

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA**

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 3:23-cv-00235-MOC-WCM

SETTLEMENT AGREEMENT AND RELEASE

Subject to approval by the Court, this Settlement Agreement and Release is made and entered into by (1) Plaintiff, Aaron Aseltine, individually and as the representative of the Settlement Class¹ and (2) Defendant Bank of America, N.A. The Parties intend for this Settlement Agreement to fully and finally resolve and settle all released rights and claims to the extent set forth below and subject to the terms and conditions set forth below.

RECITALS

WHEREAS, Plaintiff, a California citizen and resident, filed a class action on March 8, 2023, against BANA in Superior Court of the County of Mecklenburg, North Carolina, which BANA removed to the United States District Court for the Western District of North Carolina on April 25, 2023, arising from BANA's alleged unfair, deceptive, and unlawful practice of misleading consumer Accountholders into paying Incoming Wire Transfer Fees on incoming payments received in their Accounts (ECF No. 1).

WHEREAS, on June 1, 2023, BANA moved to dismiss the class action complaint (ECF

¹ Capitalized terms herein shall have the same meanings as those defined in Section I below.

No. 9). On June 22, 2023, Plaintiff filed his Response in Opposition to the Motion to Dismiss (ECF No. 17). On July 13, 2023, BANA filed its Reply in Support of its Motion to Dismiss (ECF No. 19). On July 20, 2023, this Court denied the Motion to Dismiss in its entirety, allowing claims for breach of contract, violation of N.C.G.S. § 75.1-1, *et seq.* (UDTPA), and violation of California Business and Professions Code section 172,00, *et seq.* (UCL) to proceed (ECF No. 20).

WHEREAS, BANA filed its Answer to the Complaint on October 11, 2023 (ECF No. 22).

WHEREAS, on October 12, 2023, the Court issued its Notice to the Parties to conduct an Initial Attorneys Conference pursuant to Local Rule 16.1, submit the required Certificate of Initial Attorneys Conference, and, if applicable, a joint stipulation to consent to jurisdiction of a U.S. Magistrate Judge. The Parties filed the Certification and Report of Fed. R. Civ. P. 26(f) Conference and Discovery Plan on November 2, 2023 (ECF No. 24). Thereafter, the Court held an Initial Pretrial Conference on November 21, 2023. During that conference, the Parties advised the Court they wished to extend certain deadlines in the previous schedule to have adequate time to explore settlement. Following that Conference, at the direction of the Court, the Parties met and conferred regarding the pretrial schedule, and on December 1, 2023, they filed a Certification and Report of Fed. R. Civ. P. 26(f) Conference and Amended Discovery Plan (ECF No. 27). On December 6, 2023, the Court issued its Initial Pretrial Order and Case Management Plan (ECF No. 28).

WHEREAS, on November 15, 2023, the Parties exchanged their initial disclosures.

WHEREAS, on November 8, 2023, Plaintiff served interrogatories and document requests on BANA. After agreeing to provide BANA additional time, BANA responded to those requests on February 16, 2024. For its discovery responses and its initial disclosures, BANA produced 3,145 pages of documents, along with sample data pertaining to the identification of Accounts charged the challenged Incoming Wire Transfer Fees using BANA's regularly maintained

Account-level transaction data. Interrogatory responses and document production included relevant Account agreements, fee schedules, and other disclosures, allowed for the identification of the Account types subject to the challenged Incoming Wire Transfer Fee policies, and the Accountholders who were assessed those fees. Plaintiff also served BANA with a deposition notice pursuant to Fed. R. Civ. P. 30(b)(6) on January 23, 2024, and deposed BANA on some of those topics, focusing on the available damages data and the calculation of assessed and refund Incoming Wire Transfer Fees, on March 19, 2024.

WHEREAS, the Parties scheduled a mediation date for February 29, 2024, before the Honorable Jay Ghandi (Ret.) from JAMS in Los Angeles, California. In anticipation of mediation, the Parties discussed the damages data BANA produced and the Accounts that were the subject of the challenged Incoming Wire Transfer Fee policies to be prepared for a productive mediation. The Parties also submitted detailed mediation statements to the mediator.

WHEREAS, the Parties participated in a full day arm's-length mediation on February 29, 2024; however, the Parties did not settle that day.

WHEREAS, the Parties continued to negotiate in good faith over the next several weeks. The Parties finally agreed to the basic terms of settlement subject to the Parties negotiation and drafting of this Agreement.

WHEREAS, Plaintiff filed a Notice of Settlement on April 11, 2024, in the Action. *See* ECF No. 32.

WHEREAS, the Parties are ready and willing to make and enter into this Settlement Agreement to settle the claims of the Class Representative and all putative class members in the Action.

WHEREAS, the Parties recognize that the outcome of the Action is uncertain, and that a

final resolution through the litigation process would likely require several years of protracted adversarial litigation and appeals; involve substantial risk and expense; and could result in additional expenses associated with possible future litigation raising similar or duplicative claims. Class Counsel has concluded, after inquiry and investigation of the facts, that the terms of this Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class; and the Parties and their counsel have agreed to resolve the Action as a class action settlement according to the terms of this Settlement Agreement.

WHEREAS, BANA denies all wrongdoing and liability, denies that Class Representative's claims entitle him or the Settlement Class to any relief, and denies that anyone was harmed by the conduct the Class Representative alleges. Nevertheless, BANA desires to settle the Class Representative's and putative class members' claims on the terms described herein, solely for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing litigation, and in order to put the litigation to rest.

NOW, THEREFORE, IT IS HEREBY AGREED, by Class Counsel, the Plaintiff, on behalf of himself and the Settlement Class, and BANA, without any admission or concession whatsoever by the Parties as to the strength or weakness of the merits of the claims and defenses asserted in the Action, that all Released Claims against BANA be fully and forever settled, compromised, released, and dismissed on the merits with prejudice on the following terms and conditions, subject to the Court's approval:

I. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified in this Section 1 below:

1.1. "Account" means any consumer checking or savings account maintained by BANA

at some point during the Class Period.

1.2. “Accountholder” means any individual who is or was identified as an owner of an Account that was opened on or before August 31, 2012. It includes Current Accountholders and Past Accountholders.

1.3. “Action” means the above-captioned action, *Aaron Aseltine v. Bank of America, N.A.*, 3:23-cv-00235-MOC-WCM, pending in the United States District Court for the Western District of North Carolina.

1.4. “Attorneys’ Fees and Costs” means the attorneys’ fees and costs that Class Counsel intend to seek under this Settlement Agreement.

1.5. “Attorneys’ Fees and Costs Award” means the Attorneys’ Fees and Costs, if any, awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

1.6. “BANA” means Defendant Bank of America, N.A.

1.7. “BANA’s Counsel” means Laura A. Stoll and Laura G. Brys of Goodwin Procter LLP, and Bradley Kutrow of McGuire Woods LLP.

