

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOSHUA RUPNOW, PETER SZOSTAK,
and all others similarly situated,

Plaintiffs,

v.

E*TRADE SECURITIES, LLC,

Defendant.

Civil Action No. 1:19-cv-10942-DLC

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Settlement Agreement”), dated as of the 21st day of April, 2023 (the “Execution Date”) is entered into between (a) Lead Plaintiffs Joshua Rupnow and Peter Szostak (together, “Lead Plaintiffs” or “Plaintiffs”), on behalf of themselves and the Settlement Class (defined below); and (b) Defendant E*TRADE Securities LLC (“E*TRADE” or “Defendant”) and embodies the terms and conditions of the settlement of the above-captioned action (the “Action”).¹ Subject to the approval of the Court and the terms and conditions expressly provided herein, this Settlement Agreement is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all Released Plaintiffs’ Claims (defined below) against E*TRADE.

WHEREAS:

A. On November 26, 2019, Lead Plaintiffs filed a putative class action against E*TRADE in the United States District Court for the Southern District of New York (the “Court”), alleging that E*TRADE breached E*TRADE Customer Agreements by failing to provide an indicative interest rate prior to the execution of short sales of Hard-To-Borrow (“HTB”) Securities.

¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in paragraph 1 herein.

Lead Plaintiffs alleged a class period from November 26, 2013 to October 15, 2019. The Action was assigned to Judge Vernon S. Broderick.

B. On March 5, 2020, E*TRADE filed its motion to dismiss the Complaint. On April 14, 2020, Lead Plaintiffs filed their memorandum of law in opposition to E*TRADE's motion to dismiss, and on April 28, 2020, E*TRADE served its reply papers.

C. On October 29, 2021, while the Court's ruling on the motion to dismiss was still pending, Lead Plaintiffs sent a letter to the Court requesting an initial case management conference to discuss taking steps to move the case forward at least to some limited extent (e.g., exchanging initial disclosures, holding a Rule 26(f) conference, submitting a Case Management Plan/Scheduling Order, and/or exchanging discovery requests and commencing document discovery) even while the ruling on the motion to dismiss remained pending. On November 8, 2021, the Court responded by directing that Defendant submit a responsive letter. On November 19, 2021, Defendant filed a letter in response, opposing "Plaintiffs' request to open discovery pending the Court's ruling on E*TRADE's motion to dismiss."

D. On December 9, 2021, the Court issued an Order and Opinion denying E*TRADE's motion to dismiss. The parties subsequently submitted competing proposed case schedules on February 4, 2022, and on February 15, 2022 the Court adopted Plaintiffs' case schedule, denying bifurcation of class and merits discovery.

E. E*TRADE filed its Answer to the Complaint on February 10, 2022.

F. Discovery in the Action commenced shortly thereafter. On or about March 3, 2023, the parties exchanged Rule 26 Initial Disclosures. On March 9, 2022, Lead Plaintiffs issued their first requests for the production of documents directed to E*TRADE. E*TRADE served written responses thereto on April 8, 2022. On May 6, 2022, E*TRADE issued its first requests for the

production of documents and interrogatories directed to Lead Plaintiffs. Lead Plaintiffs served written responses thereto on June 6, 2022.

G. On March 23, 2022, the parties submitted a stipulated proposed Protective Order, which was entered by the Court on March 24, 2022.

H. On May 11, 2022, the parties submitted a stipulated proposed ESI Order, which was entered by the Court on May 13, 2022.

I. In E*TRADE's April 8, 2022 written responses and objections to Lead Plaintiffs' discovery requests, E*TRADE advised Lead Plaintiffs that it objected to the class period alleged by the Plaintiffs—Nov. 26, 2013 through Oct. 15, 2019—on the basis that “the relevant language . . . underlying [the] claim did not appear in the Customer Agreement until May 26, 2016.” As a result, E*TRADE generally took the position that it was agreeable to producing only “non-privileged, responsive documents from the time period from May 26, 2016 to Oct. 15, 2019.” Lead Plaintiffs objected to this limitation. As a result, the parties held a number of meet-and-confers but were unable to resolve their disagreement.

J. On July 13, 2022, the parties filed a Joint Proposed First Amended Case Management Plan, which was entered by the Court on July 14, 2022.

K. E*TRADE filed a motion for judgment on the pleadings on July 22, 2022. On August 2, 2022, Lead Plaintiffs filed a letter motion requesting a conference with the Court to determine whether the dispute should be addressed as a discovery matter or via E*TRADE's motion for judgment on the pleadings. As a result, on August 3, 2022, the Court ordered that the dispute be referred to Magistrate Judge James L. Cott for resolution. E*TRADE submitted a letter in opposition to Plaintiffs' letter motion on August 4, 2022. The parties held a conference with Magistrate Judge Cott on August 16, 2022. Afterward, Lead Plaintiffs opposed E*TRADE's

motion for judgment on the pleadings on August 26, 2022, and E*TRADE filed its reply on August 31, 2022.

L. The Action was reassigned to Judge Denise L. Cote on August 17, 2022.

M. The parties held an in-person conference with Judge Cote on September 2, 2022, during which Judge Cote granted E*TRADE's motion for judgment on the pleadings, reducing the purported class period to May 26, 2016 through October 15, 2019.

N. Judge Cote then entered a new scheduling order, setting the deadline for fact discovery for February 24, 2023.

O. Throughout discovery, E*TRADE produced more than 20,400 documents totaling more than 111,300 pages, the vast majority of which were produced from November 2022 through January 2023. The individual investor Lead Plaintiffs produced approximately 73 documents totaling approximately 1,000 pages.

P. In late December 2022, the Parties agreed to engage in private mediation in an attempt to resolve the Action. A mediation session was held on January 13, 2023 before nationally recognized and highly experienced JAMS mediator, Peter H. Woodin, Esq. ("Mr. Woodin"). The Parties exchanged mediation statements in advance of the mediation session. The Parties were unable to agree to settlement terms at the January 13, 2023 mediation session.

