

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

ARNOLD GOLDEN,

Plaintiff,

vs.

BANCO POPULAR DE PUERTO RICO,

Defendant.

Case No. 3:20-cv-00095 (RM)

**DECLARATION OF SCOTT M.  
FENWICK OF KROLL  
SETTLEMENT ADMINISTRATION  
LLC IN CONNECTION WITH FINAL  
APPROVAL OF THE SETTLEMENT**

Date: September 8, 2023

The Hon. Judge Ruth Miller

I, Scott M. Fenwick, declare as follows:

**INTRODUCTION**

1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),<sup>1</sup> the Settlement Administrator appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

### **BACKGROUND**

3. Kroll was appointed as the Settlement Administrator to provide notification and administration services in connection with that certain Settlement Agreement and Releases (the “Settlement Agreement”) entered into in connection with the above-captioned case. Kroll’s duties in connection with the Settlement include: (a) receiving and analyzing the Class List from Defendant’s Counsel; (b) preparing and sending notices in connection with the Class Action Fairness Act; (c) creating a Settlement Website; (d) establishing a toll-free number; (e) establishing a post office box for the receipt of mail; (f) preparing and sending the Postcard Notice via first-class mail; (g) preparing and sending the Email Notice; (h) receiving and processing mail from the United States Postal Service (“USPS”) with forwarding addresses; (i) receiving and processing undeliverable mail, without a forwarding address, from the USPS; (j) receiving and processing opt outs; and (k) such other tasks as counsel for the Parties or the Court request Kroll to perform.

### **NOTICE PLAN**

4. As detailed herein, Kroll’s duties as Settlement Administrator included overseeing the execution of the Notice Plan as set forth in the Settlement Agreement. The Notice Plan sought to provide the best notice practicable by utilizing information available directly from Defendant’s existing records concerning the Settlement Class Members. The Notice Plan included both direct notice to Settlement Class via either Email Notice or Postcard Notice as applicable, as well as the Long Form Notice posted on the Settlement Website and available upon request made to the Settlement Administrator.

5. The Notice Plan apprised Settlement Class members of the following either through direct notice or, as contained therein, referral to the Settlement Website address for access to further information and related documents: a description of the material terms of the Settlement; a deadline to exclude themselves from the Settlement Class; a deadline to object to the Settlement; the Final Approval Hearing date.

**Data and Case Setup**

6. On January 25, 2023, Kroll received one (1) data file from the Defendant. The file contained 245,477 transactions with customer numbers, Account numbers, product descriptions, transaction traces, transaction dates, transaction amounts, transaction codes, transaction descriptions, overdraft charge dates, overdraft charge amounts, overdraft charge descriptions, account purge indicators, names, physical addresses and email addresses. On February 3, 2023, Kroll received a second file from the Defendant. The second file contained 42,532 transactions identified by the customer number which contained names, physical addresses and email addresses, and 4,971 transactions identified by the Account number, which contained names and physical addresses. On April 14, 2023, Kroll received a third file from the Defendant. The third file contained a summary report with 8,273 transactions, including customer numbers, charges, names, physical addresses and email addresses, and a detail report with 19,045 transactions, which contained customer numbers, product descriptions, Account numbers, transaction traces, transaction dates, transaction amounts, transaction codes, transaction descriptions, overdraft charge dates, overdraft charge amounts, overdraft charge descriptions, and account purge indicators. Kroll undertook several steps to reconcile the three (3) files and compile the eventual Class List for the emailing and mailing of Class Notices. The data was reformatted; de-duped based on names, addresses, customer numbers, and Account numbers; and combined into a single data file comprising 50,652 unique Settlement Class Members. A breakdown of the availability of physical mailing addresses and email addresses for each unique Settlement Class Member record is provided below. As per the Settlement Agreement, only Postcard Notice was to be provided to Past Accountholders. No available physical mailing address were provided by the Defendant for 3,372 Past Accountholders.

<b>Unique Records</b>	<b>50,652</b>
<b>Past Accountholders</b>	<b>4,971</b>
Total Physical Mailing Address	1,599
No Physical Mailing Address	3,372

<b>Current Accountholders</b>	<b>45,681</b>
Physical Mailing Address	45,679
Email Address	43,784
Physical Mailing Address & Email Address	43,782
Physical Mailing Address Only	1,897

Additionally, in an effort to ensure that Postcard Notices would be deliverable to Settlement Class Members as may be required pursuant to the Settlement Agreement, Kroll ran the 47,278 records with physical mailing addresses through the USPS's National Change of Address ("NCOA") database and updated the Class List with address changes received from the NCOA.

