed in their entirety with prejudice. Except as otherwise provided in this Order and/or in this Court's Order Awarding Attorneys' Fees and Costs in this Litigation, entered in response to Class Counsel's motion therefor brought in connection with the settlement, the Parties

shall bear their own costs and attorneys' fees. The Court reserves jurisdiction over the implementation of the settlement, including enforcement and administration of the Settlement Agreement, including any releases in connection therewith and any other matters related or ancillary to the foregoing.

21. The Court, being fully advised and having afforded Class Members an opportunity to object, finds that the Class Settlement is fair and reasonable under Rule 52.08 of the Missouri Court Rules, the Notice sent to Class Members satisfies the requirements of Rule 52.08 and due process, and the Parties have fully complied with the Preliminary Approval Order.

22. The Court finds that no reason exists for delay in entering this Final Approval Order. Accordingly, the Clerk is directed to enter this Final Approval Order and the accompanying Judgment of Dismissal.

23. The Parties, without further approval from the Court, are hereby permitted to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with the Final Approval Order and Judgment of Dismissal and do not limit the rights of the Settlement Class Members.

24. All Settlement Class Members are bound by this Final Approval Order and the Judgment of Dismissal. They are further bound by the terms of the Settlement Agreement including, but not limited to, its Release provisions.

25. Notice of entry of this Order and the ensuing Judgment of Dismissal has been given to Class Counsel on behalf of the Settlement Class. It shall not be necessary to send notice of entry of this Final Approval Order or ensuing Judgment of Dismissal to individual members of the Settlement Class.

26. In the event that the Settlement Agreement is terminated pursuant to its own terms; or the Settlement Agreement, Preliminary Approval Order, Final Approval Order, or Judgment of Dismissal are reversed, vacated, or modified in any material respect by this or any other court; then: (a) all orders entered pursuant to the Settlement Agreement shall be vacated, including this Final Approval Order; (b) the instant action shall proceed as though a Settlement Agreement had never been reached, and no Amended Class Action Complaint had been filed; and (c) no reference to the prior Settlement Agreement, or any documents or actions related thereto, shall be made for any purpose; provided, however, that the Parties to the Settlement Agreement agree to appeal an adverse ruling jointly and if the Settlement Agreement, Preliminary Approval Order, Final Approval Order, or Judgment of Dismissal are upheld on appeal in all material respects, then the Settlement Agreement, Preliminary Approval Order, Final Approval Order, or Judgment of Dismissal shall be given full force and effect.

27. Without affecting the finality of this Final Approval Order or the Judgment of Dismissal for purposes of appeal, the Court retains jurisdiction as to all matters related to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and this Final Approval Order and accompanying Judgment of Dismissal, and for any other necessary purpose.

It is SO ORDERED.

Date: _____ _____

Honorable Jeff Harris
Judge for the Circuit Court of
Boone County, Missouri

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

SUSANNE PACE and PATRICK FLOWERS, individually and on behalf of all others similarly situated, Plaintiffs, v. LANDMARK BANK, Defendant.	Cause No. 20BA-CV00244

[PROPOSED] JUDGMENT OF DISMISSAL

This action came before the Court on Plaintiffs Susanne Pace's and Patrick Flowers's ("Plaintiffs") and Defendant Landmark Bank's ("Landmark") (together, the "Parties") Motion for Final Approval of the Parties' class action Settlement Agreement and Release ("Settlement Agreement").

The Court having entered its Order granting Final Approval of Settlement and directing entry of judgment of dismissal,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. All Released Claims of all Settlement Class Members against Landmark, as defined in the Settlement Agreement, are dismissed with prejudice.

2. All claims of Plaintiffs against Landmark are dismissed with prejudice.

3. The Litigation is dismissed with prejudice.

4. Notwithstanding the foregoing dismissal of claims and the Litigation in the preceding paragraphs, the Court shall retain jurisdiction over the construction, interpretation, implementation, and enforcement of the Settlement Agreement, and to

supervise and adjudicate any disputes arising from the disbursement of the Settlement Fund.