Q. Mediation efforts continued for several weeks following the January 13, 2023 mediation session, with the assistance of Mr. Woodin. On February 7, 2023, Mr. Woodin issued a mediator's recommendation that the Action be settled for \$1,400,000 in cash. Lead Plaintiffs and E*TRADE accepted the mediator's proposal that day.

R. This Settlement Agreement reflects the final and binding agreement between the Parties.

S. The Parties maintain their respective convictions as to the merits of the Action. Nonetheless, the Parties recognize that continued litigation, including any appeals, would be protracted, expensive, uncertain, and contrary to their respective best interests. Accordingly, the Parties believe that this Agreement is the most efficient and beneficial method to resolve the Action.

T. Based upon their investigation, prosecution, and mediation of the case, Lead Plaintiffs and Lead Counsel, defined below, have concluded that the terms and conditions of this Settlement Agreement and the proposed Settlement are fair, reasonable, and adequate to Lead Plaintiffs and other members of the Settlement Class and in their best interests. Based on Lead Plaintiffs' direct oversight of the prosecution of this matter and with the advice of their counsel, Lead Plaintiffs have agreed to settle and release the Released Plaintiffs' Claims pursuant to the terms and provisions of this Settlement Agreement, after considering, among other things: (a) the benefits that Lead Plaintiffs and the other members of the Settlement Class will receive under the terms of the proposed Settlement and this Settlement Agreement; and (b) the significant risks and costs of continued litigation and trial.

U. This Settlement Agreement constitutes a compromise of all matters that are currently in dispute between the Parties. E*TRADE is entering into this Settlement Agreement solely to eliminate the uncertainty, burden, and expense of further protracted litigation. E*TRADE denies any and all wrongdoing, and this Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of E*TRADE with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that E*TRADE has, or could have, asserted. E*TRADE expressly denies that Lead Plaintiffs have asserted any valid claims and expressly denies any and all allegations of

fault, liability, wrongdoing, or damages whatsoever. Similarly, this Settlement Agreement shall in no event be construed or deemed to be evidence, or an admission or concession on the part of Lead Plaintiffs, of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of E*TRADE's defenses to liability had any merit.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Lead Plaintiffs (individually and on behalf of all other members of the Settlement Class) and E*TRADE, by and through its respective undersigned attorneys and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties from the Settlement, all Released Plaintiffs' Claims as against the E*TRADE Releasees and all Released E*TRADE's Claims as against the Plaintiffs Releasees shall be settled and released, upon and subject to the terms and conditions set forth below.

1. **General Definitions.** As used in this Settlement Agreement and any exhibits attached hereto and made a part herein, the following capitalized terms shall have the following meanings:

a. "Action" means the action captioned *Rupnow, et al., v. E*TRADE Securities LLC*, Civil Action No. 1:19-cv-10942-DLC (S.D.N.Y.).

b. "Administration Costs" means notice costs, claims administration costs (including the costs of identifying Settlement Class Members), and taxes or tax administration costs related to interest earned on the Settlement Funds, and other similar or related costs.

c. "Class Notice" means the notice of the pendency of the Action, the Final Approval Hearing to be scheduled by the Court, and the motion for an award of attorneys' fees and litigation expenses in a form to be approved by the Court.

d. “Complaint” means the complaint filed in *Rupnow, et al., v. E*TRADE Securities LLC*, Civil Action No. 1:19-cv-10942-DLC (S.D.N.Y.), dated November 26, 2019.

e. “Court” means the United States District Court for the Southern District of New York.

f. “Escrow Account” means the escrow account established with the escrow agent to receive and maintain funds to be distributed by Lead Plaintiffs or their designated agents or representatives for the benefit of the Settlement Class.

g. “Escrow Agreement” means the agreement between Lead Counsel and the escrow agent that holds the Settlement Fund setting forth the terms under which the escrow agent shall maintain the Escrow Account.

h. “E*TRADE” means Defendant E*TRADE Securities, LLC and its affiliates, subsidiaries, officers and directors.

i. “E*TRADE Customer Agreement” means the agreement that E*TRADE Customers entered into with E*TRADE upon opening their E*TRADE account(s) and which Lead Plaintiffs allege E*TRADE breached in the Action.

j. “E*TRADE Releasees” means E*TRADE and its current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, agents, insurers, reinsurers, and attorneys.

k. “Final Approval” means an order and judgment by the Court which finally approves this Settlement Agreement and the proposed Settlement pursuant to Federal Rule of Civil Procedure 23 and dismisses E*TRADE with prejudice from the Action.

l. “Final Approval Hearing” means the hearing before the Court where (i) the

Parties request that the Court approve this Settlement Agreement as fair, reasonable, and adequate; (ii) the Parties request that the Court enter a Final Approval Order and Final Judgment in accordance with this Agreement; and (iii) Class Counsel request approval of their petition for an award of fees and expenses, as well as any requested Service/Incentive Payments to the Class Representatives.

m. “Final Judgment” means the first date upon which both of the following conditions shall have been satisfied: (a) Final Approval of the Settlement Agreement by the Court, as defined above; and (b) either (1) thirty days have passed from the date of Final Approval with no notice of appeal having been filed with the Court; or (2) Final Approval has been affirmed by a mandate issued by any reviewing court to which any appeal has been taken, and any further petition for review (including certiorari) has been denied, and the time for any further appeal or review of Final Approval has expired.

n. “Hard-To-Borrow Security” generally means a security that has been designated “hard-to-borrow” because the supply of securities that can be loaned cannot meet demand.

o. “Hard-To Borrow Interest” means interest charged by E*TRADE to a customer in connection with a customer Short Selling a Hard-To-Borrow Security. This may also be described as “Hard-To Borrow Fees.”

