

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

PEDRO SOTO MELENDEZ, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

BANCO POPULAR DE PUERTO RICO,

Defendant.

Civil Action No. 20-1057 (JAG)

*(Lead Case for Settlement Approval
Purposes, No. 20-01057-JAG)*

JURY TRIAL DEMANDED

SANDRA ORAMA CARABALLO and
MIGUEL QUINONES ACOSTA, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

BANCO POPULAR DE PUERTO RICO,

Defendant.

Civil Action No. 22-1107

JURY TRIAL DEMANDED

**DECLARATION OF JEFFREY D. KALIEL IN SUPPORT OF MOTION FOR: (1)
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND (2)
CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS FOR SETTLEMENT
APPROVAL PURPOSES**

I, Jeffrey D. Kaliel, declare:

1. I am counsel of record for Plaintiff and the proposed Classes in the above captioned matter. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. Unless otherwise noted, I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them if called upon to do so.

2. Counsel for both sides have significant experience in consumer class-action litigation involving bank-fee practices. Class Counsel is highly experienced in consumer class

action litigation, as demonstrated by their firm resumes, and have brought that significant experience to bear in litigating and settling this case.

3. Class Counsel collectively have decades of experience litigating consumer class actions against financial institutions and have litigated and settled dozens of class actions involving wrongful overdraft fees, non-sufficient fund fees, and other types of wrongful fees.

4. Banco Popular de Puerto Rico (“BPPR” or the “Bank”) has agreed to cease—for a period of at least five years—the “retry” fee assessment practice at the heart of this case. This prospective relief will, Class Counsel estimates, save the Settlement Class and BPPR accountholders approximately \$9 million over the next five years.

5. Class Counsel spent many hours investigating the claims of several potential plaintiffs against BPPR.

6. Class Counsel interviewed a number of BPPR customers to gather information about BPPR’s disclosures and practices and their potential impact upon consumers, which was essential to counsel’s ability to understand the nature of the potential claims and issues, the language of the account agreement and other documents at issue, and potential remedies.

7. Class Counsel expended significant resources researching and developing the legal claims at issue.

8. Class Counsel has experience in understanding the damages at issue, the information critical to determine class membership, and the necessary data to calculate each Settlement Class Member’s damages. The issues were heavily contested throughout the litigation.

9. Class Counsel, along with its data analysis expert, spent a significant amount of time analyzing data related to the assessment of the Class Fees at issue.

10. The Parties conferred regarding the calculations’ accuracy.

11. Prior to the mediation, Class Counsel and Plaintiff's expert used this data to analyze the alleged damages at issue.

12. Consequently, Class Counsel mediated with Judge Fusté fully informed of the merits of Settlement Class Members' claims and negotiated the proposed Settlement while zealously advancing the position of Plaintiffs and Settlement Class Members and being fully prepared to continue to litigate rather than accept a settlement that was not in the best interest of Plaintiffs and the Settlement Class.

13. In sum, prior to negotiating the Settlement, Class Counsel spent significant time conferring with Plaintiffs, investigating facts, researching the law, preparing a well-pleaded complaint, engaging in discovery, working with an expert witness, and reviewing important documents and data.

14. The Settlement Administrator will oversee the Notice Plan, which is designed to provide the best notice practicable and is tailored to take advantage of the information BPPR has available about the Settlement Class.

15. The Notice and Notice Plan constitute sufficient notice to all persons entitled to notice, satisfying all applicable requirements of law, including Rule 23 and constitutional due process.

16. Class Counsel has not been paid for their extensive efforts or reimbursed for litigation costs.

17. The Parties negotiated and reached agreement regarding fees, costs and expenses only after agreeing on all material terms of the Settlement.

18. Class Counsel is highly experienced in this area of the law, having acted as Class Counsel in numerous successful class actions, including against other financial institutions.

19. Although Plaintiffs believe they have a strong chance on the merits, Plaintiffs might not certify the classes or would lose at summary judgment or trial, or on appeal.

20. A Settlement Fund that represents approximately 45% of the Class Fees allegedly wrongly charged to Settlement Class Members, as this Settlement does—and without the inherent litigation risks—is a very fair and reasonable recovery.

21. Each of these risks, by itself, could easily have impeded Plaintiffs' and the Settlement Class' success at trial. Under the circumstances, Plaintiffs and Class Counsel appropriately determined that Settlement outweighs the gamble of continued litigation.

22. This prospective relief will, Class Counsel estimates, save the Settlement Class and BPPR accountholders approximately \$9 million over the next five years.

23. Class Counsel has extensive experience in litigating consumer and employment class actions. Here, Class Counsel devoted substantial time and resources investigating, litigating, and resolving the Actions. Plaintiffs settled the Actions with the benefit of Class Counsel's years of experience litigating cases like this one, discovery, and data and damage analysis.

24. Numerosity is satisfied because the Settlement Class consists of tens of thousands of BPPR customers, and joinder of all such persons is impracticable.

25. There are multiple questions of law and fact – centering on the alleged systematic practice of assessing fees – that are common to the Settlement Class Members, alleged to have injured all Settlement Class members in the same way, and would generate common answers central to the claims' viability were the Action to be tried.

26. Claims of all members of a purported class need not be identical. For settlement approval purposes, to the extent that Plaintiffs are typical of absent Settlement Class Members because they were assessed more than one NSF fee or both a NSF and an OD fee on “items”

resubmitted for payment in connection with an ACH and/or a paper check transaction, they will benefit equally from the relief provided by the Settlement.

27. Plaintiffs' interests are coextensive with, not antagonistic to, the Settlement Class' interests because Plaintiffs and the absent Settlement Class Members have the same interests in the relief afforded by the Settlement, and absent Settlement Class Members have no diverging interests.

28. Further, Plaintiffs are represented by qualified and competent counsel with extensive experience and expertise prosecuting complex class actions, including similar consumer actions.

29. Class Counsel has devoted substantial time and resources to this Action and will vigorously protect the interests of the Settlement Class.

30. Certification of the Settlement Class for settlement purposes is further appropriate because the questions of law or fact common to all members of the Settlement Class substantially outweigh any possible issues that are individual to each member of the Settlement Class.

31. For example, each Settlement Class Members' relationship with BPPR arises from Account agreements that are the same or substantially similar in all relevant respects to the other Settlement Class members' agreements, and the fees at issue were charged based on "items" resubmitted for payment in connection with an ACH and/or a paper check transaction.

32. The proposed Notice Program satisfies these content requirements. It is designed to reach a high percentage of the Settlement Class by sending Email Notice or Postcard Notice to Settlement Class Members and exceeds the requirements of constitutional due process.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15th day of August, 2022, at Washington, D.C.

/s/ Jeffrey D. Kalief

JEFFREY D. KALIEL