

**ONTARIO
SUPERIOR COURT OF JUSTICE**



THE HONOURABLE)
JUSTICE BELOBABA)
)
)

FRIDAY, THE
3RD DAY OF MARCH 2023

BETWEEN:

DARA FRESCO

Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(SETTLEMENT APPROVAL)**

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with the Defendant and dismissing this action was heard this day by judicial videoconference at Toronto.

AND ON READING the materials filed, including the settlement agreement dated December 28, 2022 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and the Defendant;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there were no objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting out of the Action has passed on May 20, 2014, and 1,041 persons validly and timely exercised the right to opt out;

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

Entered/Issued
MAR - 7 2023

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Defendant in accordance with the terms thereof, and upon each member of the Class that did not validly opt out of this Action, as well as all Releasors, including those Persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 are dispensed with in respect of the Action.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions they have commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Releasors shall be and is hereby dismissed against the Releasees, without costs and with prejudice, subject to the terms of section 9.4 of the Settlement Agreement.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may

claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim.

10. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

11. **THIS COURT ORDERS** that on notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

12. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

13. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

14. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed without costs and with prejudice.

Signed: *Justice Edward Belobaba*

SCHEDULE "A"

CIBC OVERTIME CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT

Made as of December 28, 2022

Between

DARA FRESCO AND SARAH GAUDET

(the "Plaintiffs")

and

CANADIAN IMPERIAL BANK OF COMMERCE (the "Defendant")

CIBC OVERTIME CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT
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CIBC OVERTIME CLASS ACTIONS NATIONAL SETTLEMENT AGREEMENT

Subject to the approval of the Courts as provided herein, the Plaintiffs and the Defendant hereby agree that in consideration of the promises and covenants set forth in this Settlement Agreement and conditional upon the Approved Settlement Order (Fresco) and the Quebec Settlement Order (both as defined herein) becoming Final Orders, these Actions will be settled and the Settlement implemented, pursuant to the terms and conditions described below.

SECTION 1 - RECITALS

- A. **WHEREAS** on June 4, 2007, a proceeding was commenced by the Plaintiff, Dara Fresco, as Ontario Superior Court of Justice (Toronto) file 07-CV-334113CP (the “**Fresco Action**”);
- B. **WHEREAS** on June 18, 2007, a proceeding was commenced by the Petitioner, Sarah Gaudet, as Superior Court of Quebec (District of Montreal) file 500-06-000404-075 (the “**Gaudet Action**”);
- C. **WHEREAS** the Fresco Action was certified by Order of the Ontario Court of Appeal dated June 12, 2012 on behalf of a national class, including a class of Quebec residents that is duplicative of and overlaps with the proposed class in the Gaudet Action;
- D. **WHEREAS** the Gaudet Action was stayed on October 2, 2007, by the Superior Court of Quebec, pending resolution of the Fresco Action;
- E. **WHEREAS** Class Members were provided an opportunity to opt-out of the Fresco Action, the deadline for Class Members to opt-out of the Fresco Action has passed, and there were 1,041 opt-outs from the Fresco Action, including approximately 126 from class members located in Quebec;
- F. **WHEREAS** the certified common issues were determined at first instance by summary judgment granted by the Ontario Superior Court of Justice on March 30, 2020, August 10, 2020 and October 21, 2020;

G. **WHEREAS** an additional common issue concerning aggregate damages was ordered certified by the Ontario Superior Court of Justice on August 10, 2020;

H. **WHEREAS** an appeal of the common issues judgment and the Order to certify an additional common issue was dismissed by the Court of Appeal for Ontario on February 9, 2022;

I. **WHEREAS** counsel for the Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, including a three-day mediation with William Kaplan in August 2022;

J. **WHEREAS** as a result of these settlement discussions and negotiations, the Defendant and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendant and the Plaintiffs, both individually and on behalf of the classes the Plaintiffs represent, or in the case of Gaudet propose to represent, subject to approval of the Courts;

K. **WHEREAS** the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense involved in further prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Amount, the Plaintiffs and Class Counsel have each concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they represent;

L. **WHEREAS** the Parties therefore wish to and hereby do agree to finally resolve the Proceedings on a national basis in accordance with an Order from the Ontario Court approving this Settlement Agreement;

M. **WHEREAS** in the event that it becomes necessary to obtain a separate order from the Quebec Court authorizing the Gaudet Action for settlement purposes only and approving this Settlement Agreement, the Parties to the Gaudet Action consent to the authorization of the Gaudet Action solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals being granted by the Courts as provided for in this Settlement Agreement, on the express understanding that such authorization

shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

N. **WHEREAS** if it becomes necessary to obtain a separate order from the Quebec Court authorizing the Gaudet Action for settlement purposes only and approving this Settlement Agreement, the Petitioner in the Gaudet Action asserts that she is an adequate class representative for the class she seeks to represent and will seek to be appointed representative plaintiff in the Gaudet Action; and

O. **WHEREAS** the Parties intend to pursue the approval of this Settlement Agreement first through the Ontario Court, following which the Parties will seek the recognition of the Ontario Court's approval in Quebec, or alternatively, will seek approval of this Settlement Agreement in Quebec;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Fresco Action be settled and dismissed with prejudice, and that the Gaudet Action be settled and discontinued or declared settled out of Court as against the Defendant, all without costs as to the Plaintiffs, the classes they seek to represent or the Defendant, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

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

- (1) **Actions** means the Fresco Action and the Gaudet Action.
- (2) **Administration Expenses** means all fees, disbursements (including all disbursements to experts relating to this Settlement Agreement and the Distribution Protocol), expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and translation costs of the notices. Administration Expenses shall not include Class Counsel Fees, Class Counsel Disbursements or the Class Proceedings Fund Levy.

- (3) *Administrator or Claims Administrator* means the third-party professional firm and any employees of such firm, selected at arm's length by Class Counsel pursuant to the Minutes of Settlement executed on November 16, 2022, and appointed by the Court to do any one or more of the following:
- (a) facilitate dissemination of the Notices of Settlement Approval Hearing;
 - (b) facilitate dissemination of the Approved Settlement Notices;
 - (c) receive and review claims and administer the Settlement Fund in accordance with the Distribution Protocol; and
 - (d) report to the Parties and the Court on the administration of the Settlement;
- (4) *Approval Motion or Approval Motions* means, as the context requires, the motion or motions to approve the Settlement, the Approved Settlement Notices, the Plan of Notice, the Distribution Protocol, Class Counsel Fees, Class Counsel Disbursements and any other approvals required to give effect to the Settlement and its administration;
- (5) *Approved Settlement Notices* means the Approved Settlement Notices (Fresco) and, should separate notices of settlement be ordered in the Gaudet Action, the Approved Settlement Notices (Gaudet);
- (6) *Approved Settlement Notices (Fresco)* means the Approved Settlement Notice (Fresco – Direct Notice), the Approved Settlement Notice (Fresco – Publication), and the Approved Settlement Notice (Fresco – Digital Banner);
- (7) *Approved Settlement Notice (Fresco –Direct Notice)* means notice to the Class of the Approved Settlement Order (Fresco) substantially in the form attached as **Schedule “A”**;
- (8) *Approved Settlement Notice (Fresco –Publication)* means notice to the Class of the Approved Settlement Order (Fresco) substantially in the form attached as **Schedule “B”**;
- (9) *Approved Settlement Notice (Fresco – Digital Banner)* means notice to the Class of the Approved Settlement Order (Fresco) substantially in the form attached as **Schedule “C”**;

(10) *Approved Settlement Notices (Gaudet)* means notices in English and French that are substantially similar to the Approved Settlement Notices (Fresco), the form and content of which shall be agreed upon by the Parties;

(11) *Approved Settlement Orders* means the Approved Settlement Order (Fresco) and the Approved Settlement Order (Gaudet);

(12) *Approved Settlement Order (Fresco)* means the order made by the Ontario Court, substantially in the form attached as **Schedule “D”**:

- (a) approving the Settlement;
- (b) approving the forms of the Approved Settlement Notices (Fresco);
- (c) approving the Plan of Notice for the purpose of the publication and dissemination of the Approved Settlement Notices (Fresco);
- (d) dismissing the Action as against the Defendant without costs and with prejudice; and
- (e) ordering the release of the Released Claims.

(13) *Approved Settlement Order (Gaudet)* means the order made by the Quebec Court that is substantially similar to the Approved Settlement Order (Fresco), the form and content of which shall be agreed upon by the parties;

(14) *CIBC* means the Defendant the Canadian Imperial Bank of Commerce;

(15) *Claim Form* means the form to be approved by the Court or, if settlement approval is required in Quebec, the Courts, which, when completed and submitted in a timely manner to the Administrator, constitutes a Class Member’s claim for compensation pursuant to the Settlement;

(16) *Claims Bar Deadline* means the date by which each Class Member must file a Claim Form and all supporting documentation with the Administrator; which date shall be one hundred and eighty (180) days after distribution of the first Approved Settlement Notices or such other date as may be fixed by the Court;

(17) ***Class or Class Members*** means current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC's retail branches, High Value Cluster offices or Imperial Service offices at any time from February 1, 1993 to June 18, 2009, as tellers or other front-line customer service employees, including the following:

- (a) Customer Service Representatives (also formerly known as Tellers);
- (b) Assistant Branch Managers (Level 4);
- (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);
- (d) Financial Service Associates;
- (e) Branch Ambassadors; and
- (f) Other employees who performed the same or similar job functions as the above under a different or previous CIBC job title,

but excludes anyone who opted out of the Fresco Action.

(18) ***Class Counsel*** means Plaintiffs' Counsel in the Fresco Action and the Gaudet Action.

(19) ***Class Counsel Disbursements*** include the disbursements, interest, and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings and not reimbursed by the Class Proceedings Fund;

(20) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Class Members to any other body or person;

(21) ***Class Period*** means the period between February 1, 1993 to June 18, 2009;

(22) ***Class Proceedings Fund*** means the Class Proceedings Fund of the Law Foundation of Ontario as provided for by section 59.1 of the *Law Society Act*;

- (23) ***Class Proceedings Fund Levy*** means the levy to be paid to the Class Proceedings Fund as prescribed by section 10 of the *Class Proceedings Regulation* under the *Law Society Act*;
- (24) ***CPA*** means the *Class Proceeding Act, 1992*, S.O. 1992, c. 6;
- (25) ***Courts*** means the Ontario Court and Quebec Court;
- (26) ***Date of Execution*** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement;
- (27) ***Defendant*** means Canadian Imperial Bank of Commerce;
- (28) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, to be proposed by Class Counsel substantially in the form attached as **Schedule "E"** as approved by the Courts, or as amended by and otherwise directed by the Courts;
- (29) ***Effective Date*** means the date when Final Orders have been received from all Courts;
- (30) ***Eligible Claimant*** means a member of the Class who makes a claim for his or her share and is entitled to a share of the Settlement Fund;
- (31) ***Escrow Account*** means an interest-bearing trust account at a Canadian Schedule 1 bank in Ontario initially under the control of Sotos LLP, until the Approved Settlement Order (Fresco) and the Quebec Settlement Order are entered, following which it shall be transferred to the Administrator appointed pursuant to the Approved Settlement Order (Fresco);
- (32) ***Escrow Settlement Funds*** means the Settlement Amount plus any accrued interest in the Escrow Account;
- (33) ***Fee Approval Order*** means the order made by the Court approving Class Counsel Fees and Disbursements;
- (34) ***Final Orders*** means any order contemplated by this Settlement Agreement from which no appeal lies or in respect of which: (1) any right of appeal, or right to seek leave to appeal, has expired without the initiation of proceedings in respect of that appeal such as the delivery of a notice of motion for leave to appeal or a notice of appeal or (2) any right of appeal has been exercised and the appeal has been dismissed with no further right of appeal nor any further right to seek leave to appeal;