p. “Immediate Family Member” means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this paragraph, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

q. “Lead Counsel” means the law firms of Milberg Coleman Bryson Phillips Grossman PLLC and the Silver Law Group.

r. “Lead Plaintiffs” means Joshua Rupnow and Peter Szostak, named plaintiffs in the Action.

s. “Opt-Outs” refers to Settlement Class Members who made timely and valid requests to exclude themselves from the Settlement following the procedures set forth herein and/or otherwise established by the Court, and/or whose otherwise untimely or invalid request for exclusion/Opt Out was stipulated by the Parties and/or and so-ordered by the Court.

t. “Plaintiffs’ Releasees” means Lead Plaintiffs and all other Settlement Class Members, and their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, trustees, trusts, employees, Immediate Family Members, insurers, reinsurers, and attorneys, in their capacities as such.

u. “Preliminary Approval” means any order by the Court to preliminarily approve this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23.

v. “Released Claims” shall mean all Released E*TRADE’s Claims and all Released Plaintiffs’ Claims.

w. “Released E*TRADE’s Claims” means all claims (including unknown claims), debts, disputes, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, sums of money due, judgments, suits, amounts, matters, issues, and charges of any kind whatsoever (including, but not limited to, any claims for interest, attorneys’ fees, or expert or consulting fees, and any other costs, expenses, amounts, or liabilities whatsoever), whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or

unmatured, foreseen or unforeseen, whether arising under federal or state statutory or common law or any other law, rule, or regulation, whether foreign or domestic, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against E*TRADE in the Action. Released E*TRADE's Claims do not cover, include, or release any of the following claims: (i) claims relating to the enforcement of the Settlement; or (ii) claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court ("Excluded E*TRADE's Claims").

x. "Released Plaintiffs' Claims" means all claims (including unknown claims), debts, disputes, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, sums of money due, judgments, suits, amounts, matters, issues, and charges of any kind whatsoever (including, but not limited to, any claims for interest, attorneys' fees, or expert or consulting fees, and any other costs, expenses, amounts, or liabilities whatsoever), whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, foreseen or unforeseen, whether individual or class in nature, whether arising under federal or state statutory or common law or any other law, rule, or regulation, whether foreign or domestic, that Lead Plaintiffs or any other member of the Settlement Class (A) asserted in the Action or (B) could have asserted in the Action or in any other action or in any other forum that arise out of, are based upon, are related to, or are in consequence of any of the facts, allegations, transactions, matters, events, disclosures, non-disclosures, occurrences, representations, statements, fees, charges, acts or omissions, or failures to act that were involved, set forth, or referred to in the Action and involve or relate to interest or fees charged for Short Selling Hard-To-Borrow Securities, or that otherwise would have been barred by res judicata had the Action been fully litigated to a final judgment. Released Plaintiffs' Claims do not cover, include, or release any of the following

claims: (i) claims relating to the enforcement of the Settlement; or (ii) claims of any person or entity who or which submits a request for exclusion that is accepted by the Court (“Excluded Plaintiffs’ Claims”).

y. “Released Parties” means E*TRADE Releasees and Plaintiffs’ Releasees.

z. “Releasing Parties” means E*TRADE and its respective administrators, predecessors, successors, and assigns; and Lead Plaintiffs and each of the other Settlement Class Members and their respective heirs, executors, administrators, predecessors, successors, and assigns.

aa. “Settlement” means the settlement between Lead Plaintiffs and E*TRADE on the terms and conditions set forth in this Settlement Agreement.

bb. “Settlement Administrator” means Kurtzman Carlson Consultants LLC (“KCC”), the firm retained to disseminate the Class Notice and to administer the payment of Settlement Funds to the Settlement Class, subject to approval of the Court.

cc. “Settlement Class” means the class defined in Paragraph 5 below.

dd. “Settlement Class Member” means each person and entity who or which is a member of the Settlement Class.

ee. “Settlement Class Period” means May 26, 2016 until October 15, 2019.

ff. “Settlement Fund” means \$1,400,000 (one million, four hundred thousand U.S. dollars), the amount E*TRADE shall pay or cause to be paid into an interest-bearing Escrow Account maintained by an escrow agent on behalf of the Settlement Class, pursuant to Paragraphs 8 and 9 below.

gg. “Short Selling” or “Short Sale” means the process by which an investor borrows stock, sells that stock, and then purchases it back to return it to the lender.

2. **The Parties' Efforts to Effectuate this Settlement Agreement.** This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein when executed. The Parties will cooperate in good faith and use their reasonable best efforts to seek the Court's Preliminary Approval and Final Approval of the Settlement Agreement and the proposed Settlement.

3. **Litigation Standstill.** Unless otherwise directed by the Court, Lead Plaintiffs shall continue to cease all litigation activities against E*TRADE related to the pursuit of claims against E*TRADE in the Action.

4. **Motion for Preliminary Approval.** No later than fourteen (14) calendar days following the date of execution of this Settlement Agreement, Lead Plaintiffs will move for preliminary approval of the proposed Settlement, authorization to provide notice of the proposed Settlement to the Settlement Class, and the scheduling of a hearing for consideration of Final Approval of the proposed Settlement, which motion shall be unopposed by E*TRADE. The requested Preliminary Approval Order shall:

- (a) Preliminarily approve the proposed Settlement and this Agreement;
- (b) Certify a class of Settlement Class Members (as defined in Paragraph 5 below) for purposes of settlement only;
- (c) Approve the plan for providing Class Notice to Settlement Class Members under this Agreement, including the form of the Class Notice;
- (d) Approve the procedures for distribution of payments to Settlement Class Members under this Agreement;
- (e) Approve the procedures for Settlement Class Members to object to the Settlement or opt out of the Settlement, including by setting appropriate deadlines;

(f) Approve designation of Class Counsel as counsel for the Class for purposes of settlement, and Lead Plaintiffs Szostak and Rupnow as representatives of the Class for purposes of settlement; and

(g) Schedule the filing deadline for the motion for Final Approval of the settlement, and schedule the Final Approval Hearing for Final Approval of this Settlement and entry of Final Judgment.

