

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:23-cv-235-MOC-WCM**

AARON ASELTINE, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT
AND CERTIFYING CLASS FOR SETTLEMENT PURPOSES**

The Parties¹ to the above-captioned action currently pending against BANA have agreed to a settlement, the terms and conditions of which are set forth in an executed Settlement Agreement and Release. The Parties reached the Settlement through arm's-length negotiations, after conducting appropriate discovery into the liability and damages at issue. Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the proposed Settlement Class would fully, finally, and forever resolve, discharge, and release their Incoming Wire Transfer Fee claims in exchange for defendant BANA's total payment of \$21,000,000.00, inclusive of all attorneys' fees, costs, Service Award to the Class Representative, and Settlement Administration Costs, to create a Settlement Fund to benefit the Settlement Class.

The Settlement has been filed with the Court, and Plaintiff has filed an Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement and Release, along with a

¹ All capitalized terms herein shall have the same meaning as those defined in the Settlement Agreement, attached to the Motion for Preliminary Approval as *Exhibit A*.

Memorandum of Law (collectively “Motion”). Upon considering the Motion and exhibits thereto, the Settlement, the record in these proceedings, the representations and recommendations of Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to these proceedings; (2) the Parties have provided the Court with information sufficient to enable it to determine that Notice should be given to the Settlement Class; (3) the proposed Settlement Class meets the requirements of Federal Rule of Civil Procedure 23 and should be certified for settlement purposes only; (4) the persons and entities identified below have adequately represented the proposed Settlement Class and should be appointed Class Representative and Class Counsel; (5) the Settlement is the result of informed, good-faith, arm’s-length negotiations between the Parties and their capable and experienced counsel and is not the result of collusion; (6) the Settlement is within the range of reasonableness and should be preliminarily approved; (7) BANA should disclose data concerning Settlement Class members to the Settlement Administrator for purposes of implementing the proposed Notice Program; (8) the proposed Notice Program and proposed forms of Class Notice satisfy Rule 23 and constitutional due process requirements, and are reasonably calculated to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, Class Counsel’s application for Attorneys’ Fee and Cost Award and application for Service Award for the Class Representative, their rights to opt-out of the Settlement or object to the Settlement, Attorneys’ Fees and Costs for Class Counsel, and/or the Service Award for the Class Representative; (9) good cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule of Civil Procedure 23(e), to assist the Court in determining whether to grant Final Approval of the Settlement and enter the Final Approval Order, and whether to grant Class Counsel’s Attorneys’ Fee and Cost application and request for a Service Award for the Class Representative; and (10) the other related matters

pertinent to the Preliminary Approval of the Settlement should also be approved.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as follows:

1. The terms of the Agreement are hereby incorporated by reference in this Preliminary Approval Order as if fully set forth herein.
2. The Court has jurisdiction over the subject matter and Parties to this proceeding pursuant to 28 U.S.C. § 1332.
3. Venue is proper in this District.

Provisional Certification and Appointment of Class Representative and Class Counsel

4. The Court finds, for settlement purposes, that the Rule 23 factors are present and that certification of the proposed Settlement Class is appropriate under Rule 23. The Court therefore provisionally certifies the following Settlement Class:

All Accountholders in the United States who, during the Class Period, paid and were not refunded an Incoming Wire Transfer Fee.

Excluded from the Settlement Class is BANA, 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.

The Class Period is March 8, 2019, through August 31, 2023.

5. Specifically, the Court finds, for settlement purposes, that the Settlement Class satisfies the following factors of Rule 23:

- i. Numerosity: In the Action, there are more than a million members of the proposed Settlement Class. Their joinder is impracticable. Thus, the Rule 23(a)(1) numerosity requirement is met.

- ii. Commonality: The threshold for commonality under Rule 23(a)(2) is not high. Here, the commonality requirement is satisfied because there are multiple questions of law

and fact that center on BANA's class-wide policies and practices and are common to the Settlement Class.

iii. Typicality: The Plaintiff's claims are typical of the Settlement Class for purposes of this Settlement because they concern the same alleged BANA policies and practices, arise from the same legal theories, and allege the same types of harm and entitlement to relief. Rule 23(a)(3) is therefore satisfied.

iv. Adequacy: Adequacy under Rule 23(a)(4) relates to: (1) whether the proposed class representative has interests antagonistic to the Settlement Class; and (2) whether the proposed class counsel has the competence to undertake the litigation at issue. Rule 23(a)(4) is satisfied here because there are no conflicts of interest between the Plaintiff and the Settlement Class, and Plaintiff has retained competent counsel to represent him and the Settlement Class. Class Counsel here regularly engage in consumer class litigation and other complex litigation similar to the present Action, and have dedicated substantial resources to the prosecution of the Action. Moreover, the Plaintiff and Class Counsel have vigorously and competently represented the interests of the Settlement Class in the Action.