(35) *Fresco Settlement Approval Hearing* means the hearing of the motion for approval of this Settlement in Ontario and related relief;

(36) *Net Settlement Amount* means the amount available in the Escrow Account for distribution pursuant to the Distribution Protocol after payment of all Class Counsel Fees, Class Counsel Disbursements, Administration Expenses, the Class Proceedings Fund Levy and other amounts contemplated by subparagraphs 5(1)(a)-(g) hereof;

(37) *Notices of Settlement Approval Hearing* means the Notices of Settlement Approval Hearing (Fresco) and, if necessary, the Notices of Settlement Approval Hearing (Gaudet);

(38) *Notices of Settlement Approval Hearing (Fresco)* means the Notice of Settlement Approval Hearing (Fresco – Direct Notice), the Notice of Settlement Approval Hearing (Fresco – Publication) and the Notice of Settlement Approval Hearing (Fresco – Digital Banner);

(39) *Notice of Settlement Approval Hearing (Fresco – Direct Notice)* means notice to the Class of the Settlement Approval Hearing (Fresco) and the terms of the proposed settlement substantially in the form attached as **Schedule “F”**;

(40) *Notice of Settlement Approval Hearing (Fresco – Publication)* means notice to the Class of the Settlement Approval Hearing (Fresco) and the terms of the proposed settlement substantially in the form attached as **Schedule “G”**;

(41) *Notice of Settlement Approval Hearing (Fresco – Digital Banner)* means notice to the Class of the Settlement Approval Hearing (Fresco) and the terms of the proposed settlement substantially in the form attached as **Schedule “H”**;

(42) *Notice of Settlement Approval Hearing Order (Fresco)* means the Order of the Ontario Court substantially in the form as the attached **Schedule “I”**, which shall contain provisions:

- (a) appointing the Administrator;
- (b) approving the form, content and method of dissemination of the Notice of Settlement Approval Hearing; and

- (c) fixing the date for the Settlement Approval Hearing Motion, as the context may require, in the Ontario Court;
- (43) *Notices of Settlement Approval Hearing (Gaudet)* means notices in French and English that are substantially similar to the Notices of Settlement Approval Hearing (Fresco), the form and content of which shall be agreed upon by the Parties;
- (44) *Notice of Settlement Approval Order (Gaudet)*, means notice in French and English that is substantially similar to the Notice of Settlement Approval Order (Fresco) the form and content of which shall be agreed upon by the Parties;
- (45) *Ontario Court* means the Ontario Superior Court of Justice;
- (46) *Ontario Plaintiff* means Dara Fresco;
- (47) *Other Actions* means actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Class Member either before or after the Effective Date.
- (48) *Parties* means the Defendant and the Plaintiffs;
- (49) *Agreed Press Release* means the press release set out at **Schedule “J”**;
- (50) *Plaintiffs* means Dara Fresco and Sarah Gaudet;
- (51) *Plaintiff’s Counsel in Fresco* means Goldblatt Partners LLP, Roy O’Connor LLP and Sotos LLP;
- (52) *Plaintiff’s Counsel in Gaudet* means Melançon Marceau Grenier Cohen s.e.n.c.;
- (53) *Plan of Notice* means the plan to provide notice of the settlement and the process for making claims, as approved by the Ontario Court, or if settlement approval is required in both Ontario and Quebec, as approved by the Ontario Court and the Quebec Court;
- (54) *Proceedings* means the Fresco Action and the Gaudet Action;
- (55) *Quebec Common Issue* means “Did Class Members, or some of them, work uncompensated overtime for the benefit of the Defendant?”;

- (56) **Quebec Court** means the Superior Court of Quebec;
- (57) **Quebec Petitioner** means Sarah Gaudet;
- (58) **Quebec Settlement Motion** shall have the meaning ascribed in paragraph 2.2(1) herein;
- (59) **Quebec Class** means members of the Class as defined in subparagraph (17) above who worked in Quebec;
- (60) **Quebec Class Member** means a member of the Class as defined in subparagraph (17) above who worked in Quebec;
- (61) **Quebec Settlement Order** means either (i) the judgment of the Superior Court of Quebec recognizing and enforcing the Approved Settlement Order (Fresco) in Quebec and approving the discontinuance of the Gaudet Action, or (ii) the judgment of the Superior Court of Quebec, substantially in the form as the Approved Settlement Order (Fresco), approving this Settlement Agreement;
- (62) **Released Claims** (or **Released Claim**) means all claims relating to the Class Period (including individual claims) by the Class, known and unknown, relating to all matters raised, or which could reasonably have been raised, in the Proceedings including: (i) all claims and causes of action pleaded relating to the Class Period; (ii) all matters addressed in the Ontario Plaintiff's expert Stefan Boedeker's reports, dated January 12, 2022, July 18, 2022, and September 16, 2022, but only insofar as such matters relate to the Class Period, inclusive of all claims for unpaid hours, overtime pay, vacation pay, and holiday pay; and (iii) claims, or claims over, relating to the Remittances;
- (63) **Released Party** or **Released Parties** means Releasees;
- (64) **Releasees** means, the Defendant and its predecessors, successors, assigns, parents, subsidiaries and affiliates, and together with all of their current and former officers, directors, employees, servants, trustees, representatives, lawyers, agents, insurers, and re-insurers along with shareholders of the Defendant and as applicable any of their respective heirs, executors, estates, successors, and assigns;
- (65) **Releasers** means the Class Members for themselves, their heirs, executors, estates, successors, and assigns;

(66) **Remittances** means any employment withholdings, contributions, premiums, and remittances thereof, including in respect of Canada Pension Plan contributions and Employment Insurance premiums, taxes, penalties, and interest, that may be applicable, pursuant to provincial or federal legislation, in respect of the amounts distributed to the Class from the Settlement Amount;

(67) **Settlement** means the settlement provided for in this Settlement Agreement;

(68) **Settlement Agreement** means this Settlement Agreement, including the recitals and schedules;

(69) **Settlement Amount** or **Settlement Fund** means one hundred and fifty-three million Canadian dollars (CAD \$153,000,000) to be paid by CIBC in settlement of the Actions, which amount is inclusive of (i) all claims that were made, or which could reasonably have been made, in the Fresco Action during the period from February 1, 1993 to June 18, 2009 (the "Class Period"), (ii) all claims that were made, or which could reasonably have been made, in the related class proceeding commenced in the Gaudet Action during the Class Period, (iii) all costs that may be incurred in relation to the approval and administration of this settlement, including costs of any notice program and related translation costs, (iv) all Class counsel fees and disbursements (including in respect of the notice and settlement approval hearings and any related appeals in respect of this settlement as well as the fees and disbursements related to the method of distribution of the Settlement Amount to the Class), (v) any applicable statutory amounts allegedly owing payable as wages, inclusive of unpaid hours, overtime pay, vacation pay, and holiday pay, during the Class Period, (vi) the Remittances, and (vii) Administration Expenses, Class Counsel Fees, Class Counsel Disbursements, the Class Proceedings Fund Levy, any amount to which the Fonds d'Aide aux actions collectives may be entitled and any other costs (with the exception of costs paid by CIBC prior to the execution of the Settlement Agreement) or expenses otherwise related to the Actions.

SECTION 2 - APPROVAL AND NOTICE PROCESS

2.1 Best Efforts

(1) The Parties shall use their reasonable best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Fresco Action and a prompt, complete resolution of the Gaudet Action pursuant to the recognition and enforcement of the Approved Settlement Order (Fresco) in Quebec and the discontinuance of the Gaudet Action, or pursuant to the

authorization of the Gaudet Action for settlement purposes only and the subsequent approval of this Settlement Agreement by the Quebec Court.

(2) The parties will apply for the recognition of the Approved Settlement Order (Fresco) and the discontinuance of the Gaudet Action on consent and without costs, following the issuance of the Approved Settlement Order (Fresco). In the alternative, if required by the Quebec Court, the Parties will apply for the authorization of Gaudet as a class proceeding in Quebec solely for purposes of settlement, as well as the approval of this Settlement Agreement by the Quebec Court as set out in Sections 2.2 and 2.3 below.

(3) Until the Approved Settlement Order and the Quebec Settlement Order become Final Orders or the termination of this Settlement Agreement, whichever occurs first, the Parties agree to hold in abeyance all steps in the Actions, other than: (a) the motions and applications provided for in this Settlement Agreement; and (b) such other matters required to implement the terms of this Settlement Agreement.

2.2 Motions Seeking Approval of Notice of Settlement Approval Hearing Order (Fresco) and Notice of Settlement Approval Order (Gaudet)

(1) The Plaintiffs will, as soon as is reasonably practicable following the Execution Date, bring motions in relation to the Notice of Settlement Approval Hearing Order (Fresco) and in the Gaudet Action, following the issuance of the Final Approved Settlement Order (Fresco), an application seeking the recognition of the Approved Settlement Order (Fresco) in Quebec and the discontinuance of the Gaudet Action on consent and without costs; or if required by the Quebec Court, seeking the authorization of the Gaudet Action solely for purposes of settlement and the subsequent approval of this Settlement Agreement by the Quebec Court (the “**Quebec Settlement Application**”).

(2) The Plaintiffs agree that, in the event that the Quebec Court requires an application for authorization of the Gaudet Action as a class proceeding for settlement purposes and for approval of this Settlement Agreement, the only common question that they will seek to define is the Quebec Common Issue and the only class that they will assert is the Quebec Class defined herein.

(3) The Defendant retains, subject to the final judgments, decisions, or orders previously rendered in both the Fresco Action and the Gaudet Action, all of its objections, arguments, and defences if the settlement set forth in this Settlement Agreement does not receive the Courts’ approval, if the Courts’

approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close.

(4) Similarly, if the settlement set forth in this Settlement Agreement does not receive the Court's approval (or if settlement approval must be sought in Quebec, the Courts' approval), if the Court or Courts' approval (as the case may be) is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to close, the Plaintiff and the Class retain, subject to the final decisions or orders previously rendered in the Actions, all of their rights to advance their claims and claims for damages or other relief relating to the issues in the Actions.

(5) Upon entry of the Notice of Settlement Approval Hearing Order (Fresco) and the Notice of Settlement Approval Hearing (Quebec) (should the latter be necessary to file as a distinct notice), the Administrator shall cause the Notice of Settlement Approval Hearing to be published in accordance with the Plan of Notice and the directions of the Court (or Courts, if settlement approval is required in Quebec). The costs of publishing the Notice of Settlement Approval Hearing shall be paid from the Escrow Account as and when incurred.

2.3 Approval Motion and Notice

(1) The Plaintiff will bring the Settlement Approval Motion (Fresco) in accordance with the Ontario Court's directions. The Defendant will consent to the issuance of the Approved Settlement Order (Fresco).

(2) Upon the granting of the Approved Settlement Order and the Quebec Settlement Application, Class Counsel may issue the Agreed Press Release and the Administrator shall cause the Approved Settlement Notices to be published and disseminated in accordance with the Plan of Notice as approved by the Courts. The costs of publishing the Approved Settlement Notices shall be paid from the Escrow Account as and when incurred.

2.4 Confidentiality

(1) Prior to the execution and filing with either of the Courts of this Settlement Agreement, the Parties shall keep the fact of this settlement, the contents of the Minutes of Settlement and this Settlement Agreement strictly confidential and shall not disclose them to anyone, issue any press releases or make any other public statements, including to the media, regarding this settlement, except as follows:

- (a) as required by law or regulation;
- (b) in the case of CIBC, as part of its disclosure in its quarterly or annual Management's Discussion & Analysis;
- (c) as the Parties agree otherwise;
- (d) by Class Counsel to the plaintiff national counsel team, their expert and the Class Proceedings Fund; or
- (e) by Class Counsel for purposes of soliciting an Administrator.

on condition that any disclosure to the individuals referred to in (d) or (e) above be made on condition that those individuals are advised that such information as disclosed is to remain strictly confidential prior to the execution and filing with either of the Courts of an executed copy of this Settlement Agreement.