### **The CAFA Mailing**

7. As noted above, on behalf of the Defendant, Kroll provided CAFA Notice of the proposed Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. §1715(b). At Defendant's Counsel's direction, on January 27, 2023, Kroll sent the CAFA Notice via first-class certified mail, a true and correct copy of which is attached hereto as **Exhibit A**, to (a) the Attorney General of the United States Virgin Islands; (b) the Puerto Rico Office of the Commissioner of Financial Institutions; (c) the Federal Reserve Bank of New York; and (d) fifty-four (54) state Attorneys General identified in the service list for the CAFA Notice, attached hereto as **Exhibit B**. The CAFA Notice directed the recipients to the website [www.CAFANotice.com](http://www.CAFANotice.com), a site that contains all the documents relating to the Settlement referenced in the CAFA Notice.

### **Data and Case Setup**

8. On April 4, 2023, Kroll created a dedicated Settlement Website entitled [www.viBankFeeSettlement.com](http://www.viBankFeeSettlement.com), which includes a link to a Spanish version of the website, entitled [www.esvibankfeesettlement.com](http://www.esvibankfeesettlement.com). The Settlement Website "went live" on May 10, 2023, and contains a homepage, frequently asked questions, a contact page, and relevant documents relating to the Settlement, including the Complaint, Settlement Agreement, Long Form Notice, Motion for Preliminary Approval, and Preliminary Approval Order. A Spanish version of the Long Form Notice is also available on the Spanish version of the website.

9. On April 4, 2023, Kroll established a toll-free number, 1-833-747-6944, for Settlement Class Members to call and obtain additional information regarding the Settlement, including obtaining a copy of the Long Form Notice, through an Interactive Voice Response (“IVR”) system or by being connected to a live agent. As of July 24, 2023, the IVR system has received 433 calls and 124 callers have been connected to live operators.

10. On April 4, 2023, Kroll designated a post office box with the mailing address *Golden v. BPPR* c/o Kroll Settlement Administration LLC, P.O. Box 225391, New York, NY 10150-5391 in order to receive requests for exclusion and correspondence from Settlement Class Members.

### **The Notice Plan**

11. In accordance with Section 5.2.2 of the Settlement Agreement, on May 10, 2023, Kroll caused 3,496 Postcard Notices to be mailed via first-class mail to Current Accountholders who have not agreed to receive communications electronically and to Past Accountholders with a physical mailing address on file. A true and correct copy the Postcard Notice, along with the Long Form Notice, are attached hereto as **Exhibits C and D**, respectively.

12. In accordance with Section 5.2.1 of the Settlement Agreement, on May 10, 2023, Kroll caused the Email Notice to be sent to the 43,784 email addresses on file for Settlement Class Members who are Current Accountholders and have agreed to receive electronic communications from Defendant. A true and correct copy of a complete exemplar Email Notice (including the subject line) is attached hereto as **Exhibit E**. Of the 43,784 emails attempted for delivery, 7,197 emails were rejected/bounced back as undeliverable.

13. In accordance with Sections 5.2.1 of the Settlement Agreement, on June 8, 2023, Kroll caused the Postcard Notice to be mailed via first-class mail to the 7,197 Current Accountholders whose Email Notice was rejected/bounced back as undeliverable.

### **NOTICE PLAN REACH**

14. As of July 24, 2023, seventy-six (76) Postcard Notices were returned by the USPS with a forwarding address. The Postcard Notices were automatically re-mailed to the updated addresses provided by the USPS.

15. As of July 24, 2023, 440 Postcard Notices were returned by the USPS as undeliverable as addressed, without a forwarding address. Kroll ran 439<sup>2</sup> undeliverable records through an advanced address search. The advanced address search produced 245 updated addresses. Kroll has re-mailed Postcard Notices to the 245 updated addresses obtained from the advanced address search. Of the 245 re-mailed Postcard Notices, five (5) have been returned as undeliverable a second time.

16. Based on the foregoing, following all Postcard Notice re-mailings, Kroll has determined that Class Notices likely reached 47,080 of the 47,280 persons to whom notice was mailed or emailed, which equates to a reach rate of the direct mail notice of approximately 99.58%. Including the additional 3,372 Settlement Class Members for whom Defendant had no available physical mailing address or email address, the reach rate to all Settlement Class Members of approximately 92.95%. This reach rate is consistent with other court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches<sup>3</sup> over 70% of targeted class members is considered a high percentage and the “norm” of a notice campaign.<sup>4</sup>

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<sup>2</sup> Per direction from Class Counsel, we were instructed to stop trace and re-mail on July 10, 2023.