A reasonable time in advance of submission to the Court, the papers in support of the motion for Preliminary Approval shall be provided by Lead Counsel to E*TRADE and its counsel for review. To the extent that E*TRADE objects to any aspect of the motion, it shall promptly communicate such objection to Lead Counsel, and the parties shall meet and confer in good faith and make reasonable efforts to resolve any such objection.

5. **Certification of a Settlement Class.** As part of the motion for preliminary approval of the proposed Settlement, Lead Plaintiffs shall seek, and E*TRADE shall take no position with respect to, the certification in the Action of the following “Settlement Class” for settlement purposes only:

All persons in the United States who, between May 26, 2016, and October 15, 2019, were charged Hard-To-Borrow Interest by E*TRADE as a result of Short Selling securities on an E*TRADE platform.

6. **Settlement Class Notices.** After Preliminary Approval, and subject to approval by the Court of the means for dissemination of Class Notice approved by the Court:

a. Individual notice of this proposed Settlement shall be emailed, mailed, and/or otherwise sent by the Settlement Administrator, at the direction of Lead Counsel, to potential members of the Settlement Class, in conformance with a notice plan to be submitted to and approved by the Court.

b. Neither the Settlement Class, Lead Counsel, nor E*TRADE shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or obtaining approval of the Settlement or administering the Settlement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund, subject to any necessary Court approval. E*TRADE shall not object to Lead Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$75,000 to pay for Administration Costs.

c. Lead Counsel shall use reasonable best efforts to send out the Notice to the Settlement Class within three (3) months of Preliminary Approval by the Court of the Settlement Agreement. Any costs of notice that Lead Counsel are permitted to withdraw from the Settlement Fund, either pursuant to the Parties' Settlement Agreement or order of the Court, shall be nonrefundable if, for any reason, the Settlement Agreement is terminated according to its terms or is not finally approved by the Court.

7. **Motion for Final Approval and Entry of Final Judgment.** If the Court grants Preliminary Approval and certifies the Settlement Class, then Lead Plaintiffs, through Lead Counsel—in accordance with the schedule set forth in the Court's Preliminary Approval Order—shall submit to the Court a separate motion for Final Approval of this Settlement Agreement by the Court. A reasonable time in advance of submission to the Court, the papers in support of the motion for Final Approval shall be provided by Lead Counsel to E*TRADE for its review. To the extent that E*TRADE objects to any aspect of the motion, it shall promptly communicate such objection to Lead Counsel and the parties shall meet and confer in good faith and make reasonable efforts to resolve any such objection. The motion for Final Approval shall seek entry of an order and Final Judgment:

a. Finally approving the Settlement Agreement as being a fair, reasonable, and adequate settlement for the Settlement Class within the meaning of Federal Rule of Civil Procedure 23, and directing the implementation, performance, and consummation of the Settlement Agreement;

b. Determining that the Class Notice constituted reasonable notice and the best notice practicable under the circumstances of this Settlement Agreement and the fairness hearing, and constituted due and sufficient notice for all other purposes to all persons entitled to receive notice;

c. Dismissing the Action with prejudice;

d. Discharging and releasing the E*TRADE Releasees from all Released Plaintiffs' Claims;

e. Reserving continuing and exclusive jurisdiction over the Settlement Agreement for all purposes; and

f. Determining under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to E*TRADE shall be final and appealable and entered forthwith.

The Parties shall take all reasonable steps to obtain Final Approval of the Settlement Agreement.

8. **Escrow Account.** The Escrow Account shall be administered by Lead Counsel for the Lead Plaintiffs and Settlement Class under the Court's continuing supervision and control pursuant to the Escrow Agreement. Lead Counsel shall provide E*TRADE's counsel with wire instructions and a Form W-9 upon the Court's grant of Preliminary Approval.

9. **Settlement Consideration.** In consideration for the release of Released Claims and the dismissal of the Action, within thirty (30) calendar days of the later of (a) the Court's grant of Preliminary Approval, or (b) E*TRADE's counsel's receipt from Lead Counsel of the information necessary to effectuate a transfer of funds to the Escrow Account, E*TRADE shall pay or cause to be paid the Settlement Fund amount of \$1,400,000 (one million, four hundred thousand U.S. dollars) into the Escrow Account.

10. **Qualified Settlement Fund.** The Parties agree to treat the Settlement Fund as being at all times a Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1, and to that end, the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. In addition, Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Fund being a "Qualified Settlement Fund" within the meaning of Treas. Reg. § 1.4688-1. Lead Counsel shall timely and properly file all information 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), (1)). 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. E*TRADE

shall not be responsible for the filing or payment of any taxes or expenses connected to the Qualified Settlement Fund.

11. **Distribution of Settlement Fund to Settlement Class.** Members of the Settlement Class shall be entitled to look solely to the Settlement Fund for settlement and satisfaction against the E*TRADE Releasees for the Released Plaintiffs' Claims, and shall not be entitled to any other payment or relief from the E*TRADE Releasees. Except as provided by order of the Court, no member of the Settlement Class shall have any interest in the Settlement Fund or any portion thereof. Lead Plaintiffs, members of the Settlement Class, and their counsel will be paid, reimbursed and/or indemnified solely out of the Settlement Fund for all fees and expenses including, but not limited to, attorneys' fees and expenses. E*TRADE and the other E*TRADE Releasees shall not be liable for any costs, fees, or expenses of any of Lead Plaintiff or Lead Counsel's attorneys, experts, advisors, or representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Fund.

