

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEVEN CHECCHIA, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 2:21-cv-3585

SETTLEMENT AGREEMENT AND RELEASE

Subject to approval by the Court, this Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by (1) Plaintiff, Steven Checchia (“Plaintiff” or “Class Representative”), individually and as a representative of the Settlement Class (defined below) and (2) Bank of America, N.A. (“BANA”). The Class Representative and BANA are collectively referred to herein as “the Parties.” 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

1. Plaintiff, a Pennsylvania citizen, filed this class action in the Court of Common Pleas of Philadelphia County on May 19, 2021 (the “Action”), as defined below, alleging that BANA breached its customer agreements and violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75.1-1, *et seq.* (the “NCUDTPA”), and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* (the (“UTPCPL”), by

charging NSF Fees and OD Fees, as defined below, on checks that were re-presented for payment after having initially been returned for non-sufficient funds and charged a NSF Fee. *See* ECF No. 1-1.

2. On August 11, 2021, BANA removed the Action to the Eastern District of Pennsylvania, where it is currently pending. *See* ECF No. 1.

3. The Parties extended the deadlines for BANA to respond to the complaint and for Plaintiff to file a motion to remand the Action in order to participate in an early mediation. *See* ECF Nos. 2, 4-5, 7, 9.

4. The Parties mediated the matter with Judge Diane M. Welsh (ret.) on February 18, 2022, which resulted in a settlement.

5. The Parties filed a notice of settlement on March 11, 2022. *See* ECF No. #11.

6. The Court then directed the Parties to file a motion for preliminary approval of a class settlement by June 9, 2022, by text order dated March 11, 2022.

7. 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.

8. 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.

9. BANA denies all wrongdoing and liability, denies that the Class Representative's claims entitle him or the class members to any relief, and denies that anyone was harmed by the conduct alleged by the Class Representative. Nevertheless, BANA desires to settle the Class Representative and the 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.

10. 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, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiff, the Settlement Class, and BANA 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:

AGREEMENT

1. DEFINITIONS

As used in this Settlement Agreement, the terms defined below shall have the meanings assigned to them when capitalized in the same fashion as in this Section 1 of this Settlement Agreement.

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 Person or has or had any interest, whether legal or equitable, in an Account during the Class Period. It includes Current Accountholders and Past Accountholders.

1.3. “Action” means the above-captioned action, *Steven Checchia, et al., v. Bank of America, N.A.*, 2:21-cv-3585, pending in United States District Court for the Eastern District of

Pennsylvania, including all actions consolidated thereunder or that may be consolidated thereunder in the future.

1.4. “Attorneys’ Fees and Costs” means the attorneys’ fees and costs related to this Settlement Agreement that Class Counsel intend to seek under Section 10 of this Settlement Agreement.

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

1.6. “BANA’s Counsel” or “Defendant’s Counsel” means Jarrod Shaw and Brian A. Kahn of McGuireWoods LLP.

1.7. “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.

1.8. “Class Action Complaint” means the operative Complaint filed in the Action.

1.9. “Class Counsel” means Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A., Kenneth J. Grunfeld of Golomb Spirt Grunfeld, P.C., and Jeffrey Kaliel of KalielGold PLLC.

1.10. “Class Fees” means the NSF Fees and OD Fees paid and not refunded on BANA Accounts in connection with (a) an ACH entry on an Account that was submitted by a merchant or a merchant’s bank with a “REDEP CHECK” indicator, or (b) a physical check (not an ACH transaction) that was re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee within the preceding twenty-eight (28) days.

1.11. “Class List” means the list of all Settlement Class Members and their email addresses (to the extent available) and current postal addresses provided by BANA to the Settlement Administrator for the purpose of disseminating Notice, as updated as necessary during Settlement Administration.

1.12. “Class Notice” means the notice of this Settlement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Settlement Agreement and approved by the Court, consistent with the requirements of Due Process and Rule 23, and substantially in the form of *Exhibit 1* (Email Notice), *Exhibit 2* (Postcard Notice), and *Exhibit 3* (Long Form Notice), attached hereto.

1.13. “Class Period” means the time period beginning on May 19, 2017 and ending on the date on which the Court enters Preliminary Approval Order of the Settlement.

1.14. “Class Representative” means Steven Checchia.

1.15. “Court” means the United States District Court for the Eastern District of Pennsylvania.

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

1.17. “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 Agreement. 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.

1.18. “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*.

1.19. “Fee and Cost Award” means the amount of Attorneys’ Fees and Costs, if any, awarded by the Court to Class Counsel pursuant to a motion made under Section 10 herein, which will be paid out of the Settlement Amount.

1.20. “Final Approval” means the approval of this Settlement Agreement by the Court at or following the Final Fairness Hearing, and entry of the Final Approval Order on the Court’s docket.

1.21. “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.

1.22. “Final Fairness Hearing” or “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 Settlement Agreement.

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

1.24. “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*.

1.25. “Motion for Final Approval” means the motion seeking Final Approval, the Fee and Cost Award, and Service Award.