1.8. “CAFA Notice” means notice of this proposed Settlement to the United States Attorney General and appropriate state Attorneys General, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

1.9. “Class Counsel” means Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A.; David M. Wilkerson of The Van Winkle Law Firm; and Sophia Gold of KalielGold PLLC.

1.10. “Class List” means the list of all Settlement Class Members and their email addresses (to the extent available) and last known postal addresses provided by BANA to the Settlement Administrator for the purposes of disseminating Notice. The Class List shall be designated Confidential and protected pursuant to the terms of the Stipulated Protective Order, and

its usage shall be limited to administration of the Notice Program as stated in Section 5.

1.11. “Class Period” means the time period beginning on March 8, 2019, through August 31, 2023.

1.12. “Class Representative” means Aaron Aseltine.

1.13. “Complaint” means the operative complaint in this Action.

1.14. “Court” means the United States District Court for the Western District of North Carolina.

1.15. “Current Accountholder” means a Settlement Class member who is an Accountholder of BANA as of the date of the Preliminary Approval or the Effective Date as specified herein.

1.16. “Effective Date” means the next business day after the entry of the Final Approval Order and Final Judgment and Order of Dismissal provided there are no objections to the approval of the Settlement. If there are objections, then the Effective Date shall mean the next business day following the last date on which a notice of appeal directed to the entry of the Final Approval Order and Final Judgment and Order of Dismissal could have been timely filed but with no notice of appeal having been filed; or, should a notice of appeal be filed, it shall mean the next business day after the Final Approval Order and Final Judgment and Order of Dismissal is affirmed, all appeals are dismissed, and no further appeal is permitted.

1.17. “Email Notice” means the short form of notice that shall be sent by email to Current Accountholders as of the date of the Preliminary Approval Order who have agreed to receive notices from BANA by email, substantially in the form attached as *Exhibit 1*.

1.18. “Final Approval” means the approval of this Settlement by the Court following the Final Approval Hearing and entry of the Final Approval Order on the Court’s docket.

1.19. “Final Approval Order” means a final order and judgment in which the Court gives Final Approval to the Settlement and dismisses with prejudice the Class Representative’s and Settlement Class Members’ claims and enters a judgment according to the terms set forth herein.

1.20. “Final Approval Hearing” means the hearing at which the Court will consider and finally decide whether to approve this Settlement, enter the Final Approval Order, and make other such rulings contemplated by this Agreement.

1.21. “Final Judgment and Order of Dismissal” means a final judgment that dismisses the Action with prejudice following the Final Approval of the Settlement pursuant to Fed. R. Civ. P. 58.

1.22. “Incoming Wire Transfer Fees” means BANA fees assessed to Accountholders related to the receipt of incoming wire transfers into their Accounts.

1.23. “Long Form Notice” means the form of notice that shall be posted on the Settlement Website and available to Settlement Class members by mail on request made to the Settlement Administrator in substantially the same form as that attached hereto as *Exhibit 3*. A Spanish language translation of the Long Form Notice shall be available on the Settlement Website or on request made to the Settlement Administrator.

1.24. “Motion for Final Approval” means the motion seeking Final Approval of the Settlement, the Attorneys’ Fees and Cost Award, and the Service Award.

1.25. “Motion for Preliminary Approval” means the motion filed by the Plaintiff seeking Preliminary Approval of the Settlement.

1.26. “Net Settlement Fund” means the Settlement Fund, minus Court-approved Attorneys’ Fees and Cost Award to Class Counsel, Court-approved Service Award to the Class Representative, and Settlement Administration Costs.

1.27. “Notice” means the notice of the Settlement approved by the Court to advise the Settlement Class of the Settlement and how to opt-out or object, consistent with the requirements of due process and Fed. Rule Civ. P. 23, and substantially in the forms materially the same as *Exhibit 1* (Email Notice), *Exhibit 2* (Postcard Notice), and *Exhibit 3* (Long Form Notice), attached hereto.

1.28. “Notice Program” means the plan for sending Notice to the Settlement Class, including the Email Notice, Postcard Notice, and Long Form Notice.

1.29. “Opt-Out Deadline” or “Objection Deadline” means the period that begins the day after the earliest date on which the Notice is first distributed, and that ends no later than thirty (30) days before the original date set for the Final Approval Hearing.

1.30. “Party” means the Plaintiff or BANA, and “Parties” means Plaintiff and BANA, collectively.

1.31. “Past Accountholder” means a Settlement Class member who is not an Accountholder of BANA as of the date of the Preliminary Approval Order or the Effective Date as specified herein.

1.32. “Plaintiff” means Aaron Aseltine.

1.33. “Person” means a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

1.34. “Postcard Notice” means the short form of Notice that shall be sent by mail to Accountholders who have not agreed as of the date of Preliminary Approval to receive notices from BANA by email, substantially in the form attached as *Exhibit 2*.

1.35. “Preliminary Approval” means preliminary approval of the Settlement Agreement by the Court, conditional certification of the Settlement Class, and approval of the method and

content of the Notice to the Settlement Class.

1.36. “Preliminary Approval Order” means the order on the Motion for Preliminary Approval.

1.37. “Released Claims” means any individual, class, representative, group or collective claim, liability, right, demand, suit, matter, obligation, damage, loss, action or cause of action, of every kind and description, that the Releasing Parties have or may have, including assigned claims, whether known or Unknown Claims, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, accrued or un-accrued, latent or patent, contingent or non-contingent, liquidated or un-liquidated, at law or in equity, matured or un-matured, apparent or unapparent, that the Class Representative or Settlement Class Members raised or could have raised in the Action, or which they could raise in the future, in any court, tribunal, forum or proceeding, arising out of or relating in any way to allegations made in the Action. The Released Claims described herein include, but are not limited to, claims or defenses concerning Incoming Wire Transfer Fees, and any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions concerning Incoming Wire Transfer Fees during the Class Period.

1.38. “Released Parties” refers to BANA and each of its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each Person or entity acting or purporting to act for them or on their behalf, including, but not limited to, Bank of America Corporation and all of its

subsidiaries and affiliates.

1.39. “Releasing Parties” means the Class Representative and Settlement Class Members, and any Person claiming by or through the Class Representative and each Settlement Class Member, including their respective past, present and future heirs, children, spouses, beneficiaries, conservators, executors, estates, administrators, assigns, attorney, agents, consultants, and any other representatives of any of these Persons and entities.

1.40. “Service Award” means the award Plaintiff will move the Court for in the Motion for Final Approval seeking an award for serving as the Class Representative.

1.41. “Settlement” means the agreement between the Class Representative, on behalf of himself and as the proposed representative of the Settlement Class, and BANA to settle and compromise the Class Representative’s and Settlement Class Member’s claims in the Action, as memorialized in this Agreement and exhibits attached hereto.

1.42. “Settlement Administrator” means the qualified third-party administrator and agent agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval Order to administer the Settlement, including administering the Notice Program. The Parties agree to recommend the Court appoint Kroll, LLC as the Settlement Administrator.