<sup>3</sup> FED. JUD. CTR., *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. The guide suggests that the minimum threshold for adequate notice is 70%.

<sup>4</sup> Barbara Rothstein and Thomas Willging, *Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges*, at 27 (3d Ed. 2010).

**EXCLUSIONS AND OBJECTIONS**

17. The Opt-Out Deadline and Objection Deadline is August 9, 2023, and any such opt-out requests or objections must be postmarked by that date. The procedures for opting-out or objecting to the Settlement are set forth in detail in the Long Form Notice.

18. As of July 24, 2023, Kroll has received one (1) timely exclusion request. Settlement Class Members were not instructed to submit their objection to the Settlement Administrator, and none have been received by Kroll. A list of the exclusion received is attached hereto as **Exhibit F**.

**CERTIFICATION**

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on July 24, 2023, in Woodbury, Minnesota.

  
SCOTT M. FENWICK

# Exhibit A





January 27, 2023

**By Certified Mail**

«AddressBlock»

Re: Class Action Fairness Act Notice for the Proposed Settlement in *Arnold Golden v. Banco Popular de Puerto Rico*, No. 3:20-cv-00095

«GreetingLine»,

Pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Defendant Banco Popular de Puerto Rico (“Defendant”) hereby notifies you of the proposed settlement of the above-captioned action (“Action”) currently pending in the District Court of the Virgin Islands Division of St. Thomas and St. John (“the Court”). This Notice is being served within 10 days from the filing of the Motion for Preliminary Approval of the Settlement.

28 U.S.C. § 1715(b) lists eight items that must be provided to you in connection with any proposed class action settlement. Each of these items is addressed below:

1. 28 U.S.C. § 1715(b)(1) – A copy of the complaint and any materials filed with the complaint and amended complaints.

All complaints filed in the Actions, including the civil cover sheets and any attached exhibits, are available at the website: [www.cafanotice.com](http://www.cafanotice.com) under the Golden v. Banco Popular de Puerto Rico folder as Exhibits A-A8. There have been no amended complaints filed in the Actions.

2. 28 U.S.C. § 1715(b)(2) – Notice of any scheduled judicial hearing in the class action.

On January 19, 2023, Plaintiffs filed a motion for preliminary approval of the class action settlement for the Actions. A copy of the motion for preliminary approval, including the proposed order granting preliminary approval and all other exhibits to the motion are provided in electronic form at the website: [www.cafanotice.com](http://www.cafanotice.com) under the Golden v. Banco



CAFA Notice

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January 27, 2023

Popular de Puerto Rico folder as Exhibits B-B2. The files are prefixed with the documents' docket numbers as used in this case's docket.

The Court has not yet issued any order on the motion for preliminary approval and has not yet scheduled any judicial hearings with respect to the settlement.

3. 28 U.S.C. § 1715(b)(3) – Any proposed or final notification to Class Members.

A copy of the proposed Notice documents to be sent to class members regarding the settlement are attached as Exhibits C-E to the Settlement Agreement, which is included at the website: [www.cafanotice.com](http://www.cafanotice.com) under the Golden v. Banco Popular de Puerto Rico folder. The files are prefixed with the documents' docket numbers as used in this case's docket. The Notice describes, among other things, the Class Members' rights to object or request exclusion from the Class.

4. 28 U.S.C. § 1715(b)(4) – Any proposed or final class action settlement.

A copy of the filed Settlement Agreement is included in electronic form at the website: [www.cafanotice.com](http://www.cafanotice.com) under the Golden v. Banco Popular de Puerto Rico as Exhibit F. The file is prefixed with the document's docket number as used in this case's docket.

5. 28 U.S.C. § 1715(b)(5) - Any settlement or other agreement contemporaneously made between class counsel and counsel for defendants.

There are no other settlements or other agreements between Class Counsel and counsel for Defendants beyond what is set forth in the Settlement Agreement.

6. 28 U.S.C. § 1715(b)(6) - Any final judgment or notice of dismissal.



CAFA Notice

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January 27, 2023

The Court has not yet entered a final judgment or notice of dismissal. Accordingly, no such document is presently available.

7. 28 U.S.C. § 1715(b)(7) – (A) If feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State’s appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.

The proposed definition of the class in the Settlement Agreement is: All holders of BPPR consumer checking accounts (including Multicuenta accounts) at branches in the United States and its territories, who, during the Class Period, paid and were not refunded an overdraft (“OD”) fee in connection with a transaction on their account where the transaction had been authorized against available funds.