12. **Fee Awards, Costs/Expenses, and Service/Incentive Payments.** Subject to Class Counsel's discretion and the direction of the Court as to timing, Class Counsel will apply to the Court for a fee award, plus expenses, and costs incurred, and service or incentive payments or awards ("service payments") for the Lead Plaintiffs/Class Representatives, to be paid from the proceeds of the Settlement Fund. Any such application(s) shall be at the sole discretion of Lead Plaintiffs/Class Representatives and Class Counsel in all respects, and shall be subject to Court approval. E*TRADE shall have no responsibility, financial obligation, or liability for any such fees, costs, or expenses, and E*TRADE shall take no position with respect to any application to the Court by Lead Plaintiffs/Class Representatives and/or Class Counsel for the award/payment of any such fees, expenses, and/or costs incurred or service payments. Defendant shall bear no

responsibility or liability for apportionment or distribution of fees to plaintiffs' counsel. Class Counsel shall be solely responsible for and have discretion concerning the distribution of fees and expenses to any other plaintiffs' counsel.

13. **Class Representative Service/Incentive Payments.** In recognition of the material efforts of the Lead Plaintiffs in prosecuting the Action on behalf of Settlement Class Members, Lead Plaintiffs intend to make an application to the Court for the approval of Class Representative Service/Incentive Payments not to exceed four thousand dollars (\$4,000.00) each to Plaintiff Rupnow and Plaintiff Szostak (for a total not to exceed \$8,000.00), to be paid from the Settlement Fund. Provided, however, that Lead Plaintiffs will not receive a Class Representative Service/Incentive Payment until: (1) the Court approves the payment; and (2) Lead Plaintiffs have provided a validly completed current IRS Form W-9 to the Settlement Administrator. The Class Representative Service/Incentive Payments shall constitute a special award to Lead Plaintiffs and shall not be considered as a payment of overtime, salary, wages and/or compensation to Plaintiffs under the terms of any company benefit plan or for any purpose except for tax purposes. The receipt of a Class Representative Service/Incentive Payment shall not affect the amount of, contribution to, or benefit under any company benefit plan. The Parties agree that regardless of any action taken by the Court or any appellate court with respect to Class Representative Service/Incentive Payments, the validity of the underlying Settlement shall not be affected.

14. **Release of Claims.** Upon Final Judgment, as defined herein:

- a. Lead Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved,

relinquished, waived, and discharged any and all Released Plaintiffs' Claims against the E*TRADE Releasees, and shall forever be barred and enjoined from prosecuting any and all Released Plaintiffs' Claims against any of the E*TRADE Releasees. This Release shall not apply to any of the Excluded Plaintiffs' Claims.

b. E*TRADE, on behalf of itself and its respective administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged any and all Released E*TRADE's Claims against Lead Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any and all Released E*TRADE's Claims against any of the Plaintiffs' Releasees. This Release shall not apply to any of the Excluded E*TRADE's Claims.

15. **Further Release.** In addition to the provisions of Paragraph 14, the Releasing Parties hereby expressly waive and release, solely with respect to the Released Claims, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

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;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasing Party may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 14, but each Releasing Party hereby expressly waives and fully, finally, and forever

settles and releases, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties have agreed to release pursuant to Paragraph 14, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

16. **Class Notice and Administration of Class Notice.**

A. Notice of the Settlement shall be provided to Settlement Class Members as set forth in a notice plan to be submitted to and approved by the Court. The Class Notice shall state that any Settlement Class Member who has questions about the settlement may contact Class Counsel Milberg Coleman, and must not contact the Court. The Parties believe and agree that the following procedures for such notice provide the best practicable notice to Settlement Class Members, comply with Federal Rule of Civil Procedure 23, and are consistent with the requirements of due process, and recommend this Notice Plan to the Court, to be administered by a qualified Settlement Administrator (KCC). E*TRADE does not oppose the appointment of KCC as Settlement Administrator. The Settlement Administrator will facilitate the notice process by assisting in providing professional guidance in the implementation of the Notice Plan. As soon as reasonably practicable after the Court's Preliminary Approval Order, the Settlement Administrator, in coordination with Class Counsel, will implement the Notice Plan. The Settlement Administrator shall be responsible for preparing, emailing and/or mailing to all Settlement Class Members an individualized version of the Class Notice as approved by the Court, and such other materials as may be required to be distributed, all as approved and directed by the Court.

Not later than 10 days after the Court's entry of an Order of Preliminary Approval, E*TRADE shall provide to the Settlement Administrator and Class Counsel a list of all Settlement

Class Members (the “Class List”), that E*TRADE will diligently and in good faith compile from systems of record. The Class List will be formatted in Microsoft Office Excel, will be in searchable form, will be password protected, and will contain the name, last known telephone number, last known email address, and last known physical mailing address, during the Class Period of every potential Settlement Class Member. The Settlement Administrator and Class Counsel shall keep the Class List strictly confidential, except as needed to verify Class Member identity and contact information. The data provided by E*TRADE pursuant to this Agreement shall be presumed to be accurate, absent reasonable grounds to suggest otherwise, which shall be specifically communicated by Lead Counsel to E*TRADE’s counsel as soon as practicable after receiving and reviewing the list. The Settlement Administrator and Class Counsel shall keep the contents of the Class List provided by E*TRADE pursuant to this Agreement strictly confidential, and use it solely for purposes related to this Settlement, such as providing notice of the Settlement to potential Settlement Class Members, receiving, evaluating and processing potential Claims related to this Settlement, and for no other purposes unrelated to the Settlement. Within 10 business days of Final Judgment, the Settlement Administrator and Class Counsel shall destroy, delete or return to E*TRADE (depending upon E*TRADE's election) all versions, copies or other reproductions (whole or partial) of the Class List.

No later than 30 days after the Court’s entry of an Order of Preliminary Approval, the Settlement Administrator shall email the Class Notice to every individual on the Class List using the email address provided, in a form substantially similar to the form of Short-Form Notice approved by the Court. These communications will both be in English (with a reference to a Spanish version available at the Class Settlement Website).