(2) Following the execution and filing with either of the Courts of this Settlement Agreement, the Parties agree that, except as otherwise required to obtain approval of this Settlement and Class Counsel Fees and Class Counsel Disbursements, that:

- (a) They shall not issue any press releases or make any other public statements, including to the media, regarding this settlement, except those that are:
 - (i) the Agreed Press Release or otherwise agreed to by the Parties;
 - (ii) required by law or regulation;
 - (iii) in the case of Class Counsel (and while the Parties acknowledge that communications by Class Counsel to their clients (the Class) are privileged), statements or communications to their clients informing them about the settlement, the proposed distribution process and the reasonableness of the settlement and distribution by electronic, digital or virtual means that may reasonably be expected to be viewed, reviewed or received beyond members of the Class, including informing members of the Class or answering inquiries from Class members by way of virtual

town hall meetings or internet available recordings (or other similar more public means). Such statements or communications shall accord with subsection 2.4(2)(c) below, and Class Counsel shall share in advance with CIBC (through its counsel) for its review and approval a copy of any such communications, including any slides or slide deck to be presented at such town hall, to ensure that the content is fair, balanced, accurate and free from disparagement; or

(iv) in response to media inquiries directed to either of the Parties (or their counsel), the Parties (and their counsel) shall act in good faith to agree in advance on responses that accord with subsection 2.4(2)(c) below. With respect to any unanticipated media inquiry, or any anticipated media inquiry in respect of which the parties did not agree to a response in advance, the Parties (or their counsel) may refer the inquirer to the public court file or the Agreed Press Release, or answer the inquiry in accordance with subsection 2.4(2)(c) below.

(b) The Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the parties to comply with any order of the Courts, as may be required under any applicable law or regulation, or as may be agreed by counsel in seeking the approval of this settlement (or Class Counsel Fees/Disbursements) or the discontinuance of the Gaudet Action. This agreement applies notwithstanding anything to the contrary set out above.

(c) The Parties shall act in good faith to ensure that any public statements, comments or communications regarding the Actions or this settlement are balanced, fair, accurate and free from disparagement.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) CIBC shall pay the Settlement Amount for the benefit of the Class Members in full and final settlement of the Released Claims, within thirty (30) days of execution of the Settlement Agreement, to

Sotos LLP, in trust, to be deposited into the Escrow Account from which funds shall be paid toward Administration Expenses incurred in relation to the issuance of the Notice of Settlement Approval Hearing Orders and the Approved Settlement Orders.

(2) Upon the issuance of the Approved Settlement Order (Fresco) and the Quebec Settlement Order, Sotos LLP shall transfer control of the Escrow Account to the Administrator, in trust, for the benefit of the Class Members to be disbursed in accordance with this Settlement Agreement and the Approved Settlement Orders.

(3) The Settlement Amount and other valuable consideration set forth in the Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Defendant shall not have any obligation to pay any further amount to the Plaintiffs, the Class Members or Class Counsel with respect to this Settlement Agreement or the Actions for any reason, including any additional amounts for damages, interest, legal fees (including Class Counsel Fees), disbursements, taxes of any kind, costs and expenses relating in any way to the Actions, the Released Claims, the Settlement, the Remittances, the Administration Expenses and any other expenses approved by the Court which shall be paid from the Settlement Funds.

(5) Sotos LLP shall account to the Administrator for all payments, if any, made from the Escrow Account prior to the transfer of the Escrow Account to the Administrator, which payments may include the payment from the Settlement Fund to cover costs in relation to the issuance of Notice of the Settlement Approval Hearing Order. The Administrator shall provide an accounting to the Parties for all payments made from the Escrow Account, whether made by Sotos LLP or the Administrator. In the event this Settlement Agreement is terminated, Sotos LLP or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Parties no later than ten (10) days after the termination. Sotos LLP shall not pay out any of the monies in the Escrow Account except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

(6) The Administrator shall pay the Fonds d'aide aux actions collectives (Class Action Assistance Fund) the amount owed pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* in respect of remittances to the Fonds d'aide aux actions collectives, and in case of any remaining balance to be allocated *cy près* (meaning pursuant to article 596, paragraph 3,

of the Quebec *Code of Civil Procedure*) to one or more recipients to be approved by the Ontario Court (or to be approved by the Quebec Court if settlement approval is required in Quebec), the *Act Respecting the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1 will apply to the portion of any remaining balance, if any, attributable to Class Members who are residents of Quebec.

3.2 Settlement Amount to be Held in Trust

(1) Prior to the issuance of the Approved Settlement Order (Fresco) and the Quebec Settlement Order, Sotos LLP shall maintain the Escrow Account and hold the Settlement Amount in trust as provided for in this Settlement Agreement. After the issuance of the Approved Settlement Order (Fresco) and the Quebec Settlement Order, the Administrator shall maintain the Escrow Account and hold the Settlement Amount in trust as provided for in this Settlement Agreement. No amount shall be paid out from the Escrow Account by either Sotos LLP or the Administrator, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained on notice to the Parties.

3.3 Taxes and Interest

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

(2) All taxes payable on any interest which accrues on the Settlement Amount in the Escrow Account shall be paid from the Escrow Account. The Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from interest on the Settlement Amount in the Escrow Account, including any obligation to make tax payments. All taxes (including interest and penalties) due with respect to the interest earned by the Settlement Amount shall be paid from the Escrow Account.

(3) The Defendant shall have no responsibility to make any filings relating to the Escrow Account, to pay tax on any income earned by the Settlement Amount, or to pay any taxes on the monies in the Escrow Account, unless this Settlement Agreement is terminated, in which case any interest earned on the Settlement Amount in the Escrow Account shall be paid to CIBC who, in such case, shall be responsible for the payment of any taxes on such interest not previously paid.

SECTION 4 - NO REVERSION

(1) Unless this Settlement Agreement is terminated as provided herein, CIBC shall not be entitled to the repayment or reversion of any portion of the Settlement Amount or Escrow Settlement Funds. In the event this Settlement Agreement is terminated, CIBC shall be entitled to the repayment only to the extent of and in accordance with the terms provided herein.

SECTION 5 - DISTRIBUTION OF THE SETTLEMENT FUND

(1) On or after the Effective Date, the Administrator shall distribute the Settlement Amount in accordance with the following priorities:

- (a) to pay Class Counsel Fees, Class Counsel Disbursements, interest and taxes thereon to Class Counsel as awarded by the Ontario Court;
- (b) to pay all of the costs and expenses reasonably incurred in connection with the provision of the Approved Settlement Notices;
- (c) to pay all of the Administration Expenses. For greater certainty, the Defendant and the Class or Class Counsel are specifically excluded from being required to pay any costs and expenses under this subsection. All such costs and expenses shall be paid from the Settlement Amount;
- (d) to pay any taxes required by law to any governmental authority;
- (e) to pay the Class Proceedings Fund levy as prescribed by Section 10 of the Class Proceedings regulation under the *Law Society Act*;
- (f) to pay a share of the Net Settlement Amount to each Eligible Claimant in proportion to their claim as recognized in accordance with the Distribution Protocol, including payment of the Remittances; and
- (g) to pay any amounts to which the *Fonds d'aide aux actions collectives* in Quebec may be entitled.

(2) Class Counsel shall propose for approval by the Court (or Courts, if settlement approval is required in Quebec) a Distribution Protocol in the form attached as **Schedule “E”** or such other form as may be directed by the Courts.

(3) The approval or denial by the Courts of the Distribution Protocol is not part of the settlement provided for herein, except as to the priorities of distribution expressly provided in section 5(1) and is to be considered by the Courts separately from its consideration of the fairness, reasonableness, and adequacy of the settlement provided for herein.

SECTION 6- EFFECT OF SETTLEMENT

6.1 No Admission of Liability

(1) Whether or not this Settlement Agreement is terminated, this Settlement Agreement, anything contained in it, and any and all negotiations, discussions, and communications associated with this Settlement Agreement, shall not be deemed, construed or interpreted as a concession or admission of fault, wrongdoing, or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness of any claim or allegation asserted in the Actions.

6.2 Settlement Agreement Not Evidence

(1) The Parties agree that, whether or not it is terminated, unless otherwise agreed, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be referred to, offered as evidence or received as evidence or interpreted in the Actions or in any other proceeding:

- (a) of the validity of any claim that has been or could reasonably have been asserted in the Actions by the Plaintiffs against the Defendant, or the deficiency of any defence that has been or could have been asserted in the Actions;
- (b) of wrongdoing, fault, neglect or liability by the Defendant; and
- (c) that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Actions after trial.

(2) Notwithstanding Section 6.2(1), this Settlement Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Courts contemplated by this Settlement Agreement, in a proceeding to approve or enforce this Settlement Agreement, or as otherwise required by law.

6.3 Restriction on Further Litigation

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, application or demand against any Releasee or any other person who may claim contribution or indemnity or other claims over for relief from any Releasee in respect of any Released Claim.

SECTION 7- TERMINATION OF THE SETTLEMENT AGREEMENT

7.1 General

- (1) This Settlement Agreement shall automatically terminate if:
- (a) the Ontario Court refuses to approve this Settlement Agreement;
 - (b) the Quebec Court denies the Quebec Settlement Application in both forms referred to in section 2.2;
 - (c) following the return of the Settlement Approval Hearings, the Ontario Court or the Quebec Court issues an order or orders which is or are not substantially in the form of the Approved Settlement Orders, and such orders become Final Orders; or
 - (d) an Approved Settlement Order is reversed on appeal and the reversal becomes a Final Order.
- (2) In the event this Settlement Agreement is terminated in accordance with its terms:
- (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement;
 - (b) any Approved Settlement Order which has been granted will be null and void and set aside on the consent of the Parties;

- (c) subject to subsection 7.1(2)(e), the Escrow Settlement Funds will be returned to CIBC;
- (d) this Settlement Agreement will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein;
- (e) any costs reasonably incurred and paid out of the Escrow Account for performing the services required to prepare to implement this Settlement, and amounts paid for the publication and dissemination of notices are non-recoverable from the Plaintiffs, the Class Members, the Administrator or Class Counsel; and
- (f) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against any party to this Settlement Agreement except in respect of a dispute over the enforcement of any terms of this Settlement Agreement including any purported termination of this Settlement Agreement.

(3) Notwithstanding the provisions of Section 7.1(2)(d), if this Settlement Agreement is terminated, the provisions of this Section and Sections 1, 2, 3.1(4), 3.3(2), 4(1), 6.1, 6.2 and 12 shall survive termination and shall continue in full force and effect.

(4) If this Settlement Agreement is terminated, CIBC shall apply to the Court for orders:

- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions listed in subsection 7.1(3);
- (b) giving directions as to whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice; and
- (c) authorizing the repayment of all remaining funds in the Escrow Account, including accrued interest, to CIBC, less any amounts specified in subsection 7.1(2)(e), if any.

7.2 Accounting of Monies in the Escrow Account Following Termination

(1) In the event this Settlement Agreement is terminated, Sotos LLP or the Administrator, whichever then has control of the Escrow Account, shall deliver an accounting to the Plaintiffs and CIBC no later than ten (10) days after the termination.

7.3 Disputes Relating to Termination

(1) If there is any dispute about the termination of this Settlement Agreement, the Ontario Court shall determine any dispute by motion made by a Party on notice to the other Parties.

7.4 No Right to Terminate

(1) For greater certainty, no dispute or disagreement among the Plaintiffs and/or members of the Class, or any of them, about the proposed distribution of the Settlement Funds or the Distribution Protocol shall give rise to a right to terminate this Settlement Agreement.