Excluded from the Settlement Class are Defendant, its parents, subsidiaries, affiliates, officers and directors; all Settlement Class members who make a timely election to opt out; and all judges assigned to this litigation and their immediate family members.

We are in the process of confirming the final number of class members and claims. Please be advised that it is not currently feasible to identify and disclose the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement pursuant to 17 U.S.C. § 1715(b)(7)(A). Pursuant to § 1715(b)(7)(B), based on the data analysis available to date, we estimate that there are approximately <<State\_Number>> class members who now reside in your state or commonwealth, and that the estimated proportionate share of the claims of such members of the settlement is approximately <<State\_Percentage>>. Each class member’s recovery would be directly proportionate to the number of at-issue fees that the class member paid, as a proportion of the settlement as a whole.



CAFA Notice

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January 27, 2023

8. 28 U.S.C. § 1715(b)(8) - Any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6).

There have been no written judicial opinions regarding the specified materials. Accordingly, no such documents are presently available.

If you have any questions about this Notice, the Actions, or the materials located on the website: [www.cafanotice.com](http://www.cafanotice.com) under the Golden v. Banco Popular de Puerto Rico folder, please contact the undersigned counsel for Defendant by email at [kieval@thewbkfirm.com](mailto:kieval@thewbkfirm.com), or by telephone at (202) 628-2000.

Sincerely,

/s/ Michael Y. Kieval

# Exhibit B



**SERVICE LIST FOR CAFA NOTICE**

**Alabama Attorney General**

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**Federal Reserve Bank of New York**

ATTN: CAFA NOTICES  
33 Liberty Street

# Exhibit C

Golden, et al., v. Banco Popular de Puerto Rico  
c/o Kroll Settlement Administration LLC  
P.O. Box 225391  
New York, NY 10150-5391

Document #: 122-6 Filed: 07/25/23

FIRST-CLASS MAIL  
U.S. POSTAGE PAID  
CITY, ST  
PERMIT NO. XXXX

**ELECTRONIC SERVICE REQUESTED**

*Golden, et al., v. Banco Popular de Puerto Rico,*  
No. 3:20-cv-00095 (D.V.I.)

**NOTICE OF PENDING CLASS  
ACTIONS AND PROPOSED  
SETTLEMENT**

**READ THIS NOTICE FULLY  
AND CAREFULLY;  
THE PROPOSED SETTLEMENT MAY  
AFFECT YOUR RIGHTS!**

**Postal Service: Please do not mark barcode**

<<Refnum Barcode>>

CLASS MEMBER ID: <<Refnum>>

<<Fullname>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>-<<zip4>>

<<Country>>

**IF YOU HAD YOUR ACCOUNT WITH BANCO POPULAR DE PUERTO RICO  
AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES BETWEEN  
OCTOBER 1, 2016, AND NOVEMBER 30, 2022, THEN YOU MAY BE ENTITLED TO  
A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

The United States District Court for the District of the Virgin Islands has authorized this notice;  
it is not a solicitation from a lawyer.

You may be a member of the Settlement Class in *Golden, et al. v. Banco Popular de Puerto Rico* in which the plaintiff alleges that Defendant Banco Popular de Puerto Rico (“Defendant” or “BPPR”) unlawfully assessed certain Class Fees between October 1, 2016, and November 30, 2022. If you are a member of the Settlement Class and if the Settlement is approved, you may be entitled to receive a payment from the \$1,653,000.00 Settlement Fund, established by the Settlement, so long as you do not opt-out of or exclude yourself from the Settlement. **You do not have to do anything to be entitled to a payment from the Settlement Fund.**

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on September 8, 2023. At that hearing, the Court will consider whether to grant Final Approval to the Settlement, and whether to approve payment from the Settlement Fund of up to \$10,000.00 in a Service Award to the Class Representative; one-third of the value of the Settlement as attorneys’ fees; and reimbursement of costs to the attorneys and the Settlement Administrator. If the Court grants Final Approval of the Settlement and you do not request to be excluded from the Settlement, you will release your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your Account or to make a payment to you by check if you are no longer a customer of BPPR.

**To obtain a Long Form Notice and other important documents please visit [www.VIBankFeeSettlement.com](http://www.VIBankFeeSettlement.com). Alternatively, you may call 1-833-747-6944.**

*If you do not want to participate in this Settlement—you do not want to receive a cash payment and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than August 9, 2023. If you want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than August 9, 2023. You may learn more about the opt-out and objection procedures by visiting [www.VIBankFeeSettlement.com](http://www.VIBankFeeSettlement.com) or by calling 1-833-747-6944.*

**Esta notificación está disponible en español en la siguiente página web: [www.VIBankFeeSettlement.com](http://www.VIBankFeeSettlement.com) o puede llamar a 1-833-747-6944 para pedir una copia por correo.**

# Exhibit D

*Golden v. Banco Popular de Puerto Rico*, No. 3:2020-cv-00095 (D.V.I.)

**NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT**

**READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT  
MAY AFFECT YOUR RIGHTS!**

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH BANCO  
POPULAR DE PUERTO RICO (“DEFENDANT” OR “BPPR”) AND YOU  
WERE CHARGED CERTAIN OVERDRAFT FEES BETWEEN  
OCTOBER 1, 2016, AND NOVEMBER 30, 2022, THEN YOU MAY BE  
ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

The United States District Court for the District of the Virgin Islands has authorized this notice; it is not a solicitation from a lawyer.

<b>SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION</b>	
<b>DO NOTHING</b>	If you don't do anything, you will receive a payment from the Settlement Fund so long as you do not opt-out of or exclude yourself from the Settlement (described in the next box), assuming the Settlement is finally approved.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS</b>	You can choose to exclude yourself from the Settlement or “opt-out.” This means you choose not to participate in the Settlement. You will keep your individual claims against Defendant but you will not receive a payment for Class Fees as defined in the Settlement. If you exclude yourself from the Settlement but want to recover against Defendant, you would have to file a separate lawsuit or claim.
<b>OBJECT TO THE SETTLEMENT</b>	You can file an objection with the Court explaining why you believe the Court should reject the Settlement. If your objection is overruled by the Court, then you may receive a payment and you will not be able to sue Defendant for the claims asserted in this litigation. If the Court agrees with your objection, then the Settlement may not be approved.

These rights and options – *and the deadlines to exercise them* – along with the material terms of the Settlement are explained in this notice.

## **BASIC INFORMATION**

### **1. What is this lawsuit about?**

The lawsuit that is being settled is named *Golden et al. v. Banco Popular de Puerto Rico* and is pending in the United States District Court for the District of the Virgin Islands, Case No. 3:20-cv-00095. The case is a “class action.” That means that the “Class Representative” is an individual who is acting on behalf of current and former customers who were assessed certain overdraft fees (also referred to herein as “Class Fees” or “fees”) between October 1, 2016, and November 30, 2022. The Class Representative has asserted a claim for breach of BPPR’s checking account agreement based on overdraft fees charged in connection Authorize Positive, Settle Negative Transactions” (“APSN Transaction” or “APSN Transactions”), where a bank assesses fees on a transaction that overdraws the account when it settles although the transaction had previously been the subject of an authorization to the merchant that was issued against sufficient funds.

Defendant does not deny it charged fees of the type that the Class Representative is complaining about, but contends it did so properly and in accordance with the terms of its agreements and applicable law. Defendant therefore denies that its practices give rise to claims for damages by the Class Representative or any Settlement Class Members.

### **2. Why did I receive notice of this lawsuit?**

You received this notice because Defendant’s records indicate that you were charged one or more Class Fees that are the subject of these actions. The Court directed that this notice be sent to all Settlement Class Members because each such member has a right to know about the proposed Settlement and the options available to him or her before the Court decides whether to approve the Settlement.

### **3. Why did the parties settle?**

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Class Representative’s and his lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, the Class Representative’s lawyers, known as Class Counsel, make this recommendation to the Class Representative. The Class Representative has the duty to act in the best interests of the class as a whole and, in this case, it is their belief, as well as Class Counsels’ opinion, that this Settlement is in the best interest of all Settlement Class Members.

There is legal uncertainty about whether a judge or a jury will find that Defendant was contractually and otherwise legally obligated not to assess the fees at issue. And even if it was contractually wrong to assess these fees, there is uncertainty about whether the Class Representative’s claims are subject to other defenses that might result in no or less recovery to Settlement Class Members. Even if the Class Representative were to win at trial, there is no assurance that the Settlement Class Members would be awarded more than the current Settlement Amount and it may take years of litigation before any payments would be made. By settling, the Settlement Class Members will avoid these and other risks and the delays associated with continued litigation.

While Defendant disputes the allegations in the lawsuit and denies any liability or wrongdoing, it enters into the Settlement solely to avoid the expense, inconvenience, and distraction of further proceedings in the litigation.

## WHO IS IN THE SETTLEMENT

### **4. How do I know if I am part of the Settlement?**

If you received this notice, then Defendant's records indicate that you are a member of the Settlement Class who is entitled to receive a payment or credit to your Account.