For any individuals on the Class List for whom email addresses are not provided, but physical addresses are provided, the Settlement Administrator shall physically mail a copy of the Class Notice by first-class U.S. mail, postage pre-paid at that individual's listed physical address. However, before any such physical mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes.

With respect to any attempted email transmission of the Class Notice to an individual on the Class List in response to which the Settlement Administrator receives a "failed to deliver," "undeliverable" or similar "bounce-back" or rejection reply via email, the Settlement Administrator shall then physically mail a copy of the Class Notice by first-class U.S. mail, postage pre-paid, at that individual's listed physical address. However, before any such physical mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes.

Any physically mailed Class Notices that are returned to the Settlement Administrator as non-deliverable with a forwarding address on or before the deadline for Class Members to respond to the Notice (the "Response Deadline") will be sent via regular First-Class mail to the forwarding address within five calendar days of receipt of the forwarding address, and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.

For any Class Notice that is returned by the post office as undeliverable without a forwarding address or addressee unknown, the Settlement Administrator shall perform a skip trace that shall use such public and proprietary electronic resources as are available to the Settlement Administrator that lawfully collect address data from various sources such as utility records, property tax records, motor vehicle registration records, and credit bureaus. If the Settlement

Administrator is successful in locating an alternate subsequent address or addresses, the Settlement Administrator shall perform a single re-mailing of the Class Notice to the new address(es) within 10 calendar days of receipt of the undeliverable notice.

The Settlement Administrator shall not re-mail any Notice after the Response Deadline. The Settlement Administrator shall compile a list of all individuals on the Class List for whom direct Notice by both email and physical mail was unsuccessfully attempted.

B. Based on the information in the Class List, information subsequently received from Class members in response to the Class Notice (in the form of a proof of claim in a form to be approved by the Court and sent with notice, or otherwise made available through other means by the Claims Administrator), and the terms of this Settlement, the Settlement Administrator shall calculate an Estimated Settlement Amount for every Class Member, pursuant to the formulas to be determined and proposed by Class Counsel in the Plan of Allocation, approved by the Court, and included in the individualized Notice to be sent to Class Members.

C. The Settlement Administrator, in coordination with Class Counsel, will employ at least the following methods for circulating information about the Settlement to potential Settlement Class Members:

1. Direct email and/or postcard communications including the Short-Form Notice to all persons identified on the Class List (to be provided by E*TRADE pursuant to Section 16(A)) as potential Settlement Class Members;
2. Publication notice on Class Counsel's firm website, including the Short-Form and Long-Form Notice, with an active hyper link to the site referenced in (d) below;
3. A separate Class Action Settlement Website to be activated as soon as possible but no later than seven (7) business days after the Court's Preliminary Approval Order. The Settlement Administrator will secure an appropriate URL for the Class Settlement Website, and shall be

subject to the approval of Class Counsel and E*TRADE's counsel (which shall not be unreasonably withheld). The Class Settlement Website will post important settlement documents including, at a minimum: the Agreement, the Short-Form Notice, the Long-Form Notice, the Preliminary Approval Order; and procedural information regarding the status of the Court-approval process (*e.g.*, an announcement when the Final Approval Hearing is scheduled, and when the Final Approval Order and Final Judgment has been entered, and other relevant information regarding the Court-approval process). The Class Settlement Website maybe terminated within sixty (60) days after either (i) the Date of Final Approval or (ii) the date on which the Agreement is terminated, whichever is sooner; and

4. A toll-free number to be activated as soon as possible but no later than seven (7) business days after the Court's Preliminary Approval Order that provides live responders and recorded information, and directs Settlement Class Members to the Class Action Settlement Website. The Settlement Administrator shall be responsible for securing an appropriate toll-free number.

17. **Objecting to the Settlement.** Any Settlement Class Member who does not opt out of the Settlement may choose to object to the Settlement. The Class Notice shall provide that Settlement Class Members who wish to object to the Settlement must serve a written statement of objection upon Class Counsel and Counsel for E*TRADE, and also mail or file the written statement of objection to the Clerk of the Court, and specifically by mailing them to the Class Action Clerk, U. S. District Court for the Southern District of New York, or by filing them in person at any location of the U. S. District Court for the Southern District of New York, and must be filed or postmarked on or before the Response Deadline. To be considered, the objection must state whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class, and also state with specificity any and all ground(s) for the objection. The Parties may file with the Court written responses to any objections together with their motion for final approval of the Settlement prior to the Final Approval Hearing.

Settlement Class Members who fail to submit written objections in the time and manner specified herein shall be deemed to have waived any objections and shall be foreclosed from

making any objections (whether by appeal or otherwise) to the Settlement, and the Settlement shall be fully binding upon them (unless they have timely opted out of the Settlement, as described below).

18. **Opting Out of the Settlement.**

i. A Settlement Class Member may opt out of the Settlement by timely mailing a valid opt-out statement to the Settlement Administrator. No Settlement Class Member, or any person acting on behalf of or in concert or in participation with that Settlement Class Member, may exclude or opt out another Settlement Class Member from the Settlement.

ii. The Class Notice shall provide that Settlement Class Members who wish to opt out of the Settlement must comply with the following procedures:

1. Mail a signed letter to the Settlement Administrator, postmarked no later than the Response Deadline, stating the Settlement Class Member's name, telephone number, current address, last four digits of the Settlement Class Member's Social Security number, and the following statement: "I, [NAME], voluntarily choose not to participate in the settlement of the Class Action against E*TRADE Securities, LLC, and hereby waive any rights I may have to participate in the class settlement in the federal court lawsuit entitled *Rupnow, et al., v. E*TRADE Securities LLC*, Civil Action No. 1:19-cv-10942-DLC (S.D.N.Y.)."

iii. Absent a showing of good cause, as determined by the Settlement Administrator after input from Class Counsel and E*TRADE, no opt-out statement shall be honored or valid if postmarked after the Response Deadline. Requests to opt out that do not include all required information shall be deemed null, void, and ineffective.

iv. Settlement Class Members who submit valid and timely requests to opt out of the Settlement shall not receive a payment for settlement of Released Plaintiffs' Claims pursuant

to the Settlement, nor shall such Settlement Class Members be bound by the terms of the Settlement of their individual claims against E*TRADE pursuant to this Settlement.

v. The final list of requests for exclusion (“opt-out”) from the Settlement Class will be provided to Counsel for the Parties and filed with the Court by the Settlement Administrator not later than five (5) business days after the Response Deadline.