SECTION 8- DETERMINATION THAT THE SETTLEMENT IS FINAL

(1) The Settlement shall be considered final on the Effective Date.

SECTION 9 - RELEASES AND JURISDICTION OF THE COURT

9.1 Release of Releasees

(1) As of the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release, waive and discharge the Releasees from the Released Claims.

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

(3) The Releasors acknowledge and agree that the gross sum of the Settlement Amount to be paid by the Defendant is inclusive of all amounts owing by the Releasees or otherwise to be paid by the Releasees in connection with this Settlement and the administration of the Settlement.

(4) The Releasors further acknowledge that they may hereafter discover facts in addition to or different from those facts which they know or believe to be true with respect to the Released Claims, and that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such

intention, this release and, subject to the provisions of Section 7, this Settlement Agreement shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

9.2 No Further Claims

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand in respect of any Released Claim against any of the Releasees or any other person who may claim contribution or indemnity from any of the Releasees.

(2) In the event that the Releasors make any claim or commence any proceeding in respect of the Released Claims against any person or entity which might make a claim, whether for contribution or indemnity or declaratory or other relief, from the Releasees or any of them, or which might result in a claim, whether for contribution or indemnity or declaratory or other relief, being made against the Releasees or any of them, this Release may be raised as an estoppel and complete bar to any such claims, demand, action, proceeding or complaint.

9.3 Dismissal of the Proceedings

(1) Upon the Effective Date, the Fresco Action shall be dismissed with prejudice and without costs.

(2) Upon the Effective Date, the Gaudet Action shall be either (i) dismissed with prejudice and without costs pursuant to art. 168 of the Quebec *Code of Civil Procedure* or discontinued without costs pursuant to art. 213 and 585 of the Quebec *Code of Civil Procedure*, or (ii) declared settled out of Court and without costs, in accordance with Section 2 of this Settlement Agreement.

9.4 Dismissal of Other Actions

(1) Upon the Effective Date, the Releasors shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees, to the extent (and only to the extent) such Other Actions relate to Released Claims.

(2) Upon the Effective Date, all Other Actions commenced in Ontario by the Releasors, to the extent (and only to the extent) such Other Actions relate to Released Claims, shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.

(3) Upon the Effective Date, each member of the Quebec Class, with the exception of those excluded under Article 580(2) of the *Code of Civil Procedure*, shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his or her Other Actions against the Releasees, to the extent such (and only to the extent) Other Actions relate to the Released Claims.

(4) For clarity, any claims or causes of action by the Releasers that are not part of the Released Claims shall not be dismissed or otherwise prejudiced by the provisions of this subsection 9.4 or any other provision in this Settlement Agreement.

SECTION 10 – ADMINISTRATION

10.1 Appointment of the Administrator

(1) The Plaintiff, through Class Counsel, will take reasonable steps to retain an Administrator that: (i) assumes full responsibility for the Remittances; (ii) agrees to carry out those responsibilities in a timely and proper manner; and (iii) has sufficient insurance for any actions or omissions that it takes in respect of the Remittances, which insurance will extend to any liability asserted against the Defendant in respect of the Remittances, and the consequences in respect thereof.

(2) The Defendant will have a right to review the Administrator's insurance policy referred to above in Section 10.1(1) in advance of the Plaintiff formally retaining the Administrator to confirm the existence, scope, and sufficiency of the insurance.

(3) The Administrator will be required to disclose to the Parties the process by which it intends to withhold or remit the Remittances (including the nature and timing of any such withholdings or remittances) in advance of taking these steps to permit the Parties to consider the proposed process and to provide any comments on changes that ought to be made to the process.

(4) The Administrator will report to the Parties upon the payment of amounts to Class Members at the completion of any tranche or stage of payments to Class Members, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement.

(5) Subject to Section 10.1(4), the Defendant shall be entitled to communicate reasonably with the Administrator (copied to Class Counsel) at periodic intervals for the purpose of inquiring into, or confirming, the status of the Remittances.

(6) By order of the Court, the Administrator will be appointed to serve until such time as the Net Settlement Amount is distributed to Eligible Claimants, to implement this Settlement Agreement and to ensure that the Settlement Amount is distributed in accordance with the Order(s) of the Court(s).

10.2 Information and Assistance from the Defendant

(1) The Defendant shall, forthwith and prior to the hearing of the Notice of Settlement Approval Hearing Motion, provide from its existing electronic records that are in its possession, care or control (including, but not limited to, information in its human resources records, payroll records, and insurance or pension records), and without any obligation to create any new records, the information listed below:

- (a) the identities of all Class Members;
- (b) their last known mailing address, phone number and e-mail address;
- (c) the dates during which they were employed by CIBC;
- (d) the positions they worked during their employment with CIBC; and
- (e) the dates during which they held each position.;

(2) The Defendant will make itself reasonably available to respond to questions respecting the information provided pursuant to Section 10.2(1) from Class Counsel and/or the Administrator. The Defendant's obligation to make itself reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Defendant's obligation to cooperate pursuant to this Section shall cease when all settlement funds or court awards have been distributed.

(3) The Administrator or Class Counsel may use the information obtained under section 10.2(1) or 10.2(2) for the purpose of delivering the Notice of Settlement Approval Hearing and the Approved Settlement Notice and for the purposes of administering and implementing this Settlement Agreement,

the Plan of Notice and the distribution of the Net Settlement Amount to Eligible Claimants and the Distribution Protocol.

(4) Any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of distributing notices and the administration of this Settlement Agreement and the distribution of the Net Settlement Amount to Eligible Claimants or the Distribution Protocol.

10.3 Method of Distribution

(1) The process of distribution of the Settlement Amount to the Class will be as set out in the Distribution Protocol or as may be otherwise directed by the Court.

10.4 Conclusion of the Administration and Other Matters

(1) The Plaintiffs hereby acknowledge and agree, and the Class Members are hereby advised and are deemed to have acknowledged and agreed, that the Plaintiffs, Class Counsel, the Defendant and its counsel have no obligation to provide, and are in fact not providing, any advice about any potential taxes, tax consequences, tax obligations, deductions, withholdings, any other potential consequences, or any payment, remittance or reporting obligations (whether statutory, regulatory or otherwise) (including, but not limited to, acts, omissions, issues or facts relating in any way to the Remittances or the calculation, reporting or payment thereof), relating to the terms of this Settlement or any compensation available, payable or paid to Class Members under the Settlement (the "**Tax and Other Issues**"). The Class Members shall have no claims or remedies as against the Plaintiffs, Class Counsel, the Defendant or its counsel in respect of the Tax and Other Issues, the Administration, and/or the Remittances.

(2) If the Escrow Account is in a positive balance (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Net Settlement Amount, any balance sufficient, in the opinion of Class Counsel and the Administrator acting reasonably, to warrant further distribution shall be allocated among Class Members, in accordance with the Distribution Protocol or such other distribution method as approved by the Court. In the event that the balance remaining in the Escrow Account is not sufficient to warrant a further distribution, the balance shall be distributed *cy près* (and consistently with article 596 CCP, paragraph 3, of the Quebec *Code of Civil Procedure*) to a recipient or recipients approved by the Courts and to pay any further Class

Proceedings Fund Levy and any further amounts to which the *Fonds d'aide aux actions collectives* in Quebec may be entitled.

(3) Upon conclusion of the administration, the Administrator shall provide an accounting to the Parties for all payments made from the Escrow Account. Upon request by either Party or their counsel or by the Court, the Administrator will provide a report on the status of administration and distribution, and any related accounting to the particular date in question.

SECTION 11 - THE AGREEMENT AND CLASS COUNSEL FEES

11.1 Motion for Approval of Class Counsel Fees

(1) Following the Settlement Approval Motion (Fresco), it is anticipated that Class Counsel will seek the approval of Class Counsel Fees and Class Counsel Disbursements to be paid from the Settlement Fund. The Defendant acknowledges that it has no interest in relation to the approval of Class Counsel Fees and Class Counsel Disbursements, and as such will have no involvement in the fee approval process to determine the amount of Class Counsel Fees and Class Counsel Disbursements and it will not take any position or make any submissions to the Court concerning Class Counsel Fees and Class Counsel Disbursements, except as specifically requested and required by the Court.

(2) The approval, or denial, by the Court of any requests for Class Counsel Fees and Class Counsel Disbursements to be paid out of the Settlement Fund are not part of the Settlement provided for herein, except for the priorities of distribution as expressly provided in section 5(1) and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

(3) Any order or proceeding relating to Class Counsel Fees and Class Counsel Disbursements, or any appeal from any such order shall not operate to terminate or cancel this Settlement Agreement or affect or delay the finality of the Approved Settlement Order and the Settlement of this Action provided herein.

11.2 Payment of Class Counsel Fees

(1) In accordance with section 5(1)(a) herein, on or after the Effective Date, the Administrator shall pay from the Escrow Account to Sotos LLP in trust the Class Counsel Fees and Class Counsel Disbursements approved by the Court.

SECTION 12 - MISCELLANEOUS

12.1 Motions for Directions

(1) Any one or more of the Parties, Class Counsel, or the Administrator may apply to the Court for directions in respect of any matter in relation to this Settlement Agreement, its administration or implementation, and the distribution of the Net Settlement Amount to Eligible Claimants or the Distribution Protocol.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

12.2 Defendants Have No Responsibility or Liability for Administration

(1) Except for the obligations in respect of the performance of the obligations under subsections 3.1(1), 10.2(1) and 10.2(2), the Defendant shall have no responsibility for and no liability whatsoever with respect to the administration or implementation of this Settlement Agreement and the distribution of the Net Settlement Amount to Eligible Claimants or the Distribution Protocol, including, without limitation, the processing and payment of claims and Remittances by the Administrator.

12.3 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

(2) The Parties agree that the Ontario Court shall retain exclusive and continuing jurisdiction over the Fresco Action, the Parties and the members of the Class to interpret and enforce the terms, conditions and obligations under this Settlement Agreement and the Approved Settlement Order.

12.4 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment which is material to the substance of the Settlement is subject to the approval of the Court(s).

12.5 Binding Effect

(1) If the Settlement is approved by the Court(s) and becomes final as contemplated in Section 8(1), this Settlement Agreement shall be binding upon and enure to the benefit of the Plaintiffs, the Class Members, the Defendant, Class Counsel, the Releasees and the Releasers, or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

12.6 Survival

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

12.7 Negotiated Agreement

(1) This Settlement Agreement and the Settlement have been the subject of arm's length negotiations between the Parties through their representatives and on the advice of counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of the Settlement Agreement shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.8 Schedules

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

12.9 Acknowledgments

(1) Each Party hereby affirms and acknowledges that:

- (a) he/she or its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained by counsel;

- (c) he, she or its representative fully understands each term of this Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement of any other Party beyond the terms of the Settlement Agreement, with respect to the Party's decision to execute the Settlement Agreement.

12.10 Counterparts

(1) This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a signature delivered by email or facsimile shall be deemed an original signature for purposes of executing this Settlement Agreement.