1.43. “Settlement Administration Costs” means the costs and expenses reasonably and actually incurred in obtaining the services of the Settlement Administrator to facilitate the Settlement, including but not limited, to costs of sending Notice to Settlement Class members and costs of sending Settlement Class Member Payments to Settlement Class Members. All Settlement Administration Costs shall be paid out of the Settlement Fund.

1.44. “Settlement Agreement” or “Agreement” means this Stipulation and Settlement Agreement and Release.

1.45. “Settlement Class” means 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, directors, employees, all Settlement Class members who make a timely election to opt-out, and all judges assigned to this litigation and their immediate family members.

1.46. “Settlement Class Member” means any Person who falls within the definition of the Settlement Class, as further set forth above, and who does not timely submit a valid request to opt-out from the Settlement Class and who is entitled to benefits of the Settlement, including a Settlement Class Member Payment.

1.47. “Settlement Class Member Payment” means the settlement payment amount attributable to each Settlement Class Member to be computed by the Settlement Administrator according to the payment allocation described below.

1.48. “Settlement Fund” means the \$21,000,000.00 which BANA will be obligated to pay under the terms of this Settlement and which shall be placed into escrow as consideration for BANA’s agreement to settle the claims with the Settlement Class Members in this Action. The Settlement Fund represents the total extent of BANA’s monetary obligations under this Settlement and includes all sums to be paid under this Settlement Agreement as the consideration to eligible Settlement Class Members, including a Service Award, if any, the Attorneys’ Fees and Cost Award, if any, and any Settlement Administration Costs.

1.49. “Settlement Website” means the website to be created, launched, and maintained by the Settlement Administrator which shall provide access to relevant case documents, including the Long Form Notice, Complaint, Motion for Preliminary Approval, Preliminary Approval Order, Motion for Final Approval, Final Approval Order, and other relevant documents agreed to by the

Parties or ordered by the Court.

1.50. “Unknown Claims” means any claim arising out of or related to Incoming Wire Transfer Fees that a Releasing Party does not know or suspect exists in his, her or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Settlement. The Settlement is intended to extinguish all Released Claims arising out of Incoming Wire Transfer Fees, and, consistent with such intentions, the Releasing Parties shall waive their rights to the extent permitted by state law, federal law, foreign law or principle of common law, which may have the effect of limiting the release set forth above. Class Representative, on behalf of himself and the Releasing Parties, expressly waive and release any and all provisions, rights, and benefits conferred by California Civil Code Section 1542, and by any law of any other jurisdiction, or principle of common law, that is similar, comparable, or equivalent in effect to California Civil Code Section 1542 with respect to the release of claims. California Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

In making this waiver of rights, the Class Representative, on behalf of himself and the Releasing Parties, acknowledge that he and Settlement Class Members may discover facts in addition to or different from those that he now knows or believes to be true with respect to the subject matter of this release, but that it is his intention, as Class Representative and on behalf of the Settlement Class Members, to fully, finally and forever settle and release any and all claims released hereby known or unknown, suspected or unsuspected, which now exist, or heretofore

existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts for any potential claims arising out of or related to Incoming Wire Transfer Fees. The Class Representative, and the Settlement Class Members by operation of the judgment, shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for, constitutes separate consideration for, and was a key element of the Settlement and was relied upon by the BANA in entering into the Settlement.

1.51. As used herein, the plural of any defined term includes the singular thereof and *vice versa*, except where the context requires otherwise.

2. SETTLEMENT CONSIDERATION

2.1. Cash Benefits: BANA shall fund the \$21,000,000.00 Settlement Fund in accordance with Section 6.

3. SETTLEMENT CLASS

3.1. Settlement Class. In order to effectuate the Settlement, the Parties agree and consent, for settlement purposes only, that the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) are satisfied, and subject to Court approval, the Settlement Class shall be certified.

3.2. Certification for Settlement Purposes. The Parties’ agreement as to certification of the Settlement Class is solely for purposes of effectuating a settlement and for no other purpose. BANA retains all of its objections, arguments, and defenses with respect to class certification, and reserves all rights to contest class certification, if the Settlement set forth in this Settlement Agreement does not receive the Court’s Final Approval, if the Court’s approval is reversed or vacated on appeal, if this Settlement is terminated as provided herein, or if the Settlement set forth in this Agreement otherwise fails to become effective. The Parties acknowledge there has been no

stipulation to any class or certification of any class for any purpose other than effectuating the Settlement. If the Settlement set forth in this Agreement does not receive Final Approval, if the Court's approval is reversed or vacated on appeal, if this Settlement is terminated as provided herein, or if the Settlement set forth in this Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void ab initio, and this Agreement or any other Settlement-related statement may not be cited or offered into evidence regarding certification of the Settlement Class, or in support of an argument for certifying a class for any purpose related to this or any other proceeding.

4. MOTIONS FOR PRELIMINARY APPROVAL, FINAL APPROVAL, AND FINAL APPROVAL HEARING

4.1. Filing of Motion for Preliminary Approval. As soon as reasonably practicable after execution of this Agreement, Class Counsel shall provide a draft of the Motion for Preliminary Approval to BANA's Counsel, which will seek to (i) certify the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3); (ii) preliminarily approve the Settlement set forth in this Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23; (iii) appoint Aaron Aseltine as Class Representative; (iv) appoint Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A., David Wilkerson of The Van Winkle Firm, and Sophia Gold of KalieGold PLLC, as Class Counsel; (v) approve the proposed Notice Program and forms of Notice and authorize the dissemination of Notice; (vi) approve of and appoint the Settlement Administrator to effectuate the Notice Program and administer the Settlement following Final Approval; and (vii) enjoin and stay any other action raising claims for Incoming Wire Transfer Fees. BANA's Counsel shall have no less than ten (10) business days to review and comment on the Motion for Preliminary Approval. Class Counsel shall file the Motion for Preliminary Approval after the earlier of BANA's approval of the draft or

ten (10) business days after provision of the draft to BANA's Counsel.