1.26. “Motion for Preliminary Approval” means the motion seeking Preliminary Approval.

1.27. “Net Settlement Fund” means the Settlement Fund, minus Court-approved Fee and Cost Award to Class Counsel and Service Award to the Class Representative.

1.28. “Notice Plan” means the plan for sending Class Notice to Settlement Class Members, as set forth in Section 5.

1.29. “NSF Fee” means non-sufficient funds fee assessed when an item is returned for non-sufficient funds.

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

1.31. “OD Fee” means an overdraft fee that is assessed when an item is paid by BANA against non-sufficient funds.

1.32. “Party” means each of the Plaintiff and BANA, and “Parties” means Plaintiff and BANA, collectively.

1.33. “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.

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

1.35. “Postcard Notice” means the short form of notice that shall be sent by mail to Current Accountholders who have not agreed to receive notices from BANA by email, Past Accountholders, or for Current Accountholders whom the Settlement Administrator is unable to send Email Notice using the email address provided by the BANA, substantially in the form attached as *Exhibit 2*.

1.36. “Practice Change” means BANA’s agreement to cease assessing NSF or OD Fees in connection with (a) an ACH entry on an Account that was submitted by a merchant or a merchant’s bank with a “REDEP CHECK” indicator, or (b) a physical check (not an ACH transaction) that was re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee, for a

period of at least five (5) years beginning on 180 calendar days from Final Approval of the Settlement, whichever is later.

1.37. “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 Class Notice to the Settlement Class Members.

1.38. “Preliminary Approval Order” means the Order agreed upon by the Parties and attached to the Motion for Preliminary Approval.

1.39. “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 a Releasing Party has 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 the allegations made in the Action. The Released Claims described herein include claims or defenses concerning Class 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.

1.40. “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.

1.41. “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.

1.42. “Service Award” means the total of any monetary award, if any, ordered to be paid to the Class Representative, inclusive, as set forth in Section 11 herein.

1.43. “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 the Settlement Class Members’ claims in the Action, as memorialized in this Settlement Agreement and accompanying documents attached hereto.

1.44. “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 Plan. The Parties agree to recommend that the Court appoint Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator.

1.45. “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 identifying Settlement Class Members, printing

and mailing the Class Notice, and mailing settlement checks to Settlement Class Members, and related services.

1.46. “Settlement Agreement” means this Settlement Agreement and Release.

1.47. “Settlement Amount” or “Settlement Fund” means the amount of eight million dollars (\$8,000,000.00), which BANA will be obligated to pay to the Settlement Administrator on behalf of the Settlement Class, as set forth in Section 6, and only if all other contingencies outlined in Section 6 are met.

1.48. “Settlement Class” means the class of Accountholders charged Class Fees as described more specifically in Paragraph 3.1 below.

1.49. “Settlement Class Member” means any Person who falls within the definition of the Settlement Class, as further set forth below, 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.

1.50. “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.

1.51. “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 Notice, the operative complaint, and other relevant documents.

1.52. “Successful Opt-Out(s)” means the Person(s) who timely and validly exercised his, her, or their right to be excluded from the Settlement Class by the Opt-out Deadline.

1.53. “Unknown Claims” means any claim arising out of or related to Class 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 the Class 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. The Class Representative, on behalf of himself and the Releasing Parties, expressly waives and releases 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, acknowledges that he and Settlement Class Members may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is his intention, as a 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 Class 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.

1.54. As used herein, the plural of any defined term includes the singular thereof and *vice versa*, except where the context requires otherwise. All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal holiday, the deadline or date shall be extended to the next day that is not a weekend day or legal holiday.

1.55. Other terms are defined in the text of this Settlement Agreement and shall have the meaning given to those terms in the text. It is the intent of the Parties in connection with all documents related to the Settlement that defined terms as used in other documents shall have the meaning given to them in this Settlement Agreement.

2. SETTLEMENT CONSIDERATION

2.1. BANA shall effectuate the Practice Change defined in 1.36 and pay the Settlement Amount in accordance with Paragraph 6.

3. SETTLEMENT CLASS

3.1. Settlement Class Definition. 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 following Settlement Class shall be certified:

All Accountholders of BANA consumer checking and/or savings accounts (“Accounts”) in the United States who, during the Class Period, paid and were not

refunded a NSF Fee and/or OD Fee in connection with (a) an ACH entry on their Account that was submitted by the merchant or the merchant's bank with a "REDEP CHECK" indicator or (b) a physical check (not an ACH transaction) that was re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee within the preceding 28 calendar days.

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.

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 Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any class or certification of any class for any purpose other than effectuating the Settlement, and that 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 Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void ab initio, and this Settlement Agreement or any other Settlement-related statement may not be cited 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. MOTION FOR PRELIMINARY APPROVAL

4.1. Filing of Motion for Preliminary Approval. As soon as reasonably practicable, Class Counsel shall file this Settlement Agreement with the Court together with a Motion for Preliminary Approval, 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 Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23; (iii) appoint the Plaintiff as Class Representative of the Settlement Class; (iv) appoint Plaintiff's counsel as Class Counsel; (v) approve the proposed Notice Plan and authorize the dissemination of Notice as set forth in Section 5; and (vi) approve of and appoint the Settlement Administrator.