5. All Settlement Class Members, as defined in this Court's Final Approval Order, are bound by the Release set forth in the Parties' Settlement Agreement at Section VII and are hereby permanently enjoined and restrained from filing, prosecuting, or otherwise asserting any Released Claims against any Released Party as those terms are defined in the Parties' Settlement Agreement.

6. The Parties shall comply with and implement the Settlement Agreement and provide the Settlement Class Members with the benefits set forth therein.

IT IS SO ORDERED.

Date: _____ _____

Honorable Jeff Harris
Judge for the Circuit Court of
Boone County, Missouri

EXHIBIT 4:
POSTCARD NOTICE

COURT ORDERED NOTICE OF CLASS ACTION SETTLEMENT

You may be a member of the settlement class in *Pace v. Landmark Bank*, Case No. 20BA-CV00244 (Boone Cnty. Mo. Cir. Ct.), in which the plaintiff alleges that defendant Landmark Bank incorrectly assessed overdraft fees on transactions in which a customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions. The Class Period is January 1, 2015 to February 14, 2020. If you are a Settlement Class Member and if the Settlement Agreement and Release ("Settlement") is approved, you may be entitled to receive an account credit or a cash payment from the $2,750,000.00 fund established by the Settlement.

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on [PARTIES TO INSERT DATE]. At that hearing, the Court will consider whether to grant final approval to the Settlement, and whether to approve payment from the Settlement Fund of up to $10,000 in Service Awards to each of the Plaintiffs, up to one-third of the Settlement Amount as attorneys' fees, and reimbursement of costs to the attorneys and the Settlement Administrator. If the Court grants final approval of the Settlement and you do not request to be excluded from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Simmons Bank, as successor to Landmark Bank, has agreed to issue a credit to your Simmons Bank account or a cash payment to you.

Please note that capitalized terms that are used in this Notice but are not defined herein are defined in the Settlement Agreement and Release. If you wish to view the full Settlement Agreement and Release or obtain a long form class notice and other important documents please visit www.PaceFeesSettlement.com. Alternatively, you may call [INSERT PHONE #].

If you do not want to participate in this settlement—you do not want to receive a credit or cash payment and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than [PARTIES TO INSERT DATE]. If you want to object to this settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than [PARTIES TO INSERT DATE]. You may learn more about the opt-out and objection procedures by visiting www.PaceFeesSettlement.com or by calling [Insert Phone #].

EXHIBIT 5:
INDIVIDUAL EMAIL NOTICE

LEGAL NOTICE BY ORDER OF COURT

This Notice describes rights you may have in connection with the settlement of a lawsuit:

IF, DURING THE CLASS PERIOD, YOU WERE ASSESSED OVERDRAFT FEES ON A PERSONAL OR BUSINESS CHECKING ACCOUNT ESTABLISHED AT LANDMARK BANK, YOU MAY BE ELIGIBLE FOR A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT.

The Circuit Court of Boone County, Missouri authorized this Notice. This is not a solicitation from a lawyer. ***This is not a legal action against you.***

Why Am I Getting This Notice? You are receiving this notice because Landmark Bank's records indicate that you had a consumer or business checking account with Landmark Bank, and were charged one or more Overdraft Fees on that account during the Class Period. Therefore, **you may be eligible for a cash payment from a class action settlement**. Specifically, a settlement has been reached in a class action lawsuit entitled *Pace v. Landmark Bank*, Case No. 20BA-CV00244 (Boone Cty., Mo.). The individuals who brought this case allege that Landmark Bank breached its customer agreements and related obligations by charging Overdraft Fees on transactions in which a customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions ("Challenged Fees"). Landmark Bank's records indicate that you were assessed Challenged Fees during the Class Period, and therefore are eligible to receive a benefit from the settlement.

What Does the Settlement Provide? The proposed settlement provides for a funding total of $2,750,000 by Simmons Bank, as successor to Landmark Bank ("Landmark"), which will be used to make payments to the class members after first making deductions for notice and administrative costs, a Service Award to the Class Representatives, and attorneys' fees for Class Counsel.