4.2. Preliminary Approval Order. Class Counsel agrees that the proposed Preliminary Approval Order, which will be filed with the Motion for Preliminary Approval, will be attached to that motion. The Preliminary Approval Order shall: (i) preliminarily approve the Settlement memorialized in this Agreement as fair, reasonable, and adequate, including the material terms of this Settlement; (ii) set a date for a Final Approval Hearing; (iii) state that if Final Approval of the Settlement is not obtained, the Settlement is null and void, and the Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses; (iv) approve the proposed Notices in the forms attached as *Exhibits 1-3*, and authorize Notice dissemination to the Settlement Class; (v) set deadlines consistent with this Agreement for emailing and mailing of the Notice, the filing of opt-outs and objections, the filing of motions, and the filing of papers in connection with the Final Approval Hearing; (vi) appoint and approve the Settlement Administrator; (vii) set the deadline by which Plaintiff and Class Counsel shall file their Motion for Final Approval, which shall be no later than thirty (30) days prior to the original date set for the Final Approval Hearing; (viii) state that any appeal of the Court's order on the Attorneys' Fees and Cost Award or the motion for a Service Award shall have no effect on the Court's Final Approval of the Settlement; and (ix) prohibit and preliminarily enjoin the Class Representative, all Settlement Class members and Class Counsel and other counsel, in this Court or others, from commencing, prosecuting, and continuing to litigate, or assisting in any lawsuit against the Released Parties that asserts or purports to assert matters within the scope of the release during the time between entry of the Preliminary Approval Order and final determination by the Court regarding whether to grant Final Approval of the Settlement. BANA agrees that it will not oppose the entry of the Preliminary Approval Order, provided it is substantially in the form attached to the Motion for Preliminary Approval and

consistent with the material terms of the Settlement. Without implication of limitation, BANA's agreement that it will not oppose the entry of the Preliminary Approval Order shall not be an admission or concession by it that a class was appropriate in the Action (other than for purposes of this Settlement) or would be appropriate in any other matter, and/or that any relief was appropriate in the Action, for litigation purposes, or would be appropriate in any other matter.

4.3. Filing of Motion for Final Approval. If Preliminary Approval of the Settlement is granted by the Court, the Class Representative shall file the Motion for Final Approval no later than forty-five (45) days before the original date set for the Final Approval Hearing. Class Counsel shall provide drafts of the Motion for Final Approval and proposed Final Approval Order to BANA's Counsel for review and comment at least seven (7) days before it is filed. BANA shall support entry of a Final Approval Order and Final Judgment and Order of Dismissal that: (i) certifies the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purpose of the Settlement; (ii) approves finally the Settlement set forth in this Agreement and its terms as being a fair, reasonable, and adequate settlement as to Settlement Class Members within the meaning of Fed. R. Civ. P. 23 and directing its consummation according to its terms; (iii) finds the Notice Program constituted due, adequate, and sufficient notice of the Settlement set forth in this Agreement and the Final Approval Hearing and meets the requirements of Due Process and the Federal Rules of Civil Procedure; (iv) directs that, as to the Released Parties, the Action shall be dismissed with prejudice, except as provided for in this Agreement, without award of costs; (v) orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims against any Released Party; (vi) retains with the Court exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of the Settlement; and (vii)

determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to BANA shall be final and entered forthwith.

4.4. Final Approval Hearing. The Parties jointly request the Court hold a Final Approval Hearing 180 days after entry of the Preliminary Approval Order or as soon thereafter the Court is available.

4.5. Final Approval. All relief contemplated by this Settlement is expressly contingent upon the Court's Final Approval. The Parties agree that the Final Approval Order and Final Judgment and Order of Dismissal constitutes a final judgment dismissing the Action with prejudice.

5. NOTICE PROGRAM

5.1. Preparation and Production of Settlement Class List. BANA or its agent shall compile the Class List, which shall consist of a list of all Settlement Class members and provide such information to the Settlement Administrator within twenty-one (21) days after the Preliminary Approval Order. The Class List shall include (a) the total amount of Incoming Wire Transfer Fees for each Settlement Class member, (b) whether the Settlement Class member is a Current Accountholder with BANA as of the date of the Preliminary Approval Order, and (c) all known physical addresses and email addresses in BANA's possession, custody, or control, for the Settlement Class member. The Settlement Administrator shall use this information for the sole purpose of identifying the current postal addresses and/or email addresses for the Settlement Class members.

5.2. Dissemination of Class Notice. For purposes of providing Court-approved class Notices and establishing that the best practicable notice has been given, Notice will be provided as follows:

5.2.1. Within forty-five (45) days after entry of the Preliminary Approval Order, for those Settlement Class members that are Accountholders, who have agreed to receive notices from BANA by email, the Settlement Administrator shall begin the process of sending Email Notice to each such Settlement Class member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any Email Notices that are returned as undeliverable, the Settlement Administrator shall send a Postcard Notice in the manner described below. The Email Notice shall inform Settlement Class members how they may request a copy of the Long Form Notice, access the Settlement Website, and contact the Settlement Administrator.

5.2.2. Within forty-five (45) days after entry of the Preliminary Approval Order, for those Settlement Class members that are Accountholders who have not agreed to receive notices from BANA by email, and those from whom the Settlement Administrator was unable to deliver an Email Notice, the Settlement Administrator shall begin the process of mailing those Settlement Class members the Postcard Notice by first-class U.S. mail, postage prepaid, to the last known or best available mailing address. The Postcard Notice shall inform Settlement Class members how they may request a copy of the Long Form Notice, access the Settlement Website, and contact the Settlement Administrator.

5.2.3. The Settlement Administrator shall obtain updates, if any, to the addresses contained therein to any of the following using (i) information reasonably available from a Lexis-Nexis or alternative persons search performed as to each Settlement Class member, (ii) information reasonably available from the National Change of Address database maintained by the United States Postal Service, or (iii) such additional efforts as the

Settlement Administrator reasonably believes are appropriate to identify updated addresses, if any, for each Settlement Class member and/or as the Court may direct. The resulting list shall be the Class List.

5.2.4. The Settlement Administrator shall format the Notice(s) and otherwise administer the Notice Program in a reasonable manner to minimize costs.

5.2.5. For up to forty-five (45) days following the last date on which the Settlement Administrator mailed Postcard Notice, if a Postcard Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Postcard Notice immediately to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. For any Postcard Notice that is returned as undeliverable without a forwarding address, the Settlement Administrator will use commercially reasonable efforts to obtain updated addresses during the 45 days following the date the last Postcard Notice was mailed. The Postcard Notice shall be re-mailed once. Other than as set forth above, BANA and the Settlement Administrator shall have no other obligation to re-mail Class Notice.

5.2.6. In support of the Motion for Final Approval, the Settlement Administrator shall prepare a declaration describing what it did to comply with the Notice Program, as well as providing its opinion that the Notice Program satisfied the requirements of Due Process and Fed. R. Civ. P. 23.

5.2.7. Neither the Parties nor the Settlement Administrator shall have any further obligation to send notice of the Settlement to Settlement Class members once these Notice provisions have been complied with.

5.3. Settlement Website. The Settlement Administrator shall establish a website to

assist in facilitating notice to the Settlement Class members. The Settlement Website, shall be accessible no later than five (5) days prior to commencement of the Notice Program described above. The Settlement Website shall set forth the following information: (i) the Complaint; (ii) this Agreement; (iii) the Long Form Notice, including the Spanish language translation; (iv) the Motion for Preliminary Approval; (v) Preliminary Approval Order; (vi) the method for opting-out of the Settlement; (vii) contact information for the Settlement Administrator; (viii) the Motion for Final Approval and the Final Approval Order; (ix) if the Settlement is terminated, a notice of such termination, which language shall be approved by the Parties; and (x) such other document(s) as the Parties jointly or the Court determine to place on the Settlement Website. The Settlement Website shall be taken down sixty (60) days after the completion of the distribution of remaining funds in the Net Settlement Fund or, if the Settlement is terminated, thirty (30) days after such termination.