19. **Non-Disparagement.** The Parties agree they will not disparage the Action or one another and instead will confine their public comments to essentially the following, in words or substance: “The parties have agreed to resolve this matter. E*TRADE has not admitted any liability and continues to deny the allegations in Plaintiffs’ complaint, while Plaintiffs believe the claims on behalf of themselves and the Class were viable and meritorious, and that they would have prevailed.”

20. **No Admission of Wrongdoing.** Nothing in this Settlement Agreement, whether or not consummated, the negotiations leading to the Settlement Agreement, nor any proceedings taken pursuant to or in connection with this Settlement Agreement and/or approval of the Settlement (including any arguments proffered in connection therewith) shall be construed as an admission of liability, or used as evidence of liability, for any purpose in any legal proceeding, claim, regulatory proceeding, or government investigation. This Settlement Agreement is merely the resolution of a dispute between the Parties, and nothing herein or in the negotiation of this Agreement will be construed or used in any manner as an admission of liability, wrongdoing or evidence of any Party’s or their counsel’s fault, liability or wrongdoing, and each party and their counsel respectively asserts that their respective claims and defenses raised in connection with this Action were asserted in good faith and that at all times they acted reasonably and in good faith in connection with their respective conduct related to the Action.

21. **Options to Terminate.**

(a) E*TRADE will have the sole discretion to terminate this Settlement Agreement if a number of Settlement Class Members representing in excess of a specific percentage of relevant transactions — as set forth in a separate confidential letter — opt out of the Settlement Class. Any such decision to rescind the Settlement Agreement must be made within fourteen (14) calendar days of Lead Counsel providing E*TRADE with a final list of all persons or entities that have timely requested exclusion from the Settlement Class. E*TRADE will also have the sole discretion to terminate this Settlement Agreement if Lead Plaintiffs demand or the Court orders confirmatory discovery in connection with any application for Preliminary and/or Final Approval of this proposed Settlement. In the event that E*TRADE considers electing to terminate the Parties' Settlement Agreement under this provision, or there are any disputes under this provision, the Parties agree to first mediate such dispute in good faith with Mediator Woodin before E*TRADE makes such an election. However, by so agreeing to mediate, E*TRADE does not give up its right to terminate the Settlement Agreement in E*TRADE's sole discretion pursuant to this provision. If E*TRADE elects to terminate, then Lead Plaintiffs shall in no way whatsoever be prejudiced in resuming full discovery and adjudication of the Action as it stood as of the Execution Date and E*TRADE shall be prohibited from arguing to Lead Plaintiffs or the Court that its agreements with other plaintiffs or parties in any way limit Lead Plaintiffs' ability to do so.

(b) Pursuant to the Parties' agreement to cooperate in good faith and use their best efforts to obtain Court approval of the proposed Settlement, E*TRADE agrees to, if requested by Lead Plaintiffs, cooperate with Lead Plaintiffs in good faith to provide a factual declaration in support of Lead Plaintiffs' motion for preliminary approval of the Settlement.

22. **Effect of Disapproval and Rescission.** If the Court does not certify the Settlement Class as defined in this Settlement Agreement, or if the Court does not approve this Settlement Agreement in all material respects, or if the Court does not enter Final Approval as provided for in Paragraph 7 herein, or if any judgment approving this Settlement Agreement is materially modified or set aside on appeal, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 7 of this Settlement Agreement, or if this Settlement Agreement is terminated pursuant to Paragraph 21, then this Agreement may be cancelled and terminated:

- a. Solely by E*TRADE with respect to Paragraph 21 (a); or
- b. otherwise by E*TRADE or Lead Plaintiffs on behalf of the Settlement Class.

If cancelled and terminated, this Settlement Agreement shall become null and void, and, with the exception of any Settlement Funds used for notice purposes pursuant to Paragraph 6, in the event the settlement is not preliminarily or finally approved by the Court, all other funds in the Escrow Account shall be returned to E*TRADE and the Parties' position shall be returned to the status quo ante.

23. Notwithstanding any other provision of this Agreement, no order of the Court, or modification or reversal on appeal of any order of the Court, reducing the amount of any attorneys' fees or costs to be paid to Class Counsel, or reducing the amount of any service payment, shall constitute grounds for cancellation or termination of this Agreement or grounds for limiting any other provision of the judgment agreed upon by the Parties. Class Counsel retains and reserves all rights to appeal or seek reconsideration of any order of the Court reducing the amount of attorneys' fees or costs to be paid to Class Counsel and/or any order of the Court reducing the amount of any service/incentive payment.

24. **Choice of Law and Dispute Resolution.** Any disputes relating to this Settlement Agreement shall be governed by New York law without regard to conflict of law provisions.

25. **Consent to Jurisdiction.** The Parties and any Releasing Parties hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of Paragraphs 14 or 15, including but not limited to, any suit, action, or proceeding in which the provisions of Paragraphs 14 or 15 are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of or relating to this Settlement Agreement. In the event that the provisions of Paragraphs 14 or 15 are asserted by any E*TRADE Releasee as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such E*TRADE Releasee shall be entitled to a stay of that suit, action, or proceeding until the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on such provisions. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, the Parties and any Releasing Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the in personam jurisdiction of the Court. Nothing shall be construed as a submission to jurisdiction for any purpose other than enforcement of this Agreement.