Has The Court Decided Who Is Right? No. By conditionally certifying a settlement class and ordering that this Notice be provided, the Court has not decided whether Plaintiffs will win or lose. Your job right now is to decide whether you want to stay in this case (by doing nothing), or exclude yourself.

What Happens If I Do Nothing? By doing nothing, you will stay in the Class. **If you stay in, and the settlement is approved by the court and becomes final, you will receive either a deposit into your Simmons Bank checking account, or a check in the mail reflecting your share of the settlement; you will also be legally bound by the settlement agreement.**

What Happens If I Exclude Myself? Alternatively, if you do not want to be legally bound by the settlement, you can **opt out** from the Class—that is, be excluded from the Class. **If you exclude yourself from the Class, and the Class gets any money or other benefits, you will not be able to get any of that money or those benefits**. However, if you exclude yourself, you will not be legally bound by the Court's judgments in this case and you will be able to sue Landmark on your own about the same legal claims that are involved in this case, now or in the future, to the extent you have claims against Landmark. If you exclude yourself and pursue your own lawsuit, you'll

have to hire and pay your own lawyer, and you'll have to prove your claims in that case.

How Do I Opt Out? You must send a letter to the Settlement Administrator identifying:

1. Your name, mailing address, contact telephone number or email address, and the last four digits of the account number of any Landmark Bank account that you claim was charged Challenged Fees;
2. the name and case number of this lawsuit (*Pace v. Landmark Bank*, Case No. 20BA-CV00244 (Boone Cty., Mo.));
3. a statement that you wish to exclude yourself from the Settlement Class; and
4. your signature.

If you wish to exclude yourself, you must submit the above information to the following address so that it is postmarked no later than [date]:

Landmark Settlement Administrator: [address]

REQUESTS FOR EXCLUSION FROM THE CLASS THAT ARE NOT POSTMARKED ON OR BEFORE [date] WILL NOT BE HONORED.

What Other Rights Do I Have? If you stay in the settlement, you may object to it by [**date]** ("Objection Deadline"). The Court is currently scheduled to hold a hearing on [**date**] to consider whether to approve the settlement, Class Counsel's request for attorneys' fees and expenses, and a Service Award for the Class Representatives. You can appear at the hearing, but you do not have to appear. You can hire your own attorney, at your own expense, to appear or speak for you at the hearing. If you object to any part of the settlement, fee request, or Service Award, you must provide a written objection, signed by you, to the Settlement Administrator and the Court, by the Objection Deadline, with the following information: (a) the case name and number of the *Pace* Litigation; (b) your full name, current address, and the last four digits of the account number of any Landmark Bank account that you claim was charged Challenged Fees; (c) a statement that you object to the Settlement, in whole or in part; (d) the reason(s) why you object to the settlement along with any supporting materials; (e) the identity of any lawyer who assisted, provided advice, or represents you as to this case or such objection, if any; and (f) whether you will appear, either on your own or through counsel, at the final hearing regarding the settlement and whether you plan on offering testimony at the Final Approval Hearing. Please note that the hearing date is subject to change; contact the Settlement Administrator at the number below or visit the Settlement Website for the most up-to-date information and complete instructions regarding how to object.

When Will the Court Decide Whether to Grant Final Approval to the Settlement? The Court has preliminarily approved this settlement. It will hold a Final Approval Hearing in this case on [DATE]. At that hearing, the Court will consider whether to grant final approval to the settlement, and whether to approve payment from the Settlement Fund of up to $10,000 in Service Awards to each of the Class Representatives, up to one-third of the Settlement Amount as attorneys' fees, and reimbursement of costs to the attorneys and the Settlement Administrator. If the Court grants final approval of the settlement and you do not request to be excluded from the settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your account or a cash payment to you (if you are no longer a customer).

Please note that capitalized terms that are used in this Notice but are not defined herein are defined in the Settlement Agreement and Release. The foregoing description of the Settlement Agreement and Release does not purport to be complete and is qualified in its entirety by reference to the full text of the Settlement Agreement and Release, a copy of which is available on the settlement website: **www.PaceFeesSettlement.com**. In the event of a conflict between the foregoing description and the provisions of the Settlement Agreement and Release, the provisions of the Settlement Agreement and Release prevail.