5.4. CAFA Notice. The Settlement Administrator shall send CAFA Notice to the United States Attorney General and appropriate state Attorneys General in accordance with 28 U.S.C. § 1715(a) no later than ten (10) days after this Agreement is filed with the Court.

6. PAYMENT OF THE SETTLEMENT FUND

6.1. Payments to Settlement Administrator. Within five (5) business days following BANA advising the Settlement Administrator of the number of Current Accountholders, Past Accountholders, and the breakdown of those Settlement Class members that shall receive Email Notice and Postcard Notice, the Settlement Administrator shall provide an estimate of the Settlement Administration Costs to BANA and Class Counsel. BANA will pay all Settlement Administration Costs within thirty (30) days following its receipt of an invoice from the Settlement Administrator, but not until BANA has received a properly completed W-9 Form from the

Settlement Administrator.

6.2. Escrow Account. Within twenty (20) business days after the date of entry of the Final Approval Order, the Settlement Administrator shall establish and BANA shall fund an escrow account with funds sufficient for the payment of the remainder of the Settlement Fund, less any funds previously provided to the Settlement Administrator for the Settlement Administration Costs, as set forth in this Agreement. BANA (a) shall have the right to impose any reasonable terms and conditions on the operation and maintenance of the fund, and of any funds that it pays in connection with the Settlement, that it deems appropriate to take advantage of the Qualified Settlement Fund provisions of the tax code, as defined in the Treasury Regulations Sections 1.446B-1 or to protect the moneys from intentional or unintentional diversion, expenditure, forfeiture, escheat, or other dispersion that is inconsistent with the express terms of the Settlement, and (b) shall inform Class Counsel of any such terms and conditions. In the event that BANA desires to have the Settlement Administrator enter into an agreement or undertaking to take advantage of the Qualified Settlement Fund provisions of the tax code or to protect the moneys in accordance with this paragraph, or to obtain any order from the Court in connection with this paragraph, the Class Representative agrees not to object to such requested agreement or order other than on the grounds that the terms or relief sought, in whole or in part, is inconsistent with the express terms of the Settlement. BANA shall pay no portion of the Settlement Fund until it has received a properly completed W-9 Form from the Settlement Administrator.

6.3. Application of Settlement Amount. The Settlement Amount shall be applied as follows: To pay all Settlement Administration Costs; to pay any other Court-approved fees and expenses; to distribute the Net Settlement Fund to Settlement Class Members; to pay the Attorneys' Fees and Costs Award; and to pay the Service Award.

6.4. No Other Payments from BANA. As set forth above, BANA shall be responsible for paying the total Settlement Fund. BANA shall have no responsibility for any other costs, including, as further detailed in this Agreement, any Attorneys' Fees and Costs, including any taxes or tax-related costs relating to the Settlement Fund, but all such fees, expenses, and costs shall be paid out of the Settlement Fund as approved by the Court. The Class Representative and Settlement Class Members shall look solely to the Settlement Fund as full, final, and complete satisfaction of all Released Claims. Except as set forth herein, BANA shall have no obligation under this Settlement to pay or cause to be paid any amount of money, and BANA shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, taxes, or damages whatsoever alleged or incurred by Class Representative, by any Settlement Class Member, or by any Releasing Parties, including but not limited to their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Class Representative and Settlement Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

6.5. Interest on Settlement Fund. Any interest earned on the funds in the Settlement Fund, once it has been delivered to the Settlement Administrator, shall be for the benefit of the Settlement Class.

6.6. Use and Disbursal of the Net Settlement Fund

6.6.1. Purpose and Use. The Settlement Fund shall be used only in the manner and for the purposes set forth in this Settlement. No portion of the Settlement Fund shall be disbursed except as expressly set forth herein. The Settlement Fund shall be used only for Settlement Class Member Payments, the

Attorneys' Fees and Costs Award, the Service Award, and Settlement Administration Costs.

6.6.2. Settlement Class Member Payments. Settlement Class Members are entitled to Settlement Class Member Payment distributed from the Net Settlement Fund on a proportionate basis based on the total amount of Incoming Wire Transfer Fees that were assessed to the Accounts of all Settlement Class Members during the Class Period. Each Settlement Class Member will receive a share of the Net Settlement Fund proportionate to the total amount of Incoming Wire Transfer Fees that were assessed to his or her Account(s) during the Class Period.

6.6.3. Timing of Payments. The Net Settlement Fund shall be distributed by the Settlement Administrator to Settlement Class Members only after the Effective Date and after: (i) all timely objections have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (ii) all matters with respect to Class Counsel's Attorneys' Fees and Costs Award have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iii) all matters with respect to the Class Representative's Service Award have been resolved by the Court, and all appeals therefrom have been resolved or the time therefore has expired; and (iv) all Settlement Administration Costs incurred as of that date have been paid.

6.6.3.1. Within seven (7) days after the Effective Date, BANA shall determine whether the Class List needs to be updated with respect to which Settlement Class Members are Current Accountholders

with BANA as of the Effective Date, and if necessary, will provide an updated Class List to the Settlement Administrator. The Settlement Administrator will use the Class List to determine which Settlement Class Members are to receive their Settlement Class Member Payment via a credit to their BANA Account or by check.

6.6.3.2. Within twenty-one (21) days of the Effective Date, the Settlement Administrator shall (i) provide to Class Counsel and to BANA's Counsel the sum total of all Settlement Class Member Payments for Settlement Class Members, including the breakdown of Current Accountholder Settlement Class Members as of the Effective Date who will receive their Settlement Class Member Payments in the form of a credit into the Account from which the Incoming Wire Transfer Fee(s) was paid and Past Accountholder Settlement Class Members who will receive their Settlement Class Member Payment in the form of a check; (ii) provide to BANA, the Class List with the applicable Settlement Class Member Payment Amount owed to each Settlement Class Member owed a credit; and (iii) cause to be transmitted to BANA the total amount of Settlement Class Member Payments for credits via direct deposit into the BANA Accounts of Settlement Class Members who are Current Accountholders as of the Effective Date.

6.6.3.3. Within forty-five (45) days after the Effective Date, BANA shall directly deposit the Settlement Class Member Payments to those Settlement Class Members who are Current Accountholders with

BANA as of the Effective Date into the Account(s) from which the Incoming Wire Transfer Fee(s) was paid. The direct deposit entry shall identify that the funds are for the Settlement Class Member Payment. If BANA is unable to complete certain Account credits, BANA shall within fifteen (15) days deliver the total amount of such undelivered Account credits and a list of the applicable Settlement Class Members to the Settlement Administrator, and those Settlement Class Member Payments will be sent by check following the procedures below.