12.11 Notice

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

For the Plaintiffs and for Class Counsel in the Proceedings:

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For the Defendant:

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Tel. 416.864.7301
Email : john-field@hicksmorley.com

12.12 Language of Agreement

(1) The Parties have specifically requested that this Settlement Agreement be drafted in English. *Les parties ont spécifiquement demandé que la présente transaction soit rédigée en anglais.*

12.13 Date of Execution

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

DARA FRESCO on her own behalf and on behalf of the Ontario Class, by her counsel:

Name of Authorized Signatory:

Steven Barrett

Signature of Authorized Signatory:



Goldblatt Partners LLP
Ontario Counsel

Name of Authorized Signatory:

David F. O'Connor

Signature of Authorized Signatory:



Roy O'Connor LLP
Ontario Counsel

Name of Authorized Signatory:

Louis Sokolov

Signature of Authorized Signatory:



Sotos LLP
Ontario Counsel

SARAH GAUDET on her own behalf and on behalf of the Quebec Class, by her counsel:

Name of Authorized Signatory: Marie-Claude St-Amant

Signature of Authorized Signatory: 
Melançon Marceau Grenier Cohen s.e.n.c.
Quebec Counsel

CANADIAN IMPERIAL BANK OF COMMERCE, by its counsel:

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Torys LLP

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Hicks Morley Hamilton Stewart Storie LLP

SARAH GAUDET on her own behalf and on behalf of the Quebec Class, by her counsel:

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Melançon Marceau Grenier Cohen s.e.n.c.
Quebec Counsel

CANADIAN IMPERIAL BANK OF COMMERCE, by its counsel:

Name of Authorized Signatory: Linda Plumpton

Signature of Authorized Signatory: 
Torys LLP

Name of Authorized Signatory: John Field

Signature of Authorized Signatory: 
Hicks Morley Hamilton Stewart Storie LLP

SCHEDULE "A"

APPROVED SETTLEMENT NOTICE (FRESCO – DIRECT NOTICE)

**CIBC UNPAID OVERTIME CLASS ACTION – NOTICE OF SETTLEMENT
APPROVAL IN *FRESCO V. CANADIAN IMPERIAL BANK OF COMMERCE***

TO: Current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC's retail branches, High Value Cluster offices or Imperial Service offices at any time from February 1, 1993 to June 18, 2009, as tellers or other front-line customer service employees, including the following:

- (a) Customer Service Representatives (also formerly known as Tellers);
- (b) Assistant Branch Managers (Level 4);
- (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);
- (d) Financial Service Associates;
- (e) Branch Ambassadors; and

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

This Notice is directed to all individuals who fall within the definition noted above, except those who previously took steps in 2013 to opt-out of (i.e. ask to be removed from and not bound by any outcome in) the case.

You are receiving this notice because a review of the records of the Defendant indicates that you are a Class Member (as described and defined above) in this unpaid overtime class action lawsuit. You were previously notified of the certification of this action by the Court-approved Notice of Certification dated ● and Notice of Settlement Approval Hearing dated ●.

**A SETTLEMENT HAS BEEN APPROVED IN THE CLASS ACTION AGAINST CIBC
FOR UNPAID OVERTIME**

**PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES WHAT YOU NEED TO
DO IN ORDER TO BE COMPENSATED**

For more information about this class action and the settlement, please visit the following website cibcunpaidovertime.ca. If you have further questions, you can also contact the Settlement Administrator by email at ●, or by phone at ●.

What was the case, and what is the settlement?

The common issues to be decided by the Court were:

1. Did the Defendant have a duty (in contract or otherwise) to prevent Class Members from working, or a duty not to permit or not to encourage Class Members to work, overtime hours for which they were not properly compensated or for which the Defendant would not pay? If "yes", did the Defendant breach that duty?
2. Did the Defendant have a duty (in contract or otherwise) to accurately record and maintain a record of all hours worked by Class Members to ensure that Class Members were appropriately compensated for same? If "yes", did the Defendant breach that duty?
3. If the answer to common issues 1(a) or 2(a) is "yes", and to the extent found necessary by the common issues trial judge, did the Defendant thereby require or permit all uncompensated hours of the class members?
4. What are the relevant terms (express or implied or otherwise) of the Class Members' contracts of employment with the Defendant respecting:
 - a. Regular and overtime hours of work?
 - b. Recording of the hours worked by Class Members?
 - c. Paid breaks?
 - d. Payment of hours worked by Class Members?
5. Did the Defendant breach any of the foregoing contractual terms?
6. Was the Defendant enriched by failing to pay Class Members appropriately for all their hours worked? If "yes",
 - a. Did the class suffer a corresponding deprivation?
 - b. Was there no juristic reason for the enrichment?
7. If the answer to any of common issues 1, 2, 3, 5 or 6 is "yes", what remedies are Class Members entitled to?
8. If the answer to any of common issues 1, 2, 3, 5 or 6 is "yes", is the Class entitled to an award of aggravated, exemplary or punitive damages based upon the Defendant's conduct? If "yes" (i) Can these damages be determined on an aggregate basis? and (ii) What is the appropriate method or procedure for distributing any aggregate aggravated, exemplary or punitive damages to Class Members?

9. Can the defendant's monetary liability be determined on an aggregate basis? If so, in what amount?

The plaintiff Dara Fresco sought compensatory and punitive damages pursuant to each of these questions.

Under the Court-approved settlement, CIBC will pay a total \$153 million to settle the case. The \$153 million covers all compensation to the Class Members for all unpaid potential overtime or hours of work for the period between February 1, 1993 and June 18, 2009 as well as withholding taxes, legal fees and related disbursements (including taxes), the costs of administration and distribution of money to Class Members, and a statutory levy (as discussed further below). The Superior Courts of Ontario and Quebec approved the settlement as being fair, reasonable and in the best interests of the Class in reasons for decision released on ● and ●.

The settlement will result in payment of compensation to every eligible class member. Class members will not have to prove their claims and the claims will be administered by an independent claims administrator. **CIBC will have no role in the consideration or payment of claims and will not know the identities of which class members make claims.¹**

What should I do?

If you are an eligible Class member and want money from the Settlement, complete the enclosed Settlement Payment Form and mail it to ● or complete the form online at ●. You must send the completed form by no later than ● (the "Filing Deadline"). After you complete the form and after the Filing Deadline has passed, you will get a cheque and letter explaining how the cheque was calculated.

Class members' share of the settlement fund will be based on a Distribution Protocol that will take into account the length of time, during the class period, that class members worked in one of the affected positions, as well as the specific position or positions worked. The amount that each Class member receives will also depend on how many Class Members make claims.

The compensation paid to Class members will be paid from the amount of money remaining after deducting the Court-approved legal fees and disbursements (including taxes) as well as the costs of administering and distributing the money to Class Members, from the \$153 million.

All amounts paid to Class Members will be subject to any relevant deductions (including deduction and remittance to the Canada Revenue Agency), and a statutory levy to be paid to the Class Proceedings Fund.² Class members will need to complete a claim form in order to receive compensation.

¹ In the event the independent claims administrator requires additional information from CIBC requiring specific claims, the identity of any individual claimant will not be disclosed to CIBC without the express consent of the claimant and Class Counsel.

² The Class Proceedings Fund, a body established by statute to provide support for class actions brought in Ontario. Further information about the Class Proceedings Fund can be found at <https://lawfoundation.on.ca/for-lawyers-and-paralegals/class-proceedings-fund/>. In exchange for

You can read the full Distribution Protocol at www.cibcunpaidovertime.ca.

Where can I ask more questions?

For more information, please visit cibcunpaidovertime.ca. If you have questions that are not answered online or by email, **please contact the Court-appointed administrator** ● by email at ●, or by phone at ●.

The law firms of Sotos LLP, Roy O'Connor LLP, and Goldblatt Partners LLP are Class Counsel and represent members of this class action in Canada.

Goldblatt Partners LLP can be reached at:

Telephone: 416-979-4233
Email: tatherfold@goldblattpartners.com
Mail: 20 Dundas Street West, Suite 1039, Toronto ON M5G 2C2

Roy O'Connor can be reached at:

Telephone: 416-362-1989
Email: info@royoconnor.ca
Mail: 1920 Yonge Street, Suite 300, Toronto ON M4S 3E6

Sotos LLP can be reached at:

Telephone (toll free): 1-888-977-9806
Email: info@sotosclassactions.com
Mail: 180 Dundas Street West, Suite 1200, Toronto ON M5G 1Z8

Counsel for CIBC can be reached at: 79 Wellington St. W., 30th Floor (deliveries) / 33rd Floor (reception) Box 270, TD South Tower Toronto, ON M5K 1N2 Canada, (416) 865-0040.

Interpretation

This notice contains a summary of some of the terms of the Settlement Agreement and the Distribution Protocol. If there is a conflict between the provisions of this notice and the Settlement Agreement or Distribution Protocol, the terms of the Settlement Agreement or Distribution Protocol, as applicable, shall prevail.

PLEASE DO NOT CALL CIBC, THE COURTHOUSE, OR THE REGISTRAR OF THE COURT ABOUT THIS ACTION.

This notice was approved by the Ontario Superior Court of Justice.

its support, the Class Proceedings Fund is entitled to repayment of monies advanced plus 10% of net settlement funds payable to Class members (i.e. after legal fees, taxes, disbursements and administration expenses). In this case, the Class Proceedings Fund's levy will amount to approximately ● of the total settlement.

SCHEDULE "B"

APPROVED SETTLEMENT NOTICE (FRESCO – PUBLICATION)

**CIBC UNPAID OVERTIME CLASS ACTION - SETTLEMENT APPROVED IN
*FRESCO V. CANADIAN IMPERIAL BANK OF COMMERCE***

If you were a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009 you could receive compensation in this class action settlement.

A class action was brought against CIBC on behalf of CIBC retail branch employees in Canada who were employed between February 1, 1993 and June 18, 2009. The class action lawsuit alleges that CIBC's overtime policies and record-keeping systems contravened the Canada Labour Code, resulting in front-line bank employees not being compensated for overtime. The representative plaintiff, Dara Fresco, sought compensatory and punitive damages for herself and on behalf of the class.

A settlement for \$153 million has been reached with CIBC.

The settlement applies to the following group of people (except those who previously took steps in 2013 to opt-out of (i.e. ask to be removed from and not bound by the outcome in) the case:

(1) Current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC's retail branches, High Value Cluster offices or Imperial Service offices at any time from February 1, 1993 to June 18, 2009, as tellers or other front-line customer service employees, including the following:

- (a) Customer Service Representatives (also formerly known as Tellers);
- (b) Assistant Branch Managers (Level 4);
- (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);
- (d) Financial Service Associates;
- (e) Branch Ambassadors; and

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

Under the Court-approved settlement, CIBC will pay a total \$153 million to settle the case. The \$153 million covers all compensation to the Class Members for all unpaid potential overtime or hours of work for the period between February 1, 1993 and June 18, 2009 as well as withholding taxes, legal fees and related disbursements (including taxes), the costs of administration and distribution of money to Class Members, and a statutory levy.

The settlement will result in payment of compensation to every eligible class member. Class members will not have to prove their claims and the claims will be administered by an independent claims administrator. **CIBC will have no role in the consideration or payment of claims and will not know the identities of which class members make claims.**³

What should I do?

If you are an eligible Class member and would like to make a claim, or obtain more information about the settlement, obtain the contact information of the claims administrator and legal counsel in the file, or obtain the method for distributing funds please visit: <https://cibcunpaidovertime.ca/>.

This notice was approved by the Ontario Superior Court of Justice.

³ In the event the independent claims administrator requires additional information from CIBC requiring specific claims, the identity of any individual claimant will not be disclosed to CIBC without the express consent of the claimant and Class Counsel.

SCHEDULE "C"

APPROVED SETTLEMENT NOTICE (FRESCO – DIGITAL BANNER)

Were you a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009? You may be entitled to a share of a \$153 million settlement of an overtime class action. Click [here](#) for more information.

SCHEDULE "D"
APPROVED SETTLEMENT ORDER (FRESCO)

Court File No.: file 07-CV-334113CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) TUESDAY, THE
)
JUSTICE BELOBABA) 7th DAY OF FEBRUARY 2023
)

B E T W E E N :

DARA FRESCO
Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE
Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(SETTLEMENT APPROVAL)

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with the Defendant and dismissing this action was heard this day by judicial videoconference at Toronto.