26. **Class Action Fairness Act.** Within ten (10) days of filing of this Settlement Agreement in Court with the abovementioned motion for preliminary approval, E*TRADE, at its sole expense, shall submit all materials required to be sent to appropriate Federal and State officials

pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and shall confirm to Lead Plaintiffs' and Lead Counsel that such notices have been sent.

27. **Administration Costs.** The E*TRADE Releasees shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Funds, and all such Administration Costs shall be paid out of the Settlement Fund.

28. **Binding Effect.** This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, Settlement Class, the Releasing Parties, and the Released Parties as defined herein. Without limiting the generality of the foregoing, upon certification of the Settlement Class and Final Approval, each and every covenant and agreement herein by the Lead Plaintiffs shall be binding upon all members and potential members of the Settlement Class and Releasing Parties who have not validly excluded themselves from the Settlement Class pursuant to the opt-out procedures set forth herein.

29. **Extensions of Time.** The Parties may, by mutual agreement and subject to Court approval, agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement or otherwise in connection with seeking Court approval of this Settlement Agreement and the proposed Settlement.

30. **Sole Remedy.** This Settlement Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any E*TRADE Releasee, and upon entry of Final Judgment, the Releasing Parties shall be forever barred from initiating, asserting, maintaining, or prosecuting any and all Released Claims against any E*TRADE Releasee.

31. **Counsel's Express Authority.** Each counsel signing this Settlement Agreement on behalf of a Party or Parties has full and express authority to enter into all of the terms reflected

herein on behalf of each and every one of the clients for which counsel is signing. The Parties and their respective counsel shall cooperate with each other and use their best efforts to effect the implementation of this Agreement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement or the proposed Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement or the proposed Settlement, the Parties may seek the assistance of the mediator or the Court to resolve such disagreement.

32. **Mutual Cooperation.** The Parties hereto agree to cooperate with each other reasonably and in good faith to accomplish the terms of this Agreement, including but not limited to executing further documents and taking such other action(s) as may reasonably be necessary to implement and effectuate the terms of this Agreement and receive Court approval of the proposed Settlement.

33. **Admissibility.** It is agreed that this Settlement Agreement shall be admissible in any proceeding for establishing the terms of the Parties' agreement or for any other purpose with respect to implementing or enforcing this Settlement Agreement.

34. **Notices.** If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If directed to Lead Plaintiffs, the Settlement Class, or any member of the Settlement Class, to:

Kent Bronson
Mitchell Breit
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC
100 Garden City Plaza
Garden City, New York 11530
kbronson@milberg.com

mbreit@milberg.com

If directed to E*TRADE, to:

Marc Greenwald
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
marcgreenwald@quinnemanuel.com

or such other address as the Parties may designate, from time to time, by giving notice to all Parties hereto in the manner described in this Paragraph.

35. **No Third-Party Beneficiaries.** No provision of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not an E*TRADE Releasee, Lead Plaintiff, Settlement Class Member, or Lead Counsel.

36. **No Party is the Drafter.** None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

37. **Titles and Captions of No Force.** Paragraph titles or captions contained herein are inserted for convenience and ease of reference and are not intended to and do not define, limit, extend, or describe the scope of the terms of the Agreement and its provisions.

38. **No Prior Assignment.** The Parties hereto represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

39. **Amendment and Waiver.** This Settlement Agreement shall not be modified in any respect except by a writing executed by the Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. The waiver

by any Party of any particular breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement. This Settlement Agreement does not waive or otherwise limit the Parties' rights and remedies for any breach of this Settlement Agreement. Any breach of this Settlement Agreement may result in irreparable damage to a Party for which such Party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that the Parties may immediately seek enforcement of this Settlement Agreement by means of specific performance or injunction, without the requirement of posting a bond or other security.

40. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. Facsimile or Electronic Mail signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.

41. **Integrated Agreement.** This Settlement Agreement, including the "separate confidential letter" referenced in paragraph 21, comprises the entire, complete, and integrated agreement between the Parties, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between the Parties. The Parties agree that this Settlement Agreement may be modified only by a written instrument signed by the Parties and that no Party will assert any claim against another based on any alleged agreement affecting or relating to the terms of this Settlement Agreement not in writing and signed by the Parties.


42. **Voluntary Settlement.** The Parties agree that this Settlement Agreement was negotiated in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with competent counsel and the participation of a neutral mediator, and no Party has entered this Settlement Agreement as the result of any coercion or duress.

43. **Confidentiality.** The Parties agree to continue to maintain the confidentiality of all settlement discussions, and materials exchanged during the settlement negotiation, until the application for Preliminary Approval of the proposed Settlement Notice is filed with the Court. The existence and terms of this Settlement Agreement and the Settlement contemplated herein shall be kept confidential until such time (except and to the extent reasonably possible considering that the proposed Settlement has already been referenced in public filings on the Court's electronic docket, and in other public filings and statements by E*TRADE), except (a) for purposes of obtaining Preliminary Approval and Final Approval by the Court, which is expected to include public filing of this Settlement Agreement; (b) for purposes of providing notice to members of the Settlement Class; (c) as otherwise required by law (including any applicable court order), regulation, administrative guidance, request, ruling, or proceeding, or stock exchange rule and as necessary to prepare tax, securities, and other required documents and disclosure; or (d) to enforce this Settlement Agreement.

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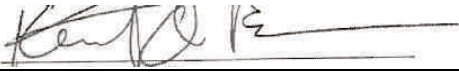
IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed by their duly authorized attorneys and corporate representatives as of April 21, 2023.

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

By: 

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Leigha Empson
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