6.6.3.4. Within thirty (30) days after the Effective Date, the Settlement Administrator shall mail payment notices and Settlement Class Member Payments, in the form of checks, to Past Accountholder Settlement Class Members as of the Effective Date. Within seventy-five (75) days of the Effective Date, checks and payment notices shall also be issued to Settlement Class Members whom BANA was unable to complete an Account credit.

6.6.3.5. Payment pursuant to this Settlement Agreement shall be deemed final and conclusive as against all Settlement Class Members. If any Settlement Check is returned as undeliverable, the Settlement Administrator will attempt to notify the Settlement Class Member, including by attempting to obtain a new mailing address as practical (with any costs incurred treated as Settlement Administration Costs). If, after a second attempt, such Settlement check is again returned as undeliverable, no further efforts need to be taken by the Settlement Administrator. All

Settlement Class Members who do not cash their checks within 180 days otherwise shall be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.

6.6.4. Each Settlement payment notice accompanying a check shall state: “This payment is tendered to you as a class member in *Aseltine v. Bank of America, N.A.* (W.D.N.C.) in consideration for your release from liability of Defendant and other Released Parties as set forth in the Settlement Agreement and Release.” The payment notices shall also notify the recipients the checks must be cashed within 180 days from the date on the check and the enclosed check shall not be valid after that date. In the event a Settlement check becomes void, the Settlement Class Member to whom that Settlement check was made payable will forfeit the right to payment and will not be entitled to have the check reissued or any further distribution from the Net Settlement Fund or to any further recourse against the Parties.

6.6.5. For a jointly held Account, a single check, payable to all Accountholders named on the Account, jointly, and mailed to the first Accountholder listed on the Account.

6.6.6. The Settlement Administrator will make reasonable efforts to locate the proper address for any check returned undeliverable and will re-mail it once to the updated address or, in the case of a jointly held Account, and in the Settlement

Administrator's discretion, to an Accountholder other than the one listed first.

6.7. Remaining Funds. BANA shall not have a reversionary interest in the Settlement Fund. No later than sixty (60) days after the uncashed checks issued for Settlement Class Member Payments become void, any excess funds remaining from the Net Settlement Fund that have not been distributed in accordance with other provisions of this Settlement Agreement shall, if economically feasible, be distributed to the Settlement Class Members who successfully cashed checks or received their Settlement Class Member Payment as a credit. BANA shall make Account credits for a second distribution to Current Accountholders, notating that the payment is for a second distribution. The payment notices accompanying the Settlement checks for a second distribution shall notify the Past Accountholders the checks must be cashed within ninety (90) days from the date on the payment notice and the enclosed check shall not be valid after that date. Any second distributions that BANA is unable to make by credit shall be made by check. If a second distribution of remaining funds costs more than the amount to be distributed or is otherwise economically unfeasible, or if additional funds remain after a second distribution, the Parties shall petition the Court to distribute any remaining funds to a consumer protection or financial services organization as a *cy pres* recipient.

6.8. Jurisdiction Over Payments. All proceedings with respect to the notice, administration and processing of Settlement Class Member Payments and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court.

7. TERMINATION OF THE SETTLEMENT

7.1. This Settlement is contingent on Court approval. If the Court fails to grant Final Approval of the Settlement in any material respect, the Settlement will be subject to termination by any Party. Notwithstanding this paragraph, the Court's order as to the Attorneys' Fees and Costs

Award, Service Award, and/or any plan of distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Agreement.

7.2. Except as otherwise provided herein, in the event the Settlement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action prior to entering into this Agreement. BANA retains all rights regarding any defenses on the statute of limitations that it had as of April 4, 2024. Further, the Parties agree that BANA reserves and preserves all of its defenses and claims related to the Action, and that the Parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming the Action.

7.3. Except as otherwise expressly provided herein, in the event the Agreement is terminated in accordance herewith, is vacated, nor approved, or the Effective Date fails to occur for any reason, the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of BANA, together with any interest earned thereon (and, if applicable, re-payment of any Attorneys' Fees and Costs Award, if any, with respect to such funds) shall be returned to BANA within ten (10) business days from the date of the event causing such termination. However, if BANA is the terminating party, BANA agrees to cover any Settlement Administration Costs incurred or charged by the Settlement Administrator prior to the termination of this Agreement.

8. PROCEDURES FOR OPT-OUTS AND OBJECTIONS

8.1. **Opt-Out Procedures.** The Long Form Notice shall inform proposed Settlement Class members how they may opt-out of the Settlement and shall explain the potential implications of doing so, including the possibility that opting out may preclude later participation in any later

class action against the Released Parties. The Email Notice and Postcard Notice shall direct Settlement Class members to the Long Form Notice and Settlement Website to obtain this information.

8.1.1. A proposed Settlement Class Member may request to opt-out from the Settlement Class by sending a written, printed request for exclusion, addressed to “Opt-Out Requests: Bank of America Incoming Wire Transfer Fees” at the Settlement Administrator’s address as shown in the Notice. The proposed Settlement Class member’s opt-out request must contain his or her original signature, current postal address, email address (if any), and a specific affirmative statement that the proposed Settlement Class member elects to opt-out from the Settlement Class. For any Account with joint Accountholders, an opt-out request by one Accountholder, shall bind all Accountholders on that Account. Opt-Out requests must be postmarked no later than thirty (30) days prior to the original date set for the Final Approval Hearing (the Opt-Out Deadline).

8.1.2. No Party hereto or its counsel shall directly, or indirectly, solicit or encourage any Person to request to opt-out from the Settlement Class.

8.1.3. Persons who purport to opt-out of the Settlement Class as a group, aggregate, or class involving more than one purported Settlement Class member, shall not be considered to have validly opted out.

8.1.4. List of Successful Opt-Outs. Not later than five (5) days after the Opt-Out Deadline, the Settlement Administrator shall provide Class Counsel and BANA’s Counsel a complete list of the successful opt-outs, together with all opt-out requests.

8.2. Objections from Settlement Class Members.

8.2.1. Any Settlement Class Member may object to the Settlement or any matters described in the Notice.

8.2.2. The objection of a Settlement Class Member objecting to the Settlement, the Attorneys' Fees and Cost Award, and/or Service Award shall state:

- (i) the objector's full name, address, telephone number, and email address (if any);
- (ii) information identifying the objector as a Settlement Class Member in this Action, including evidence the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing or assisting the objector, if any; (v) the identity of all counsel representing the objector who will appear at the Final Approval Hearing, if any;
- (vi) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection, if any; (vii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation), if any; (ix) 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 three (3) years; (x) a list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last three (3) years; and (xi) 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. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court by the date certain as ordered by the Court in the Preliminary Approval Order thirty (30) days before the original date set for the Final Approval Hearing (the Objection Deadline) and served concurrently therewith upon Class Counsel and BANA's Counsel.