FOR MORE INFORMATION, call the Settlement Administrator's toll free number (*-***-****), or visit www.PaceFeesSettlement.com.**

EXHIBIT 6:
LONG FORM NOTICE

LEGAL NOTICE BY ORDER OF COURT

IF, DURING THE CLASS PERIOD, YOU WERE ASSESSED OVERDRAFT FEES ON A PERSONAL OR BUSINESS CHECKING ACCOUNT ESTABLISHED AT LANDMARK BANK, YOU MAY BE ELIGIBLE FOR A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT.

This Notice describes rights you may have in connection with the settlement of a lawsuit.

The Circuit Court of Boone County, Missouri authorized this Notice. This is not a solicitation from a lawyer. ***This is not a legal action against you.***

- Simmons Bank, as successor to Landmark Bank ("Landmark"), has agreed to pay $2,750,000 into a fund from which eligible persons will receive Cash Awards. The fund also will be used to pay settlement Administrative Expenses, and any Court-awarded Service Awards, attorneys' fees, and costs.

- The settlement resolves a lawsuit brought against Landmark Bank regarding its purported use of the so-called "Authorize Positive, Settle Negative" methodology to assess Overdraft Fees; specifically, the individuals who brought this case allege that Landmark Bank breached its customer agreements and related obligations by charging Overdraft Fees on transactions in which a customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions ("Challenged Fees").

- If you were assessed any Challenged Fees during the Class Period by Landmark Bank, you are eligible to receive a cash payment from a settlement fund.

- Court-appointed lawyers for the Settlement Class ("Class Counsel") will ask the Court for a payment of up to $_____ from the fund as attorneys' fees, which is equal to one-third of the Settlement Amount. Class Counsel also will ask the Court to reimburse them for the out-of-pocket expenses they paid to investigate the facts and litigate the case.

- The two named Plaintiffs each will also seek approval of a $10,000 Service Award from the Court.

- The two sides disagree on whether the named Plaintiffs and the Settlement Class could have won at trial.

- Your legal rights are affected whether you act or don't act. Read this Notice carefully.

- The foregoing description of the Settlement Agreement and Release does not purport to be complete and is qualified in its entirety by reference to the full text of the Settlement Agreement and Release, a copy of which is available on the settlement website: **www.PaceFeesSettlement.com**. In the event of a conflict between the foregoing

description and the provisions of the Settlement Agreement and Release, the provisions of the Settlement Agreement and Release prevail.

FOR ADDITIONAL INFORMATION REGARDING THIS SETTLEMENT, OR FOR INFORMATION ON HOW TO REQUEST EXCLUSION FROM THE SETTLEMENT CLASS OR FILE AN OBJECTION, PLEASE CONTACT THE SETTLEMENT ADMINISTRATOR AT _____. **Please <u>do not</u>** call or write the Court, the Court Clerk's office, Landmark, or Landmark's Counsel for more information. They will not be able to assist you.

BASIC INFORMATION

The purpose of this Notice is to let you know that a proposed settlement has been reached in a proposed class action case entitled *Pace v. Landmark Bank*, Case No. 20BA-CV00244, pending in the Circuit Court of Boone County, Missouri. Plaintiffs have alleged that Landmark Bank breached its customer contracts and implied duty of good faith and fair dealing by charging Overdraft Fees on transactions in which a customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions ("Challenged Fees"). The Court has not decided who is right.

You have legal rights and options that you may act on before the Court decides whether to approve the proposed settlement. Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

YOUR LEGAL RIGHTS AND OPTIONS

DO NOTHING	If you are eligible for a Cash Award, you do not need to submit a claim to receive the settlement benefits. If you are a current Simmons Bank accountholder and are eligible for a Cash Award, you will receive a direct deposit into your current Simmons Bank checking account reflecting your share of the settlement; if you are a former Landmark/Simmons Bank accountholder and are eligible for a Cash Award, you will receive a check sent to the most recent address that the Settlement Administrator can locate for you.
EXCLUDE YOURSELF BY [DATE]	If you choose to exclude yourself from the settlement, you will get no benefit from the settlement fund, but you will keep any rights you have to bring your own suit against Landmark at your own expense. This is the only option that allows you to ever be part of any other separate lawsuit against Landmark about the legal claims in this case.