## YOUR OPTIONS

### **5. What options do I have with respect to the Settlement?**

You have three options: (1) do nothing and you will receive a payment according to the terms of this Settlement; (2) exclude yourself from the Settlement ("opt-out" of it); or (3) participate in the Settlement but object to it. Each of these options is described in a separate section below.

### **6. What are the critical deadlines?**

There is no deadline to receive a payment. If you do nothing, then you will get a payment if the Settlement is finally approved.

The deadline for sending a letter to exclude yourself from or opt-out of the settlement is **August 9, 2023**.

The deadline to file an objection with the Court is also **August 9, 2023**.

### **7. How do I decide which option to choose?**

If you do not like the Settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this Settlement, then you may want to consider opting-out.

If you believe the Settlement is unreasonable, unfair, or inadequate and the Court should reject the Settlement, you can object to the Settlement. The Court will decide if your objection is valid. If the Court agrees, then the Settlement may not be approved and no payments will be made to you or any other member of the Class at this time. If your objection (and any other objection) is overruled, and the Settlement is approved, then you may still get a payment, and will be bound by the Settlement.

If you want to participate in the Settlement, then you do not have to do anything; you will receive a payment if the Settlement is approved by the Court and becomes final.

### **8. What has to happen for the Settlement to be approved?**

The Court has to decide that the Settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide Preliminary Approval of the Settlement, which is why you received a notice. The Court will make a final decision regarding the Settlement at or after a "Fairness Hearing" or "Final Approval Hearing," which is currently scheduled for **September 8, 2023**.



## **THE SETTLEMENT PAYMENT**

### **9. How much is the Settlement?**

Defendant has agreed to create a Settlement Fund of \$1,653,000.00.

As discussed separately below, attorneys' fees, litigation costs, and the costs paid to a third-party Settlement Administrator to administer the Settlement (including mailing and emailing notice) will be paid out of the Settlement Fund. The Net Settlement Fund will be divided among all Settlement Class Members entitled to Settlement Class Member Payments based on formulas described in the Settlement Agreement.

### **10. How much of the Settlement Fund will be used to pay for Attorneys' Fees and Costs?**

Class Counsel will request the Court to approve attorneys' fees of one-third of the Settlement Fund, and will request that they also be reimbursed for litigation costs incurred in prosecuting the case. The Court will decide the amount of the Attorneys' Fees and Costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

### **11. How much of the Settlement Fund will be used to pay the Class Representative a Service Award?**

Class Counsel will request that the Class Representative be paid a Service Award in the amount of \$10,000.00 each for their work in connection with this case. The Service Award must be approved by the Court.

### **12. How much will my payment be?**

The balance of the Settlement Fund after Attorneys' Fees and Costs, the Service Award and the Settlement Administrator's Costs, also known as the Net Settlement Fund, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments in accordance with the formulas outlined in the Settlement Agreement. Current customers of Defendant will receive a credit to their Accounts for the amount they are entitled to receive. Former customers of Defendant will be sent a check from the Settlement Administrator.

### **13. Do I have to do anything if I want to participate in the Settlement?**

No. If you received this notice, then you may be entitled to receive a payment for a Class Fee without having to make a claim, unless you choose to exclude yourself from the Settlement, or "opt-out."

### **14. When will I receive my payment?**

The Court will hold a Final Approval Hearing on **September 8, 2023 at 10:00 a.m.** to consider whether the Settlement should be approved. If the Court approves the Settlement, then payments should be made or credits should be issued approximately 90 days later. Checks must be cashed within 180 days from the date on the payment notice. However, if someone objects to the Settlement, and the objection is sustained, then there is no Settlement. Even if all objections are overruled and the Court approves the Settlement, an objector could appeal, and it might take months or even years to have the appeal resolved, which would delay any payment.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **15. How do I exclude myself from the Settlement?**

If you do not want to receive a payment or if you want to keep any right you may have to sue Defendant for the claims alleged in this lawsuit, then you must exclude yourself, or “opt-out.”

To opt-out, you **must** send a letter to the Settlement Administrator that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the Settlement in the *Golden, et al., v. Banco Popular de Puerto Rico* class action. The request must include your signature, address, the last four digits of your account number(s) or former account number(s) or other information to identify the relevant bank account, and current contact information such as your address, telephone number, and email address. Your exclusion or opt-out request must be postmarked by **August 9, 2023**, and sent to:

Golden v. Banco Popular de Puerto Rico  
Attn: Opt-Out Requests: VI BPPR Fee Class Action  
c/o Kroll Settlement Administration LLC  
PO Box 225391  
New York, NY 10150-5391

### **16. What happens if I opt-out of the Settlement?**

If you opt-out of the Settlement, you will preserve and not give up any of your rights to sue Defendant for the claims alleged in this case. However, you will not be entitled to receive a payment from the Settlement.