8.2.3. 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 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 attorneys' fees and costs from anyone other than the objectors he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BANA's Counsel, not later than thirty (30) days before the original date set for the Final Approval Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of attorneys' fees and costs sought by the attorney for representing the objector and the factual and legal justification for the attorneys' fees and costs 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.

8.2.4. Any Settlement Class Member who fails to comply with the requirements for objecting set forth herein shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement, the Attorneys' Fees and Costs Award, and Service Award, and shall be bound by all the terms of the Settlement and by all proceedings, orders and judgments in the Action. The exclusive means for any challenge to the Settlement shall be through the provisions set forth herein. Without limiting the foregoing, any challenge to the Settlement, the Final Approval Order and Final Judgment and Order of Dismissal to be entered upon Final Approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

8.2.5. The Parties shall file their responses to objections to the Settlement no later than ten (10) days prior to the original date set for the Final Approval Hearing.

8.2.6. By filing an objection, the objector and objector's counsel submit to the jurisdiction of the Court for all purposes, including but not limited to subpoenas and discovery.

8.2.7. Objectors must also make themselves available for deposition by counsel for the Parties between the time the objection is filed and a date no later than five (5) days before the Final Approval Hearing, and the objection must include the dates when the objector is available for deposition.

8.2.8. 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. The Notice of Intent to Appear may be incorporated in the objection and must be filed and served no later than thirty (30) days before the Final Approval Hearing.

8.2.9. Any Settlement Class member who fails to timely file such a written statement of his or her intention to object shall be foreclosed from making any objection to the Settlement and shall waive and forfeit any and all rights he or she may have to appear separately and/or object, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments, including but not limited to, the Release contained in this Settlement Agreement.

9. ATTORNEYS' FEES AND COSTS

9.1. Class Counsel will move, as part of its Motion for Final Approval, for an Attorneys' Fees and Costs Award no later than forty-five (45) days prior to the original date set for the Final

Approval Hearing.

9.2. BANA agrees that Class Counsel shall be entitled to an award of reasonable attorneys' fees and costs, to be determined by the Court.

9.3. BANA agrees not to oppose Class Counsel's request for attorneys' fees provided the amount is no more than 33.33% of the Settlement Fund. In addition, Class Counsel may request reimbursement of costs in prosecuting this matter. The Attorneys' Fees and Costs Award shall be paid from the Settlement Fund, with no further obligation by BANA. Based upon the total Settlement Amount of \$21,000,000, BANA will not object to a request for Attorneys' Fees of up to \$7,000,000. However, BANA reserves its rights to object or oppose any request for Attorneys' Fees by Class Counsel over and above that amount.

9.4. Any Attorneys' Fees and Costs Award shall be paid to Class Counsel by the Settlement Administrator within twenty (20) days following Final Approval.

9.5. If the Attorneys' Fees and Costs Award is reduced or reversed on appeal, Class Counsel shall make all necessary refunds into the Settlement Fund no later than thirty (30) days after the Court notifies Class Counsel. Such refunds shall be distributed by the Settlement Administrator to the Settlement Class in the manner provided by the Final Approval Order.

10. SERVICE AWARD TO CLASS REPRESENTATIVE

10.1. Application for Service Award. As part of the Motion for Final Approval, Class Counsel shall apply to the Court for a Service Award to be paid from the Settlement Fund to Plaintiff for serving as the Class Representative in filing the Action and in support of the Settlement. BANA will not oppose a request of up to \$5,000.00 as a Service Award for the Class Representative from the Settlement Fund, with no further obligation by BANA.

10.2. No Additional Obligation by BANA. BANA shall have no other responsibility for

or liability with respect to the payment of a Service Award to the Class Representatives beyond the amount stated above for resolution of the Released Claims herein.

10.3. Timing of Payment. The Service Award shall be paid by the Settlement Administrator no later than twenty (20) days after the Effective Date.

10.4. If a Service Award is reduced or reversed on appeal, Class Representative shall make all necessary refunds and repayments into the Settlement Amount no later than thirty (30) days after the Court notifies Class Counsel. Such refunds shall be distributed by the Settlement Administrator to the Settlement Class in the manner provided by the Final Approval Order.

11. RELEASE OF CLAIMS

11.1. Release of BANA and Released Parties. Upon the Effective Date, in exchange for the relief described herein, each Releasing Party fully and finally releases and discharges the Released Parties of and from the Released Claims. This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion. Subject to the Court's approval, this Settlement Agreement shall bind all Settlement Class Members, and all Released Claims shall be dismissed with prejudice and released as against the Released Parties. The Released Claims are released regardless of whether these claims are known or Unknown Claims, actual or contingent, liquidated or unliquidated.

11.2. Covenant Not to Sue. Provided that the Settlement is granted Final Approval and the Effective Date occurs, the Class Representative, on behalf of himself and the Settlement Class Members, covenants and agrees: (i) not to file, commence, prosecute, continue to litigate, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any

of the Released Parties; (ii) not to organize or solicit the participation of Settlement Class Members, or Persons who would otherwise fall within the definition of the Settlement Class but who requested to opt-out from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Released Parties.

12. DISPUTES RELATING TO THE SETTLEMENT

12.1. Good Faith. The Parties shall work in good faith to resolve any disputes that may arise in connection with the Settlement.

12.2. Best Efforts. Until and unless this Settlement Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, the Class Representative, BANA, Class Counsel, and BANA's Counsel represent and warrant that they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary Approval and Final Approval of this Settlement as promptly as possible, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement.

13. MISCELLANEOUS PROVISIONS

13.1. Non-Disparagement: Other than the Settlement Website required by this Agreement and the Notice Program, the Class Representative, Class Counsel, BANA, and BANA's Counsel shall not issue, or otherwise cause to be issued, any press release, advertisement, or Internet posting related to this Settlement. No press release, advertisement, or Internet posting

shall (i) disparage the Class Representative, Class Counsel, BANA, or BANA's Counsel with respect to any matters or issues alleged or asserted in the Action or relating to this Settlement; or (ii) include evidence or information protected from disclosure in the Action.

13.2. No Admission. Nothing herein shall constitute any admission as to any assertion, claim, or allegation made by any Party, or as to the scope of liability. The Parties further agree that BANA's decision to resolve these claims prior to responding to the Complaint likewise does not constitute any admission as to any assertion, claim, or allegation made by any Party, or as to the scope of liability stated therein. BANA specifically denies any wrongdoing or liability in this Action, including in the Complaint, and specifically denies that a class could or should be certified in the Action for litigation purposes. This Settlement is entered into to resolve all claims amicably and avoid the risk and expense of additional litigation, and does not imply or suggest in any way fault or wrongdoing. The Parties agree this Agreement and its Exhibits, and any and all associated negotiations, documents, discussions, shall not be deemed or construed by anyone to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by BANA.