OBJECT BY [DATE]	Write to the Court explaining why you don't like the settlement.
ATTEND A HEARING ON [DATE]	Ask to speak in Court about the fairness of the settlement.
The Court in charge of this case still has to decide whether to approve the settlement. If it does and any appeals are resolved, benefits will be distributed to those who qualify and do not exclude themselves. Please be patient.	

WHAT THIS NOTICE CONTAINS [ADD PAGE #S AFTER FINALIZED]

1. WHO IS IN THE SETTLEMENT CLASS?

The judge in the case has preliminarily certified the following Class for settlement purposes only (hereinafter, the "Settlement Class"):

> All holders of a personal or business checking account originally established at Landmark Bank, including former holders and holders with accounts transitioned to Simmons Bank, regardless of the state of residence or citizenship of its account holder, who, from January 1, 2015, to and including February 14, 2020, incurred one or more paid item fees when the customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions.
>
> The Class excludes all judicial officers presiding over this Litigation and their staff, and any of their immediate family members as well as Plaintiffs' counsel and Landmark officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns.

If you received notice of the settlement directed to you, records indicate that you are a member of the Settlement Class.

If you are not sure whether you are in the Settlement Class, or have any other questions about the settlement, you may contact the Settlement Administrator at _____.

2. WHAT IS THIS LAWSUIT ABOUT?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All of these people are a class, or class members. One court resolves the issues for all class members, except those who exclude themselves from the class.

The Class Representatives allege that Landmark Bank breached its customer agreements and implied duty of good faith and fair dealing by charging Overdraft Fees on transactions in which a customer's available account balance was positive at the time the transaction was authorized at Landmark Bank, but the customer's available account balance was negative at the time the transaction settled due to intervening transactions ("Challenged Fees"). This is just a summary of the allegations. The operative complaint in the *Pace* Litigation is available online at **www.PaceFeesSettlement.com** and contains all of the allegations. Landmark denies these allegations; however, in order to avoid the expense, inconvenience, and distraction of continued litigation, the Parties have agreed to the settlement described in this notice and the entire Settlement Agreement and Release is available at **www.PaceFeesSettlement.com**.

3. WHO IS REPRESENTING ME?

Susanne Pace and Patrick Flowers ("Plaintiffs") sued Landmark Bank and the Court has appointed them to be Class Representatives for the Settlement Class.

The Court also approved John F. Garvey of Carey Danis & Lowe; Lynn A. Toops of Cohen & Malad, LLP; J. Gerard Stranch IV and Martin F. Schubert of Brannstetter, Stranch & Jennings, PLLC; Christopher D. Jennings of Johnson Firm; and Jeffrey D. Kaliel and Sophia Gold of Kaliel Gold PLLC as Class Counsel. Class Counsel represents the Class of which you are a part, but if you want to be represented by your own individual lawyer, you may hire one at your own expense.

4. WHAT BENEFITS CAN I RECEIVE FROM THE SETTLEMENT?

Landmark has agreed to pay $2,750,000 to be divided among all Settlement Class Members who do not exclude themselves from the settlement after any fees, costs, Service Awards to the Class Representatives, and settlement expenses have been deducted. Your share of the settlement will be calculated as a pro rata proportion of the Net Settlement Fund, based on the number of qualifying Overdraft Fees on APSN Transactions you were assessed during the Class Period.

If you do not exclude yourself from the Settlement Class, and are a current Simmons Bank (legacy Landmark Bank) accountholder, you will receive a direct deposit to your Simmons Bank account equivalent to your pro rata share of the settlement; if you are not a current Simmons Bank accountholder, the Settlement Administrator will mail you a check.