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

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

AND ON BEING ADVISED that the deadline for opting out of the Action has passed on [ntd: insert date], and ● persons validly and timely exercised the right to opt out;

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

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Defendant in accordance with the terms thereof, and upon each member of the Class that did not validly opt out of this Action, as well as all Releasors, including those Persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194 are dispensed with in respect of the Action.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, the Releasors shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions they have commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Releasors shall be and is hereby dismissed against the Releasees, without costs and with prejudice, subject to the terms of section 9.4 of the Settlement Agreement.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim.

10. **THIS COURT ORDERS** that the direct notice of settlement approval (the “**Notice of Settlement Approval (“Direct”)**”) is approved, substantially in the form attached hereto as Schedule “A”.

11. **THIS COURT ORDERS** that the publication notice of settlement approval (the “**Notice of Settlement Approval (“Publication”)**”) is approved, substantially in the form attached hereto as Schedule “B”.

12. **THIS COURT ORDERS** that the digital banner notice of settlement approval (the “**Notice of Settlement Approval Hearing (“Digital Banner”)**”) is approved, substantially in the form attached hereto as Schedule “C”.

13. **THIS COURT ORDERS** that the Plan of Notice for the purpose of the dissemination of notices of settlement is approved, substantially in the form attached hereto as Schedule “D”.

14. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Defendant acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

15. **THIS COURT ORDERS** that on notice to the Court but without further order of the Court, the parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

16. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.

17. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Class.

18. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed without costs and with prejudice.

The Honourable Justice Belobaba

SCHEDULE “E”
DISTRIBUTION PROTOCOL

DARA FRESCO AND SARAH GAUDET

(the “Plaintiffs”)

and

CANADIAN IMPERIAL BANK OF COMMERCE (the “Defendant”)

**CIBC OVERTIME CLASS ACTION NATIONAL DISTRIBUTION PROTOCOL
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SECTION 1- DEFINITIONS

For the purposes of this Distribution Protocol all defined terms have the same meaning as in the Settlement Agreement, unless specified otherwise.

- (1) ***Employment Position*** means:
 - (a) Customer Service Representatives (also formerly known as Tellers) (CSR);
 - (b) Assistant Branch Managers (Level 4) (ABM);
 - (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors) (FSR);
 - (d) Financial Service Associates (FSA);
 - (e) Branch Ambassadors (BA); and
 - (f) Other employees who performed the same or similar job functions as the above under a different or previous CIBC job title,

- (2) ***Relative Share*** means the proportion of the Net Settlement Amount that individual Class Members will be entitled to.

- (3) ***Tenure*** means the total calendar days between a Class Member's start date with CIBC and the Class Member's termination date with CIBC, according to the records of CIBC or as otherwise determined by the Administrator in accordance with section 6 of this Protocol, inclusive of the start and termination dates but excluding any time before or after the Class Period and excluding anytime that a Class Member did not occupy an Employment Position. For greater clarity, Tenure shall not include anytime for which a Class Member was not employed in an Employment Position within CIBC or any employment outside of CIBC.

SECTION 2– GENERAL PRINCIPLES OF THE DISTRIBUTION AND ADMINISTRATION

- (1) This Distribution Protocol is intended to govern the administration process to distribute the Net Settlement Amount recovered in the Actions.
- (2) This protocol is intended to ensure the claims procedure is user friendly, expedient, efficient and accessible to Class Members.
- (3) To ensure Relative Shares in the Net Settlement Amount are tailored to each individual Class Member, as much as reasonably possible, the Relative Share shall be a product of the yearly average wage applicable to Employment Positions held by a Class Member and the Tenure worked in each Employment Position. Class Members who worked longer in higher paying Employment Positions will receive relatively more than those who worked shorter periods of time in lower paid Employment Positions.
- (4) Class Members will not be required to establish hours worked or overtime hours worked under any circumstances. Class Members for whom Tenure and Employment Position information is available will only need to verify their identity, Social Insurance Number, contact information, and submit a Claim Form to be entitled to payment. For Class Members whose Tenure and Employment Position information is not available or disputed, the Class Member will be required to provide that information with supporting documentation, where reasonably available, and make a solemn declaration when submitting a Claim Form.

SECTION 3– DUTIES AND RESPONSIBILITIES OF THE CLAIMS ADMINISTRATOR

- (1) The Administrator shall administer this Distribution Protocol in accordance with the provisions of the Orders of the Courts, the Settlement Agreement and the ongoing authority and supervision of the Courts.
- (2) In addition to all duties imposed on the Administrator pursuant to the Settlement Agreement and otherwise as are reasonably required, requested or directed, the Administrator's duties and responsibilities shall include the following:

- (a) providing notice(s) to the Class Members as may be required;
- (b) receiving information from the Defendant, including Class Members' identifying information, start and termination dates, Employment Position(s), Tenure and average wage if available;
- (c) developing a database for calculating Class Members' Relative Share of the Net Settlement Amount pursuant to this protocol and for pre-populating the Claim Form with available Employment Position and Tenure data organized by calendar year;
- (d) making timely determinations of Class Members' Employment Positions and Tenure as required by Claim Forms and in the absence of available records from CIBC;
- (e) developing, implementing and operating the administration process including a bilingual administration website;
- (f) making timely calculations of Class Members' Relative Share of the Net Settlement Amount and notifying Class Members of their Relative Share and the inputs for the calculation;
- (g) arranging payment to Class Members in a timely fashion;
- (h) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement;
- (i) performing such recalculation of the distributions as may be required by Class Counsel or if ordered by the Courts;
- (j) maintaining the administration information so as to permit Class Counsel to review the administration at the discretion of Class Counsel or if ordered by the Courts;
- (k) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Member elects;

- (l) providing Class Counsel and the Defendant with the proposed process for addressing the Remittances prior to doing so in accordance with section 10.1(3) of the Settlement Agreement;
- (m) calculating the amounts of the Remittances and withholding and remitting same within the time limits required by law;
- (n) preparing and distributing T4A forms to Class Members;
- (o) remitting amounts payable to the Class Proceedings Fund;
- (p) arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered or approved by the Courts;
- (q) reporting to Class Counsel respecting Claims received, determination made and administration expenses;
- (r) holding the Net Settlement Amount in the Escrow Account and making all payments from the Net Settlement Amount from the Escrow Account as authorized;
- (s) cash management and audit control; and
- (t) preparing and submitting reports and records, and responding to reasonable inquiries, as directed or requested by Class Counsel or the Courts.

SECTION 4– RELATIVE SHARE CALCULATION

- (1) For each Class Member (including, as applicable, their heirs, executors, estates, successors, and assigns who wish to make claims) who submits a valid Claim Form, the Administrator shall use the records of CIBC, or make a determination as described in Section 6 below, to assign the Class Member to an Employment Position(s) by year of the Class Period. Where a Class Member became employed, or left employment or changed their Employment Position during a calendar year, such assignment will be on a pro-rated basis.
- (2) The Administrator shall then allocate the Class Member's Tenure to specific Employment Positions by year, or portion thereof, based upon the records of CIBC or the Administrator shall make a determination as described in Section 6 below.

(3) At the end of steps (1) and (2) above, the Administrator shall have for each Class Member their Employment Position(s) by year, or portion thereof, of the Class Period and the total Tenure applicable to each of the Class Member's Employment Positions by year.

(4) The Administrator shall have or obtain information relating to the average hourly wage applicable to each Employment Position by year of the Class Period. A single estimated average hourly wage shall be used for all Employment Positions for all Tenure prior to January 1, 2003, depending on the available records of CIBC.

(5) The Administrator shall then calculate points applicable to the Class Member's Claim Form. The total points applicable to a Claim Form shall be calculated by multiplying a Class Member's Tenure by the average wage applicable to the Employment Position in a given year, represented by the following formula:

$$\textit{Tenure in Employment Position} \times \textit{Average wage for Employment Position} = \textit{points}$$

(6) The monetary value of one (1) point shall be calculated by dividing the Net Settlement Amount by the total numbers of points calculated from all valid Claim Forms, represented by the following formula:

$$\textit{Net Settlement Amount} / \textit{total points for all valid claims} = \textit{monetary value of one (1) point}$$

(7) The Class Member shall then be awarded the monetary value of their points by multiplying their total points for all Employment Positions in the Class Period by the monetary value of a point.

(8) For any points calculated for Tenure outside the applicable provincial limitation periods listed below, the monetary value of each point shall be reduced by 50%.

Province	Applicable Legislation	Provincial Limitation Periods
Ontario	<i>Limitations Act</i> , R.S.O. 1990, c. L. 15, s. 45	June 4, 2001 – Dec. 31, 2003
	<i>Limitations Act, 2002</i> , S.O. 2002, c. 24, Sch. B, s. 4	June 4, 2005 – June 18, 2009
Quebec	<i>Civil Code of Quebec</i> , C.Q.L.R., c. CCQ- 1991,	June 4, 2004 – June 18, 2009
British Columbia	<i>Limitation Act</i> , R.S.B.C. 1996, c. 266, s. 3	June 4, 2001 – June 18, 2009
Alberta	<i>Limitations Act</i> , R.S.A. 2000, c. L-12, s. 3	June 4, 2005 – June 18, 2009
Saskatchewan	<i>The Limitation of Actions Act</i> , R.S.S. 1978, c. L-	June 4, 2001 – May 1, 2005

	<i>The Limitations Act</i> , S.S. 2004, c L-16.1, ss. 5 and 6	June 4, 2005 – June 18, 2009
Manitoba	<i>The Limitation of Actions Act</i> , R.S.M. 1987, c.	June 4, 2001 – June 18, 2009
Nova Scotia	<i>Limitation of Actions</i> , R.S., c. 168, s. 2	June 4, 2001 – June 18, 2009
New Brunswick	<i>Limitations of Actions Act</i> , R.S.N.B. 1973, c. L-8,	June 4, 2001 – June 18, 2009
Newfoundland	<i>An Act Respecting the Limitation of Personal Actions and Guarantees and Sureties</i> , S.N.L. 1990, c. L-15, s. 2 <i>Limitations Act</i> , S.N.L. 1995, c. L-16.1, s. 9	June 4, 2001 – June 18, 2009
PEI	<i>Statute of Limitations</i> , R.S.P.E.I. 1988, c. S-7,s. 2	June 4, 2001 – June 18, 2009
NWT and Nunavut	<i>Limitation of Actions Act</i> , R.S.N.W.T. 1988, c. L-	June 4, 2001 – June 18, 2009
Yukon	<i>Limitation of Actions Act</i> , R.S.Y. 2002, c. 139, s. 2	June 4, 2001 – June 18, 2009

(9) Some consideration may be given to whether every Class Member who submits a valid claim shall be entitled to a minimum payment, to be determined subsequently.

SECTION 5 - THE ADMINISTRATION PROCESS

(1) Generally, the claims administration will be as follows:

(a) **Step 1: Submission of Online Claim Forms and Confirmation of Records**

The Claim Form shall be made available on a secure website that will require Class Members to enter their first and last names, date of birth, Social Insurance Number, Address, email and phone number.

When a Class Member enters their first and last name on the online Claim Form it shall display the Class Member's Employment Position(s) and Tenure in the respective Employment Position(s) by year, or portion thereof. The Class Member will be asked to agree or disagree with the records presented at the time of submitting the Claim Form.

If a Class Member disagrees with the available records, or no records are responsive to the Class Member's name, the Class Member will be required to submit a Claim Form with what they claim are the correct Employment Position(s) and Tenure by year, or portion thereof, along with any available supporting records, and make a solemn declaration upon submission. The Administrator shall then determine the

applicable Employment Position(s) and Tenure by year and notify the Class Member of their determination. The determination process shall be governed by the procedure described in Section 6.