13.3. Admissibility of Settlement Agreement. This Agreement shall not be offered nor shall be admissible as evidence in any action or proceeding except (i) the motions and hearings necessary to obtain and implement Court approval of this Settlement; and (ii) any hearing to enforce the terms of this Agreement or related order by the Court. This Settlement, whether or not consummated, any proceedings relating to the Settlement, and any of the terms of the Agreement, whether or not consummated, shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of BANA with respect to any fact or matter alleged in the Action, or any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any

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13.8. Entire and Voluntary Agreement.

13.8.1. Knowing and Voluntary Assent. The Parties agree that the Settlement is voluntary and that its terms were negotiated at arm's length. The Parties agree that they were represented by competent and experienced counsel.

13.8.2. Entire Agreement. The Parties intend the Settlement to be a complete and final resolution to the Action. This Agreement contains the Parties' entire agreement on and understanding of the subject-matter at issue in the Action. This Settlement merges with and supersedes all prior negotiations and proposals, whether written or oral.

13.9. Headings and Titles. The headings and titles in this Agreement are for the reader's convenience only and shall not affect or alter the meaning of the Agreement's terms.

defense that has been or could have been asserted.

13.4. Successors and Assigns. This Settlement Agreement's terms shall apply to and bind the Parties and their heirs, successors, and assigns.

13.5. No Assignments. The Class Representative and Class Counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any Released Claim except as set forth herein, and that there are no Persons having any interest in any award of attorneys' fees, litigation costs or the Service Award in connection with the Action. Class Counsel agrees to indemnify and hold BANA and its counsel harmless as to (a) any breach of the representation and warranty contained in the prior sentence; and (b) any claim by any other Person against BANA or its counsel for such an award of attorneys' fees, litigation costs, or Service Award.

13.6. No Tax Advice. BANA may be required to file certain Form 1099 or other information reports with the United States Internal Revenue Service or other government agencies as required indicating its payments to the Settlement Class Members. No representations or advice regarding the tax consequences of this Settlement Agreement have been made by anyone. The Parties further understand and agree that each Party, each Settlement Class Member, and each of Class Counsel shall be responsible for his, her, its, or their own taxes, if any, resulting from this Settlement Agreement and any payments made pursuant to this Settlement Agreement.

13.7. Communications With Parties Relating to Settlement Agreement. All notices, requests for consent, and other formal communications under this Agreement shall be in writing and sent by mail and email to counsel for the Party to whom notice is directed at all of the addresses below. Any Party may change its designated recipient(s) or notice address(es) by written notice to all other Parties.

13.10. Settlement Agreement Controls Over Exhibits. All exhibits attached to this Agreement are hereby incorporated into this Settlement as though fully set forth herein. If there is any conflict between the terms of the Agreement and the attached exhibits, the Agreement shall control.

13.11. Amendments and Modifications. This Settlement may be amended or modified only by a written instrument signed by the Parties or by the respective attorneys, or their respective successors-in-interest.

13.12. Authorization to Sign or Act. The Class Representative and Settlement Class Members expressly authorize Class Counsel to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Settlement to effectuate its terms. Class Counsel are furthermore expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class members that they deem necessary or appropriate. Each attorney or other Person executing the Agreement on behalf of a Party hereto warrants that such attorney or other Person has full authority to do so. The undersigned representative of BANA represents that he or she is fully authorized to enter into and execute this Agreement on behalf of BANA. Class Counsel represent they are fully authorized to conduct settlement negotiations with BANA's Counsel on behalf of the Class Representative and to enter into and execute this Agreement on behalf of the Class Representative and the putative Settlement Class members, subject to approval by the Court.

13.13. Computation of Time. Except as expressly set forth herein, in computing any period of time prescribed or allowed by this Settlement Agreement, the provisions of Federal Rule of Civil Procedure 6 shall govern.

13.14. Continuing Jurisdiction and Exclusive Venue. Each of the Parties, each

Settlement Class Member, and each of the Releasing Parties that are otherwise subject to the jurisdiction of a United States court hereby irrevocably submits to the exclusive jurisdiction and venue of the United States District Court for the Western District of North Carolina for any suit, action, proceeding, case, controversy, or dispute arising from or related to this Agreement and/or Exhibits hereto and the negotiation, performance, or breach of same.

13.15. Construction and Interpretation of Terms. The Parties have cooperated in drafting and preparing this Agreement. There shall therefore be no presumption for or against any Party because that Party initially drafted a particular section or subsection. Before declaring any provision invalid, a court should first attempt to construe the provision as valid, consistent with the Settlement's purposes, and consistent with applicable precedent.

13.16. No Claims Arising from this Settlement Agreement. No Person shall have any claim against any of the Released Parties, against any Class Representative, or against counsel for any Party, based on distribution of benefits made substantially in accordance with this Settlement or related order(s) of the Court.

13.17. Standing of Released Parties. The Released Parties who are not signatories hereto shall be third-party beneficiaries under this Agreement and shall be entitled to enforce this Settlement in accordance with its terms. Aside from the Released Parties, it is not the intention of the Parties to confer third-party beneficiary rights or remedies upon any other Person or entity.


13.18. Applicable Law. This Agreement shall be interpreted under and governed by federal law. To the extent state law applies, the laws of the State of North Carolina shall apply, without regard to choice-of-law principles. All judicial proceedings regarding this Settlement shall be brought only in the Court, the Fourth Circuit Court of Appeals, and the Supreme Court of the United States.

13.19. Counterparts. This Agreement may be executed in two or more counterparts and by email of PDF, both of which shall be deemed an original. Original signatures are not required. All executed counterparts shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts. A complete set of executed Counterparts shall be filed with the Court.

IN WITNESS THEREOF, the Parties have caused this Settlement Agreement and Release to be executed by their duly authorized representatives.

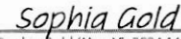
Signature Page Follows

APPROVED BY PLAINTIFF AND CLASS COUNSEL


Aaron Aseltine (May 15, 2024 15:40 MDT)


Aaron Aseltine

Date: May 15, 2024


Sophia Gold (May 15, 2024 14:27 PDT)


Sophia Gold
KALIEL GOLD PLLC

Date: May 15, 2024


Jeffrey Ostrow (May 15, 2024 17:25 EDT)

Jeff Ostrow
KOPELOWITZ OSTROW P.A.

Date: May 15, 2024


David Wilkerson (May 15, 2024 18:36 EDT)

David Wilkerson
THE VAN WINKLE FIRM

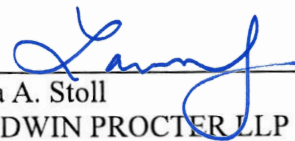
Date: May 15, 2024

**APPROVED BY DEFENDANT AND
COUNSEL FOR DEFENDANT**




On behalf of Bank of America, N.A.

Date: May 17, 2024



Laura A. Stoll
GOODWIN PROCTER LLP

Date: May 17, 2024



Bradley Kutrow
MCGUIRE WOODS LLP

Date: May 17, 2024