If you receive a check, you will have 120 days from the date of the check to cash the check. If you do not cash the check within 120 days, your check will be void and the funds will be used as the Court deems appropriate, including redistribution to other Class Members or distribution to a charitable organization.

5. DO I HAVE TO PAY THE LAWYERS REPRESENTING ME?

No. Class Counsel will ask the Court to approve payment of up to $_____ to them for attorneys' fees, which one-third of the Settlement Amount. Class Counsel also will ask to be reimbursed for any out-of-pocket expenses. These payments would pay Class Counsel for their time investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also request a Service Award of up to $10,000 to each of the Class Representatives (Plaintiffs Susanne Pace and Patrick Flowers) in recognition of their service to the Settlement Class. The amount of any fee or Service Award will be determined by the Court. Class Counsel's contact information is as follows:

Lynn A. Toops COHEN & MALAD, LLP One Indiana Square, Suite 1400 Indianapolis, Indiana 46204 (317) 636-6481 ltoops@cohenandmalad.com Jeffrey D. Kaliel Sophia Gold KALIEL GOLD PLLC 1100 15th Street, NW, 4th Fl. Washington, DC 20005 (202) 615-3948 jkaliel@kalielpllc.com sgold@kalielgold.com	Christopher D. Jennings JOHNSON FIRM 610 President Clinton Avenue, Suite 300 Little Rock, Arkansas 72201 (501) 372-1300 chris@yourattorney.com J. Gerard Stranch, IV Martin F. Schubert John F. Garvey BRANSTETTER, STRANCH & JENNINGS, PLLC 223 Rosa L. Parks Avenue, Suite 200 Nashville, Tennessee 37203 (615) 254-8801 gerards@bsjfirm.com martys@bsjfirm.com jackg@bsjfirm.com

6. WHAT AM I AGREEING TO BY REMAINING IN THE SETTLEMENT CLASS IN THIS CASE?

Unless you exclude yourself, you will be part of the Settlement Class, and you will be bound by the release of claims in the settlement. This means that if the settlement is approved, you cannot sue, continue to sue, or be part of any lawsuit against Landmark or the other Released Parties asserting a "Released Claim," as defined below. It also means that the Court's Order approving the settlement and the judgment in this case will apply to you and legally bind you.

The "Released Claims" that you will not be able to assert against Landmark or the Released Parties if you remain a part of the Settlement Class are as follows: "Released Claims" means any and all claims, demands, damages, costs, attorneys' fees, disputes, liabilities, actions, rights, suits or causes of action, losses or remedies of any kind or nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or any legal or equitable theory, right of action or otherwise, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of, or relate to, or are based upon or in any manner related or connected with: (i) any Challenged Fee incurred in any personal or business checking account; (ii) any claim that Landmark Bank improperly assessed Challenged Fees for any personal or business checking account; and (iii)

any alleged failure to adequately or clearly disclose any of Landmark Bank's practices and policies related to assessing Challenged Fees. Such release concerning Challenged Fees applies regardless of how such claims are pled. This Agreement does not imply that any such claims exist or are valid.

"Released Parties" means Simmons Bank and each of its respective past, present, and future parents; subsidiaries; affiliates; successors; predecessors (including, but not limited to, Landmark Bank); assigns; related entities; and acquired, acquiring, and affiliated companies and corporations (including, but not limited to, Landmark Bank); and each of all of the foregoing's respective past, present, and future directors, officers, managers, employees, agents, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, assigns, or related entities, and each of their respective executors, successors, and legal representatives.

7. WHAT IF I DO NOT AGREE WITH THE SETTLEMENT

If you are a member of the Settlement Class, and you do not exclude yourself from the settlement, you may object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. To object, you must send your objection to the Settlement Administrator providing:

1. the case name and case number of the *Pace* Litigation (*Pace v. Landmark Bank*, Case No. 20BA-CV00244 (Boone Cty., Mo.)).