v. Predominance and Superiority: Rule 23(b)(3) is satisfied for settlement purposes, as well, because the common legal and alleged factual issues here predominate over individualized issues, and resolution of the common issues for thousands of members of the Settlement Class in a single, coordinated proceeding is superior to thousands of individual lawsuits addressing the same legal and factual issues. With respect to predominance, Rule 23(b)(3) "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation" and "requires that common issues predominate over issues affecting only individual class members." Based on the record currently before the Court, the predominance

requirement is satisfied here for settlement purposes because common questions present a significant aspect of the case and can be resolved for all Settlement Class Members in a single common judgment.

6. The named Plaintiff, Aaron Aseltine, is designated as Class Representative.

7. The following attorneys and firms are appointed as Class Counsel: Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A.; Sophia Gold of KalieGold PLLC; David Wilkerson of The Van Winkle Law Firm.

Preliminary Approval of the Settlement

8. At the preliminary approval stage, the Court's task is to evaluate whether giving notice is justified by the Parties' showing that the Court will likely be able to approve the proposed Settlement under Rule 23(e)(2), and certify the Settlement Class. Fed. R. Civ. P. 23(e)(1)(B).

9. The Court preliminarily approves the Settlement and the exhibits attached to the Motion for Preliminary as fair, reasonable and adequate. The Court finds it has information sufficient to determine that notice should be given to the Settlement Class. The information provided indicates the Class Representative and Class Counsel have adequately represented the Settlement Class; that the Settlement reached is the product of informed, good-faith, arm's-length negotiations between the Parties and their capable and experienced counsel. The Court further preliminarily finds that the Settlement, including exhibits, is within the range of reasonableness and possible judicial approval, such that: (a) a presumption of fairness is appropriate for the purposes of Preliminary Approval; and (b) it is appropriate to effectuate Notice to the Settlement Class, as set forth below and in the Settlement, and schedule the Final Approval Hearing to assist the Court in determining whether to grant Final Approval to the Settlement and enter a Final Approval Order.

10. Subject to Final Approval of the proposed Settlement, and subject to the provision of

Notice required by this Preliminary Approval Order, the Court approves the provisions of the Agreement making the Settlement and its release of claims binding on all Settlement Class Members, whether or not they actually receive notice of the Action or the Settlement.

Approval of Notice and Notice Program and Direction to Effectuate Notice

11. The Court approves the form and content of the Notice to be provided to the Settlement Class, substantially in the forms attached to the Agreement. The Court further finds that the Notice Program is the best practicable under the circumstances and reasonably calculated to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, their rights to opt-out of the Settlement or object to the Settlement, Attorneys’ Fees and Costs to Class Counsel, and Service Award for the Class Representative. The Notice Program will provide sufficient notice to all persons entitled to notice. The Notice Program satisfies all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of Due Process.

12. The Court approves the appointment of Kroll, LLC as the Settlement Administrator.

13. The Settlement Administrator shall implement the Notice Program, as set forth in the Agreement, including using the attached Email Notice, Postcard Notice, and Long Form Notice, and approved by this Preliminary Approval Order. Class Counsel and BANA’s Counsel may implement immaterial changes to those Notices as necessary to effectuate the Notice Program.

Final Approval Hearing, Opt-Outs, and Objections

14. A Final Approval Hearing shall be held before the Court on _____, 2024, at ___:___ a.m./p.m., in Courtroom # _____ of the United States District Court for the Western District of North Carolina, located at Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, NC 28202, to determine, among other things: (a) whether the Settlement is fair,

reasonable, and adequate, and should be granted Final Approval; (b) whether Settlement Class Members should be bound by the Releases set forth in the Agreement; (c) whether the Settlement Class should be finally certified; (d) the amount of Service Award for the Class Representative, if any; and (e) the Attorneys' Fees and Costs to be awarded to Class Counsel, if any. The Final Approval Hearing may be adjourned or continued by the Court without the provision of additional notice other than updating the Settlement Website. Further, the Final Approval Hearing may be held virtually, in which case notice of the instructions for such virtual hearing shall be posted on the Settlement Website.

15. The Court directs that any person within the Settlement Class definition who wishes to opt-out of the Settlement may exercise their right to opt-out of the Settlement Class by completing and mailing a request to the address set forth in the Notice. Such request must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. For a Settlement Class member's opt-out to be valid, it must contain his or her original signature, current postal address, and a specific affirmative statement that the proposed Settlement Class member wishes to opt-out of the Settlement. If an Account has more than one Accountholder, and if one Accountholder excludes himself or herself from the Settlement Class, then all Accountholders on that Account shall be deemed to have opted-out of the Settlement with respect to that Account, and no Accountholder shall be entitled to a payment under the Settlement.