(b) **Step 2: Correction of Deficiencies**

If the Administrator finds that deficiencies exist in a completed Claim Form, the Administrator shall forthwith notify the Class Member of the deficiencies. In order to remedy any deficiency in the completion of a Claim Form, the Administrator may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of the Claims Bar Deadline or sixty (60) days from the date of the request from the Administrator to rectify the deficiency, although the Administrator may consider late corrections of deficiencies in their discretion.

(c) **Step 3: Identification and Prevention of Potentially Fraudulent Claims**

The administrator shall flag potentially fraudulent claims, including those with a P.O. box address, an address outside of Canada, claims using the same mailing address, phone number or email and duplicate claims by name. Such claims will be set aside for review and follow-up by the Administrator and provided to Class Counsel.

(d) **Step 4: Calculation of Relative Share**

After all Claims Forms are received with Class Members agreeing to the available records and all final determinations of Employment Position(s) and Tenure made in accordance with Section 6, the Administrator shall calculate the Relative Share of each Class Member.

(e) **Step 5: First Distribution**

Class Members shall be sent a cheque consisting of 70% of their Relative Share, less employee and employer portions of CPP, EI and income tax withholding, and Class Proceedings Fund ("CPF") Levy ("First Distribution").

(f) **Step 6: Second Distribution**

Within a set time after the First Distribution, the Administrator will process the Second Distribution and distribute cheques to Class Members consisting of the remaining 30% of their Relative Share, less employee and employer portions of CPP, EI and income tax withholding, CPF Levy, and amount owing to the Fonds d'aide aux actions collectives. The Relative Shares of the Second Distribution may be adjusted and may not account for the remaining 30% of the First Distribution to account for, among other things, any errors identified following the First Distribution and potential acceptance of late claims ("Second Distribution").

(g) **Step 7: Remittance**

The Administrator will make the Remittances to the Canada Revenue Agency and any other applicable government entities, including Revenu Québec and provide T4A and related forms to Class Members, including RL-1 forms to Quebec Class Members. The Administrator will remit the CPF Levy to the CPF and, if required, any amounts owing to the Fonds d'aide aux actions collectives in Quebec.

(h) **Step 8: Report**

The Administrator will report to the Plaintiffs and Defendant upon the payment of Relative Shares to Class Members at the completion of the First and Second Distributions, or any other payment tranches, including confirming the Remittances and the dates relating thereto, but such disclosure to the Defendant will not include the disclosure of the Remittances at an individual Class Member level, including with respect to the identities of any particular Class Member to whom a payment is made under the Settlement.

**SECTION 6- DETERMINATIONS OF EMPLOYMENT POSITION(S),
TENURE AND EMPLOYMENT YEARS**

(1) An absence of CIBC records showing Employment Position(s) or Tenure for a Class Member shall not prohibit entitlement to a Relative Share of the Net Settlement Amount.

(2) In the event a Class Member disputes the records of CIBC regarding Tenure, Employment Position(s) or years of employment, or no such records exist, the Class Member shall complete a Claim Form and shall advise the Administrator of the claimed Employment Position(s), Tenure and years of employment and provide documentation and/or written reasons in support of their claim, all to be solemnly affirmed.

(3) The Claims Administrator may ask the Class Member further questions in their discretion, but the Class Member shall not be subject to cross-examination or inquires from the Defendant under any circumstances.

(4) The Administrator shall review the information provided in paras (2) to (3) above and make a determination as to the applicable Employment Position(s), Tenure and employment years. The principles of access to justice, expediency and accessibility shall guide all determinations. The Administrator shall, within a reasonable time frame, advise the Class Member of its determination, by email or letter mail. The determination of the Administrator is final and not subject to appeal in any court or review in any manner by any court, tribunal, board or authority.

(5) Class Counsel shall review the first thirty (30) determinations prior to the determination being communicated to the Class Member. Class Counsel may review further determinations as reasonably requested or required, and may ask for reports regarding the total determinations made and statistics regarding the outcomes of the determinations, plus further information in their discretion.

(6) No appeals shall lie by any Class Member based on distributions made substantially in accordance with this Protocol, or with any other order or judgment of the Courts. No claims shall lie against Class Counsel or the Defendant based on this Protocol, or based on any distributions made substantially in accordance with this Protocol, or the reporting or withholding of Remittances, or with any other order or judgment of the Court on any terms of this Protocol.

SECTION 7- CLASS COUNSEL

(1) Class Counsel shall oversee the claims process and provide assistance and directions to the Administrator regarding this Distribution Protocol and the claims process.

(2) Class Counsel shall have no role in the calculation of individual entitlements or the calculation and remittance of income taxes, CPP or EI.

SECTION 8- RESIDUAL DISCRETION

(1) Notwithstanding the foregoing, if, during the administration, Class Counsel have reasonable and material concerns that the Administration and Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Courts for approval of a reasonable modification to this Administration and Distribution Protocol or for further directions with respect to the distribution of the Net Settlement Amount.

(2) In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class Counsel shall seek comments or input from the Defendant and the Administrator.

SECTION 9- RESIDUAL DISTRIBUTION

(1) If there remains any amount of the Net Settlement Amount after the distribution has been made to all valid claims in accordance with the provisions of this Distribution Protocol (as modified, if applicable), Class Counsel will make an application to the Courts to determine how such funds shall be distributed. In preparing a proposal in respect of how to distribute any excess monies, Class Counsel will consider all relevant factors, including the utility and efficacy of a *cy-près* or article 596, paragraph 3 CCP distribution, if appropriate.

(2) Under no circumstances will any residual amounts from the Net Settlement Amount revert to CIBC.

SECTION 10- CONFIDENTIALITY

(1) All information received from the Defendant or the Class Members is collected, used, and retained by the Administrator pursuant to, inter alia, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, and any analogous provincial legislation as may be applicable, for the purposes of administering their Claims.

(2) All reasonable steps shall be taken to ensure the identity of Class Members submitting Claims Forms is kept confidential from the Defendant. The Defendant shall be entitled to see aggregate

statistics on the number of claims made, average value of claims and total payment made. The Defendant will not be entitled to know the identity of Class Members who submit a Claim Form or how much individual Class Members are awarded, except as required by regulatory or tax reporting requirements.

SCHEDULE "F"

NOTICE OF SETTLEMENT APPROVAL HEARING (FRESCO – DIRECT NOTICE)

**CIBC UNPAID OVERTIME CLASS ACTION – NOTICE OF
SETTLEMENT APPROVAL HEARING IN *FRESCO V. CANADIAN
IMPERIAL BANK OF COMMERCE***

If you were a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009, you could receive compensation in this class action settlement.

PLEASE READ THIS NOTICE CAREFULLY. IT DESCRIBES THE SETTLEMENT AND HOW IT MAY AFFECT YOUR LEGAL RIGHTS.

You are receiving this notice because a review of the records of the Defendant indicates that you are a Class Member (as described below) in this unpaid overtime class action lawsuit. You were previously notified of the certification of this action by the Court-approved Notice of Certification dated ●.

What is the class action about?

In June 2007, a class action lawsuit was brought against CIBC on behalf of certain CIBC retail branch employees in Canada who were employed between February 1, 1993 and June 18, 2009. The class action alleges that CIBC's overtime policies and record-keeping systems contravened the Canada Labour Code, resulting in front-line bank employees not being compensated for overtime.

The lawsuit was "certified" as a class proceeding in 2012, meaning that it was permitted to proceed to trial and the outcome would bind the class defined below. The Ontario Superior Court of Justice heard a motion for summary judgement, which was decided in 2020, in which it found that CIBC's overtime policies and record keeping practices, in place between 1993 and 2009, contravened the Canada Labour Code and were institutional impediments to employees being properly compensated for all hours worked. The Court left the calculation of compensation to a further hearing. The decision of the Ontario Superior Court of Justice was upheld by the Court of Appeal for Ontario in 2022. The common issues to be decided by the Court were:

1. Did the Defendant have a duty (in contract or otherwise) to prevent Class Members from working, or a duty not to permit or not to encourage Class Members to work, overtime hours for which they were not properly compensated or for which the Defendant would not pay? If "yes", did the Defendant breach that duty?
2. Did the Defendant have a duty (in contract or otherwise) to accurately record and maintain a record of all hours worked by Class Members to ensure that Class Members were appropriately compensated for same? If "yes", did the Defendant breach that duty?

3. If the answer to common issues 1(a) or 2(a) is "yes", and to the extent found necessary by the common issues trial judge, did the Defendant thereby require or permit all uncompensated hours of the class members?
4. What are the relevant terms (express or implied or otherwise) of the Class Members' contracts of employment with the Defendant respecting:
 - a. Regular and overtime hours of work?
 - b. Recording of the hours worked by Class Members?
 - c. Paid breaks?
 - d. Payment of hours worked by Class Members?
5. Did the Defendant breach any of the foregoing contractual terms?
6. Was the Defendant enriched by failing to pay Class Members appropriately for all their hours worked? If "yes",
 - a. Did the class suffer a corresponding deprivation?
 - b. Was there no juristic reason for the enrichment?
7. If the answer to any of common issues 1, 2, 3, 5 or 6 is "yes", what remedies are Class Members entitled to?
8. If the answer to any of common issues 1, 2, 3, 5 or 6 is "yes", is the Class entitled to an award of aggravated, exemplary or punitive damages based upon the Defendant's conduct? If "yes" (i) Can these damages be determined on an aggregate basis? and (ii) What is the appropriate method or procedure for distributing any aggregate aggravated, exemplary or punitive damages to Class Members?
9. Can the defendant's monetary liability be determined on an aggregate basis? If so, in what amount?

The plaintiff Dara Fresco sought compensatory and punitive damages pursuant to each of these questions.

What settlement has been reached?

After months of negotiation, including a multi-day mediation before an independent mediator, the parties reached an agreement to settle the class action, subject to approval of the Court. Under the proposed settlement, CIBC will pay a total \$153 million to settle the case.

If the settlement is approved by the Court, the \$153 million will cover all compensation to the Class Members for all unpaid potential overtime or hours of work for the period between February 1, 1993 and June 18, 2009 (the effective date of the certification order) as well as withholding taxes, legal fees and related disbursements (including taxes), the costs of administration and distribution of money to Class Members, and a statutory levy (as discussed

further below). In exchange for its \$153 million payment, CIBC will receive a full release of all claims.

The proposed settlement will result in payment of compensation to every eligible class member who completes a claim form and certifies that they worked uncompensated overtime during the class period. Class members will not have to do anything further to prove their claims and the claims will be administered by an independent claims administrator. **CIBC will have no role in the consideration or payment of claims and will not know the identities of which class members make claims.**⁴

The settlement is subject to the approval of the Court, which will decide whether the settlement is fair, reasonable, and in the best interests of Class Members. The Court will hold a hearing to decide whether to approve the settlement in the Ontario Superior Court of Justice, via video conference on February 7, 2023 at 10:00 a.m. (Eastern). The Court will also decide whether to approve the proposed protocol for the distribution of settlement funds and the request of Class Counsel for fees.

Who Does The Settlement Apply To?

The settlement impacts front-line CIBC employees who worked in branches between February 1, 1993 and June 18, 2009, also called the “class”. A more detailed definition of the class is below:

(1) Current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC's retail branches, High Value Cluster offices or Imperial Service offices at any time from February 1, 1993 to June 18, 2009, as tellers or other front-line customer service employees, including the following:

- (a) Customer Service Representatives (also formerly known as Tellers);*
- (b) Assistant Branch Managers (Level 4);*
- (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);*
- (d) Financial Service Associates;*
- (e) Branch Ambassadors; and*

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

⁴ In the event the independent claims administrator requires additional information from CIBC requiring specific claims, the identity of any individual claimant will not be disclosed to CIBC without the express consent of the claimant and Class Counsel.

If you are unsure whether you are a class member, please contact ●.