2. your full name, current mailing address, and the last four digits of your Landmark Bank account number for any account that you claim was charged Challenged Fees;

3. a statement that you object to the Settlement, in whole or in part;

4. the reasons why you object to the settlement along with any supporting materials;

5. the identity of any lawyer who assisted, provided advice, or represents you as to this case or such objection, if any;

6. your signature; and

7. whether you will appear, either on your own or through counsel, at the final hearing regarding the settlement and whether you plan on offering testimony at the Final Approval Hearing.

Your objection must be postmarked no later than [date]. Objections must be mailed: **[insert administrator's address]**.

8. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT CLASS?

If you want to exclude yourself from the Settlement Class, sometimes referred to as "opting-out," you will not be eligible to recover any benefits as a result of this settlement. However, you will keep any right you may have to sue or continue to sue Landmark or Released Parties on your own and at your own expense about any of the Released Claims.

To exclude yourself from the Settlement Class, you must send a letter to the Settlement Administrator identifying:

1. your name, mailing address, contact telephone number or email address, and the last four digits of the Landmark Bank account number for any account that you claim was charged Challenged Fees;

2. the name and case number of this lawsuit (*Pace v. Landmark Bank*, Case No. 20BA-CV00244 (Boone Cty., Mo.));

3. a statement that you wish to exclude yourself from the Settlement Class; and

4. your signature.

If you wish to exclude yourself, you must submit the above information to the following address so that it is postmarked no later than [date]:

Landmark Settlement Administrator: [address]

REQUESTS FOR EXCLUSION FROM THE CLASS THAT ARE NOT POSTMARKED ON OR BEFORE [date] WILL NOT BE HONORED.

9. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND ASKING TO BE EXCLUDED?

Objecting means telling the Court that you do not like something about the settlement. You can object to the settlement only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the settlement because it no longer affects you.

10. WHAT IF I DO NOTHING AT ALL?

You will remain a member of the Settlement Class and be eligible to receive a cash payment. See Part 4 above.

11. WHAT WILL BE DECIDED AT THE FINAL APPROVAL HEARING?

The Court will hold a hearing to decide whether to approve the settlement and any requests for fees, expenses, and Service Awards (the "Final Approval Hearing"). The Final Approval Hearing is currently set for [date] at [time], before the Honorable Jeff Harris of the Circuit Court of Boone County, Missouri in Courtroom __ of the Boone County Courthouse **[or via Zoom]**, located at 705 E. Walnut St., Columbia, MO 65201. The hearing may be moved to a

different date or time without additional notice, so it is a good idea to check the Court's docket or the settlement website (**www.PaceFeesSettlement.com)** for updates.

At the Final Approval Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also consider the request by Class Counsel for attorneys' fees and expenses and Service Award for the Class Representatives. If there are objections, the Court will consider them at the Final Approval Hearing. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

You may attend the hearing, at your own expense, but you do not have to do so. You cannot speak at the hearing if you exclude yourself from the settlement.

If you have objected to the settlement and want to attend the hearing you must state in your objection that you intend to appear at the Final Approval Hearing either personally or through counsel.

12. DOES THIS NOTICE CONTAIN THE ENTIRE SETTLEMENT AGREEMENT?

No. This is only a summary of the settlement. If the settlement is approved and you do not exclude yourself from the Settlement Class, you will be bound by the release contained in the Settlement Agreement, and not just by the terms of this Notice. Capitalized terms that are used in this Notice but are not defined in this Notice are defined in the Settlement Agreement. If you wish to view the full Settlement Agreement, you can do so on the settlement website at **www.PaceFeesSettlement.com** or write or call the settlement administrator at the address and phone number below for more information.

13. WHERE CAN I GET MORE INFORMATION?

For more information, you may call the Landmark Settlement Administrator at 1-999-999-9999, or you may contact Class Counsel as set forth in Section 5, above. You may also visit the settlement website at **www.PaceFeesSettlement.com**.

NOTE: PLEASE **DO NOT** CALL OR WRITE THE COURT, THE COURT CLERK'S OFFICE, LANDMARK, OR LANDMARK'S COUNSEL FOR MORE INFORMATION. THEY WILL NOT BE ABLE TO ASSIST YOU.