16. A request to opt-out that does not comply with all the foregoing requirements, that is sent to an address other than the one designated in the Notice, or that is not postmarked by the Opt-Out Deadline, shall be invalid, and the person(s) serving such a request shall be bound as a Settlement Class Member and by the Agreement, if the Agreement is finally approved. No member of the Settlement Class may purport to exercise any opt-out right of any other person, or purport to opt-out

other members of the Settlement Class as a group, aggregate, or class involving more than one person. Any such purported opt-out request shall be invalid. Any member of the Settlement Class who successfully opts-out of the Settlement shall be deemed to have waived any rights or benefits under the Settlement, and will have no standing to object to the Settlement.

17. The Court further directs that any Settlement Class Member who wishes to object to the Settlement must file a written objection with the Settlement Administrator and/or the Court by the Objection Deadline and serve the objection concurrently on Class Counsel and BANA's Counsel. To be considered valid, each objection must set forth:

- a. the objector's full name, address, and telephone number, and email address (if any);
- b. information identifying the objector as a Settlement Class Member, including evidence that the objector is a member of the Settlement Class;
- c. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- d. the identity of all counsel representing or assisting the objector, if any;
- e. the identify of all counsel representing the objector who will appear at the Final Approval Hearing, if any;
- f. a list of all Persons who will be called to testify at the Final Approval in support of the objection, if any;
- g. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
- h. the objector's signature and the signature of the objector's duly authorized attorney or duly authorized representative (along with documentation setting forth such representation), if any;

- i. a list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action settlement within the last 3 years;
- j. a list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any Person) has filed an objection to any proposed class action settlement within the last 3 years; and
- k. a list, by case name, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

18. Any objection made by or through an attorney must also include: (a) the identity and number of the Settlement Class Members represented by objector's counsel; (b) the number of such represented Settlement Class Members who have opted-out of the Settlement Class; and (c) the 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 objector he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BANA's Counsel, not later than 15 days before the Final Approval 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.

19. Any Settlement Class Member who, before the Objection Deadline, files and serves a written objection satisfying the requirements of this section may appear at the Final Approval

Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of the Settlement. Settlement Class Members, or their attorneys, intending to make an appearance at the Final Approval Hearing must deliver to Class Counsel and BANA's Counsel and have file-marked by the Court, no later than the Objection Deadline, or as the Court otherwise may direct, a "Notice of Intent to Appear." The Notice of Intent to Appear must: (i) state how much time the Settlement Class Member anticipates needing to present the objection; (ii) identify, by name, address, and telephone number all witnesses the Settlement Class Member proposes to have testify; (iii) summarize in detail the anticipated testimony of all such witnesses; (iv) identify all exhibits the Settlement Class Member intends to offer in support of the objection; and (v) attach complete copies of all such exhibits..

Motion for Final Approval

20. Plaintiff shall file his Motion for Final Approval seeking Final Approval, the Attorneys' Fee and Cost Award, and Service Award no later than 45 days prior to the original date for the Final Approval Hearing.

21. The Parties shall file their responses to timely filed objections no later than 5 days prior to the Final Approval Hearing.

Effect of Failure to Approve Settlement or Termination

22. As detailed more fully in the Agreement, in the event of termination, all of the Parties' respective pre-settlement claims and defenses will be preserved, including, but not limited to, Plaintiff's right to seek class certification and BANA's right to oppose class certification. Any discussions, offers, or negotiations associated with the Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if the Agreement had not been negotiated,

made, or filed with the Court.

Stay/Bar of Other Proceedings

23. All proceedings in the Action are hereby stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be granted Final Approval, Plaintiff, all Accountholders in the Settlement Class, and persons purporting to act on their behalf are hereby enjoined from commencing, prosecuting (either directly, representatively or in any other capacity), or continuing to litigate against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of the claims made in the Action or those in the Released Claims.

24. Based on the foregoing, the Court sets the following schedule of actions which must precede the Final Approval Hearing set for **October 21, 2024**.

- a. The Settlement Administrator shall complete the Notice Program no later than 60 days before the Final Approval Hearing;
- b. Plaintiffs shall file their Motion for Final Approval no later than 45 days before the Final Approval Hearing;
- c. Settlement Class Members must file any objections to the Settlement, Class Counsel's Attorneys' Fee and Cost Award, and/or the Service Award no later than 30 days before the Final Approval Hearing;
- d. Settlement Class members must submit their opt-out requests from the Settlement no later than 30 days before the Final Approval Hearing; and
- e. The Parties shall file their responses to timely filed objections no later than 5 days before the Final Approval Hearing.

Signed: June 4, 2024