If the settlement is approved, it will apply to all class members, except those who previously took steps in 2013 to opt-out of (i.e. ask to be removed from and not be bound by any outcome in) the case. In exchange for the settlement amount, the court will order that all class members cannot sue CIBC in the future for unpaid overtime that occurred during the class period, as described in the proposed settlement agreement.

What will happen if the settlement is rejected by the Court?

The Court will decide whether to approve or reject the settlement. It does not have the authority to unilaterally change the material terms of the settlement. If the Court does not approve the settlement, the lawsuit will continue.

If the settlement is not approved, the case will return to court for a further hearing or hearings to determine compensation for class members and the process for class members to prove their individual claims. If the settlement is not approved, there is no guarantee that any individual class member will receive compensation. Those that do receive compensation will likely not receive it for several more years.

What steps should I take now?

Class Members and members of the public may attend the settlement approval hearing on February 7, 2023, but are not required to do so. Class Members are entitled, but not obligated, to express their opinions about the settlement and whether it should be approved. If you wish to make a submission to the Court supporting or objecting to the proposed settlement, you must send the submissions in writing (by mail or email) to Class Counsel, at the address below, and ensure they are received no later than January 27, 2023. Class Counsel will provide all submissions to the Court and the Defendant in advance of the hearing.

The written submissions should include:

- a. your name, address and telephone number;
- b. a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- c. whether you plan to attend at the settlement approval hearing

If you would like to virtually attend the settlement hearing, a link will be posted at cibcunpaidovertime.ca. Please note that there will not be an opportunity to address the Court at the hearing, unless the request has been made in advance, as described above.

What happens to the money paid under the settlement?

The compensation paid to Class members will be paid from the amount of money remaining after deducting the Court-approved legal fees and disbursements (including taxes) as well as the costs of administering and distributing the money to Class Members, from the \$153 million.

Class members' share of the settlement fund will be based on a Distribution Protocol that will take into account the length of time, during the class period, that class members worked in one

of the affected positions, as well as the specific position or positions worked. The amount that each Class member receives will also depend on how many Class Members make claims.

It is anticipated that class members will not receive their share until the latter half of, or late, 2023.

All amounts paid to Class Members will be subject to any relevant deductions (including deduction and remittance to the Canada Revenue Agency), and a statutory levy to be paid to the Class Proceedings Fund.⁵ Class members will need to complete a claim form in order to receive compensation.

You can read the full Distribution Protocol at www.cibcunpaidovertime.ca. If the settlement is approved, further notice will be given with the details and deadline for filing a claim form, if required.

When and where will the hearing be?

The hearing will be held via video conference before the Ontario Superior Court of Justice on February 7, 2023 at 10:00 a.m. (Eastern). A link will be posted at cibcunpaidovertime.ca.

Who are the lawyers working on this class action and how are they paid?

The law firms of Sotos LLP, Roy O'Connor LLP, and Goldblatt Partners LLP are Class Counsel and represent members of this class action in Canada.

Goldblatt Partners LLP can be reached at:

Telephone: 416-979-4233

Email: tatherfold@goldblattpartners.com

Mail: 20 Dundas Street West, Suite 1039, Toronto ON M5G 2C2

Roy O'Connor can be reached at:

Telephone: 416-362-1989

Email: info@royoconnor.ca

Mail: 1920 Yonge Street, Suite 300, Toronto ON M4S 3E6

Sotos LLP can be reached at:

Telephone (toll free): 1-888-977-9806

Email: info@sotosclassactions.com

⁵The Class Proceedings Fund, a body established by statute to provide support for class actions brought in Ontario. Further information about the Class Proceedings Fund can be found at <https://lawfoundation.on.ca/for-lawyers-and-paralegals/class-proceedings-fund/>. In exchange for its support, the Class Proceedings Fund is entitled to repayment of monies advanced plus 10% of net settlement funds payable to Class members (i.e. after legal fees, taxes, disbursements and administration expenses). In this case, the Class Proceedings Fund's levy will amount to approximately 6.2% of the total settlement, assuming class counsel's fee request is allowed in full.

Mail: 180 Dundas Street West, Suite 1200, Toronto ON M5G 1Z8

Class members will not have to personally pay Class Counsel for the work that they have done or for the disbursements that they have carried over the past 15 years since this case began. Legal fees in class actions are typically deducted from any compensation that the class ultimately receives as a result of a successful judgment. Class Counsel's legal fees are subject to Court approval. In this case, Class counsel's retainer agreement with the Representative Plaintiff provides for a contingency fee of 30% of the settlement fund, plus taxes and disbursements.

Counsel for CIBC is Torys LLP:

Telephone: 416.865.0040

Email: info@torys.com

Mail: 79 Wellington St. W., 30th Floor (deliveries) / 33rd Floor (reception) Box 270, TD South Tower
Toronto, ON M5K 1N2

Where can I ask more questions?

For more information, please visit cibcunpaidovertime.ca. If you have questions that are not answered online or by email, please contact Class Counsel at the numbers listed above. To receive future notices and updates regarding the class action, register online at www.cibcunpaidovertime.ca.

Interpretation

This notice contains a summary of some of the terms of the Settlement Agreement and the Distribution Protocol. If there is a conflict between the provisions of this notice and the Settlement Agreement or Distribution Protocol, the terms of the Settlement Agreement or Distribution Protocol, as applicable, shall prevail.

PLEASE DO NOT CALL CIBC, THE COURTHOUSE, OR THE REGISTRAR OF THE COURT ABOUT THIS ACTION.

This notice was approved by the Ontario Superior Court of Justice.

SCHEDULE "G"

NOTICE OF SETTLEMENT APPROVAL HEARING (FRESCO – PUBLICATION)

If you were a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009 you could receive compensation in this class action settlement.

A class action was brought against CIBC on behalf of CIBC retail branch employees in Canada who were employed between February 1, 1993 and June 18, 2009. The class action, known as *Fresco v. Canadian Imperial Bank of Commerce*, alleges that CIBC's overtime policies and record-keeping systems contravened the Canada Labour Code, resulting in front-line bank employees not being compensated for overtime. Compensatory and punitive damages were sought on behalf of the class.

A settlement for \$153 million has been reached with CIBC, pending Court approval.

The settlement applies to the following group of people except those who previously took steps in 2013 to opt-out (i.e. ask to be removed) from the case:

(1) Current and former non-management, non-unionized employees of CIBC in Canada who worked at CIBC's retail branches, High Value Cluster offices or Imperial Service offices at any time from February 1, 1993 to June 18, 2009, as tellers or other front-line customer service employees, including the following:

- (a) Customer Service Representatives (also formerly known as Tellers);
- (b) Assistant Branch Managers (Level 4);
- (c) Financial Service Representatives (also formerly known as Personal Banking Associates, Personal Bankers, Senior Personal Bankers and Business Advisors);
- (d) Financial Service Associates;
- (e) Branch Ambassadors; and

And other employees who performed the same or similar job functions as the above under a different or previous CIBC job title.

A Court hearing in Toronto, Ontario has been scheduled for February 7, 2023 to consider whether to approve the settlement, the method for distributing funds to class members, and the requested legal fees.

If you would like to learn more information about the proposed settlement, the lawyers representing the parties, or the claims administrator or the proposed method for distributing funds and Class Counsel's fee request please visit: <https://cibcunpaidovertime.ca/>.

This notice was approved by the Ontario Superior Court of Justice.

SCHEDULE “H”

NOTICE OF SETTLEMENT APPROVAL HEARING (FRESCO – DIGITAL BANNER)

Were you a CIBC front-line retail branch employee in Canada between February 1, 1993 and June 18, 2009? A hearing to consider approval of a \$153 million settlement is scheduled for February 7, 2023. Click [here](#) for more information.

SCHEDULE "I"
NOTICE OF SETTLEMENT APPROVAL HEARING ORDER (FRESCO)

Court File No.: file 07-CV-334113CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)	
)	●DAY, THE
JUSTICE BELOBABA)	
)	●th DAY OF DECEMBER 2022

B E T W E E N :

DARA FRESCO

Plaintiffs

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(NOTICE APPROVAL)

THIS MOTION made by the Plaintiff for an Order approving the Notice of Hearing for the Motion for Settlement Approval, Distribution Protocol Approval and Fee Approval and the method of dissemination of said notice was heard this day by judicial videoconference / in writing at Toronto.

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

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

1. **THIS COURT ORDERS** that the direct notice of settlement, distribution protocol and fee approval hearing (the “**Notice of Settlement Approval Hearing (“Direct”)**”) is approved, substantially in the form attached hereto as Schedule “A”.
2. **THIS COURT ORDERS** that the publication notice of settlement, distribution protocol and fee approval hearing (the “**Notice of Settlement Approval Hearing (“Publication”)**”) is approved, substantially in the form attached hereto as Schedule “B”.
3. **THIS COURT ORDERS** that the digital banner notice of settlement, distribution protocol and fee approval hearing (the “**Notice of Settlement Approval Hearing (“Digital Banner”)**”) is approved, substantially in the form attached hereto as Schedule “C”.
4. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing (“Direct”) be disseminated by direct mailings via email and/or direct mail to Class Members;
5. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing (Publication) and the Notice of Settlement Approval Hearing (“Digital Banner”) will be disseminated in accordance with the Notice Plan, attached hereto as Schedule “D”.
6. **THIS COURT ORDERS** that ● be appointed as administrator to disseminate the Notice of Hearing.
7. **THIS COURT ORDERS** that within ■ days following this Order, the Defendant, through its Counsel, will provide from its existing electronic records that are in its possession, care or control (including, but not limited to, information in its human resources records, payroll records, and insurance or pension records) and without any obligation to create any new records, the information listed below:

- (a) the identities of all Class Members;
- (b) their last known mailing address, phone number and e-mail address;
- (c) the dates during which they were employed by CIBC;
- (d) the positions they worked during their employment with CIBC; and
- (e) the dates during which they held each position;

8. **THIS COURT ORDERS** that within ten days following the receipt of the list described in paragraph 7 above, ● will disseminate the direct notices and the Class Counsel will publish the notices.

The Honourable Justice Belobaba

SCHEDULE “J”
AGREED PRESS RELEASE

FOR IMMEDIATE RELEASE:

December ●, 2022

Settlement Reached in CIBC Unpaid Overtime Class Action Lawsuits

The parties have agreed to settle class actions, launched in 2007, by retail branch employees alleging systemic unpaid overtime.

The settlement provides that CIBC will pay a total of \$153 million, which will be used to compensate approximately 30,000 class members (current and former front-line retail staff) for unpaid overtime, and also used to pay for legal fees and for the cost of distributing the settlement funds. The settlement must be approved by the Ontario Superior Court before it will become binding. A motion will be brought in February 2023 for approval of the settlement, a plan to distribute the settlement funds and payment of legal fees.

The settlement was reached after 15 years of contested litigation, and months of negotiation, which followed decisions on liability by the Ontario Superior Court and Court of Appeal. The Court left the calculation of compensation and CIBC’s related defences to a further hearing, which will no longer be necessary because of the negotiated settlement.

Dara Fresco, the former CIBC Bank teller, who brought this case in 2007, stated that she is pleased with the settlement. “It is good news for the class to have this case finally resolved”, said Ms. Fresco. “I am very happy that the case is settling. This settlement is a fair compromise that will bring meaningful compensation to thousands of my fellow class members.”

Class Counsel stressed that the settlement will provide for a simple and easy method for class members to be paid. “A big advantage of this settlement is that class members will not have to prove their claims, a task that could be challenging in cases where some claims may go back nearly 30 years.” “We believe that this settlement will put more money into more class members’ hands, a lot sooner, than would happen if the case continued to be fought.”

DARA FRESCO
Plaintiff

-and- **CANADIAN IMPERIAL BANK OF COMMERCE et al.**
Defendants

Court File No. 07-CV-334113-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

ORDER
(SETTLEMENT APPROVAL)

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