## **OBJECTING TO THE SETTLEMENT**

### **17. How do I notify the Court that I do not like the Settlement?**

You can object to the Settlement or any part of it that you do not like **IF** you do not exclude yourself, or opt-out, from the Settlement. (Settlement Class Members who exclude themselves from the Settlement have no right to object to how other Settlement Class Members are treated.) To object, you **must** send a written document by mail or private courier (e.g., Federal Express) to the Clerk of Court, Settlement Administrator, Class Counsel, and Defendant’s Counsel at the addresses below. Your objection must include the following information:

- a. the name of the Action or other information to confirm objector is a Class Member;
- b. the objector’s full name, address, email address (if any), and telephone number;
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector’s counsel;
- d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector’s prior objections that were issued by the prior objections that were issued by the trial and appellate courts in each listed case;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;

- f. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;
- g. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
- h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- k. the objector's signature (an attorney's signature is not sufficient)
- l. If the objection is made by or through an attorney, the written objection must also include:
  - (a) the identity and number of the Settlement Class Members represented by objector's counsel; (b) the identity and number of such represented Settlement Class members who have opted-out of the Settlement Class; and (c) the identity and number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected. If the attorney intends to seek fees and expenses from anyone other than the objectors he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BPPR's Counsel, not later than 15 days before the Final Fairness Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney's hourly rate.

All objections must be post-marked no later than **August 9, 2023**, and must be mailed to the Settlement Administrator as follows:

Golden v. Banco Popular de Puerto Rico  
Attn: Objection Requests: VI BPPR Fee Class Action  
c/o Kroll Settlement Administration LLC  
PO Box 225391  
New York, NY 10150-5391

**18. What is the difference between objecting and requesting exclusion from the Settlement?**

Objecting is telling the Court that you do not believe the Settlement is fair, reasonable, and adequate for the Settlement Class, and asking the Court to reject it. You can object only if you do not opt-out of the Settlement. If you object to the Settlement and do not opt-out, then you are entitled to a payment for a Class Fee if the Settlement is approved, but you will release claims you might have against Defendant. Excluding yourself or opting-out is telling the Court that you do not want to be part of the Settlement, and do not want to receive a payment under the Settlement or release claims you might have against Defendant for the claims alleged in this lawsuit.

**19. What happens if I object to the Settlement?**

If the Court sustains your objection, or the objection of any other member of the Settlement Class, then there is no Settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the Settlement.

**THE COURT’S FINAL APPROVAL HEARING**

**20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval or Fairness Hearing at 10:00 a.m. on **September 8, 2023**, at the United States District Court for the District of the Virgin Islands, which is located at 5500 Veteran’s Drive, Charlotte Amalie, St. Thomas, Virgin Islands. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys’ fees and litigation costs and the amount of the Service Award to the Class Representative. The hearing may be virtual, in which case the instructions to participate shall be posted on the website at [www.VIBankFeeSettlement.com](http://www.VIBankFeeSettlement.com).

**21. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have submitted an objection, then you may want to attend.

**22. May I speak at the hearing?**

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 17, above, the statement, “I hereby give notice that I intend to appear at the Final Approval Hearing.”

**THE LAWYERS REPRESENTING YOU**

**23. Do I have a lawyer in this case?**

The Court ordered that the lawyers and their law firms referred to in this notice as “Class Counsel” will represent you and the other Settlement Class members.

**24. Do I have to pay the lawyer for accomplishing this result?**

No. Class Counsel will be paid directly from the Settlement Fund.

**25. Who determines what the Attorneys’ Fees and Costs will be?**

The Court will be asked to approve the amount of Attorneys’ Fees and Costs at the Fairness Hearing. Class Counsel will file an application for Attorneys’ Fees and Costs and will specify the amount being sought as discussed above. You may review a copy of the fee application at the website established by the Settlement Administrator, or by requesting the court record online from the United States District Court for the District of the Virgin Islands.

**GETTING MORE INFORMATION**

This notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [www.VIBankFeeSettlement.com](http://www.VIBankFeeSettlement.com) or at the Office of the Clerk of the United States District Court for the District of the Virgin Islands, which is located at 5500 Veteran's Drive, Charlotte Amalie, St. Thomas, Virgin Islands, by asking for the court file containing the Motion For Preliminary Approval of Class Settlement (the Settlement Agreement is attached to the motion) or obtaining a copy online at <https://eservices.archives.gov/orderonline>.

For additional information about the Settlement and/or to obtain copies of the Settlement Agreement, or to change your address for purposes of receiving a payment, you should contact the Settlement Administrator as follows:

Golden v. Banco Popular de Puerto Rico  
c/o Kroll Settlement Administration LLC  
PO Box 225391  
New York, NY 10150-5391

For more information, you also can contact the Class Counsel as follows:

Michael R. Reese  
REESE LLP  
100 West 93<sup>rd</sup> Street, 16<sup>th</sup> Floor  
New York, New York 10025  
212-645-0500  
[mreese@reesellp.com](mailto:mreese@reesellp.com)

Jeffrey Kaliel  
KalielGold PLLC  
1100 15<sup>th</sup> St. NW, 4th Floor  
Washington, DC 20005  
202-350-4783  
[jkaliel@kalielpllc.com](mailto:jkaliel@kalielpllc.com)

***PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF DEFENDANT CONCERNING THIS NOTICE OR THE SETTLEMENT.***

**Esta notificación está disponible en español en la siguiente página web: [www.VIBankFeeSettlement.com](http://www.VIBankFeeSettlement.com) o puede llamar a 1-833-747-6944 para pedir una copia por correo.**

# Exhibit E

**Subject:** Golden v. Banco Popular de Puerto Rico - NOTICE REGARDING CLASS ACTION SETTLEMENT

Class Member ID: 65696MICHELLER

*Golden v. Banco Popular de Puerto Rico*, No. 3:20-cv-00095 (D.V.I.)

**NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT**

**READ THIS NOTICE FULLY AND CAREFULLY;**

**THE PROPOSED SETTLEMENT MAY AFFECT YOUR RIGHTS!**

**IF YOU HAVE OR HAD A CHECKING ACCOUNT WITH BANCO POPULAR DE PUERTO RICO AND YOU WERE CHARGED CERTAIN OVERDRAFT FEES BETWEEN OCTOBER 1, 2016, AND NOVEMBER 30, 2022, THEN YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

The United States District Court for the District of the Virgin Islands has authorized this Notice; it is not a solicitation from a lawyer.

You may be a member of the Settlement Class in *Golden v. Banco Popular de Puerto Rico* in which the plaintiff alleges that Defendant Banco Popular de Puerto Rico ("Defendant" or "BPPR") unlawfully assessed certain Class Fees between October 1, 2016, and November 20, 2022. If you are a member of the Settlement Class and if the Settlement is approved, you may be entitled to receive a payment from the \$1,653,000.00 Settlement Fund, established by the Settlement, so long as you do not opt-out of or exclude yourself from the Settlement. **You do not have to do anything to be entitled to a payment from the Settlement Fund.**

The Court has preliminarily approved this Settlement. It will hold a Final Approval Hearing in this case on September 8, 2023. At that hearing, the Court will consider whether to grant Final Approval to the Settlement, and whether to approve payment from the Settlement Fund of up to \$10,000.00 in a Service Award to the Class Representative; one-third of the value of the Settlement as attorneys' fees; and reimbursement of costs to the attorneys and the Settlement Administrator. If the Court grants Final Approval of the Settlement and you do not request to be excluded from the Settlement, you will release

your right to bring any claim covered by the Settlement. In exchange, Defendant has agreed to issue a credit to your Account or to make a payment to you by check if you are no longer a customer of BPPR.

**To obtain a Long Form Notice and other important documents please visit [www.VIBankFeeSettlement.com](http://www.VIBankFeeSettlement.com). Alternatively, you may call 1-833-747-6944.**

*If you do not want to participate in this Settlement—you do not want to receive a cash payment and you do not want to be bound by any judgment entered in this case—you may exclude yourself by submitting an opt-out request postmarked no later than August 9, 2023. If you want to object to this Settlement because you think it is not fair, adequate, or reasonable, you may object by submitting an objection postmarked no later than August 9, 2023. You may learn more about the opt-out and objection procedures by visiting [www.VIBankFeeSettlement.com](http://www.VIBankFeeSettlement.com) or by calling 1-833-747-6944.*

**Esta notificación está disponible en español en la siguiente página web: [www.VIBankFeeSettlement.com](http://www.VIBankFeeSettlement.com) o puede llamar a 1-833-747-6944 para pedir una copia por correo.**

[Click here to unsubscribe to future emails related to this settlement](#)



# Exhibit F

<b>Exclusion List</b>	
<b>Count</b>	<b>Class Member ID</b>
1	673261BFQWBTH