4.2. Preliminary Approval Order. Class Counsel agrees that the proposed Preliminary Approval Order to be filed together with the Motion for Preliminary Approval will be in substantially the same form as *Exhibit 4*. The Preliminary Approval Order shall (i) preliminarily approve the Settlement memorialized in this Settlement Agreement as fair, reasonable, and adequate, including the material terms of this Settlement Agreement; (ii) set a date for a Final Fairness 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 Class Notice in the forms attached hereto as *Exhibits 1, 2 and 3*, and authorize their dissemination to the Settlement Class; (v) set deadlines consistent with this Settlement Agreement for emailing and mailing of the Class Notice, the filing of objections, the filing of motions, and the filing of papers in connection with the Final Fairness Hearing; (vi) appoint and approve the Class Representative, Class Counsel, and the Settlement Administrator; (vii) set deadlines by which Plaintiff and Class Counsel shall file their Motion for

Final Approval, which shall be at least forty-five (45) days prior to the Final Fairness Hearing; (viii) state that any appeal of the Court's order on the motion for the Fee 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 (excepting those who are Successful Opt-Outs), and Class Counsel from commencing, prosecuting, 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 of *Exhibit 4* hereto 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 entered by the Court, the Class Representative shall seek, and 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 Settlement 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 that the Notice Plan constitute due, adequate, and sufficient notice of the Settlement set forth in

this Settlement Agreement and the Final Fairness 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 and, except as provided for in this Settlement 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 Settlement 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.

5. NOTICE PLAN

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 the total number of Class Fees for each Settlement Class Member, whether the Settlement Class Member is a Current Accountholder with BANA as of the date of the Preliminary Approval Order, as well as all known physical addresses and email addresses in BANA's possession, custody, or control, for the Settlement Class Members. 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. Within twenty-one (21) days after the Preliminary Approval Order, BANA will also provide an anonymized version of the Class List to Class Counsel for Class Counsel's validation purposes, which will not include any personal identifying information related to 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, Class Notice will be provided as follows:

5.2.1. For those Settlement Class Members who are Current Accountholders of BANA and have agreed to receive electronic account statements from BANA, the Settlement Administrator shall send the 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 emails that are returned 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.

5.2.2. For those Settlement Class Members who are Current Accountholders of BANA who have not agreed to receive account statements electronically, or who are Past Accountholders, the Postcard Notice shall be mailed by first class United States mail 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.

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 ("NCOA") database maintained by the United States Postal Service ("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. Within ten (10) business days after the Class List is finalized as set forth in Paragraph 5.1, the Settlement Administrator shall begin the process of mailing the Class Notice(s) to each Settlement Class Member using the Class List by first-class U.S. mail, postage prepaid, and shall complete that process as soon as is practicable. The Settlement Administrator shall format the Class Notice(s) and otherwise administer the Notice Plan 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 Class Notice under this Section 5, if a Class Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Class Notice immediately to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. For any Class Notice that is returned as undeliverable without a forwarding address, the Settlement Administrator will use commercially reasonable efforts to obtain updated addresses during the forty-five (45) days following the date the last Class Notice was mailed. 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 Plan, as well as providing its opinion that the Notice Plan satisfied the requirements of Due Process.

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 Class Notice provisions have been complied with.

5.3. Settlement Website.

5.3.1. The Settlement Administrator shall establish a website to assist in facilitating notice

to the Settlement Class Members. This Settlement Website, www.NSFODFeeCheckSettlement.com, shall be accessible no later than seven (7) days prior to the Class Notice mailing described above. The Settlement Website shall set forth the following information: (i) the Complaint; (ii) the full text of this Settlement Agreement; (iii) the Long Form Notice; (iv) the Motion for Preliminary Approval and the Preliminary Approval Order; (v) the method for opting-out of the Settlement; (vi) contact information for the Settlement Administrator and Class Counsel, (vii) Motion for Final Approval and the Final Approval Order (once filed); (viii) if the Settlement is terminated, a notice of such termination, which language shall be approved by the Parties; and (ix) such other document(s) as the Parties or the Court determine to place on the Settlement Website.

5.3.2. Not later than twenty (20) days before the Final Fairness Hearing, the Settlement Administrator shall cause proof of the establishment and maintenance of the Settlement Website to be provided to Class Counsel.

5.3.3. The Settlement Website shall be dismantled thirty (30) days after the completion of the distribution of remaining funds in accordance with Paragraph 6.7 or, if the Settlement is terminated, thirty (30) days after such termination.

5.4. CAFA Notice. BANA 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) business days after this Settlement Agreement is filed with the Court. BANA shall file with the Court certification of the date on which the CAFA Notice was served.

6. PAYMENT OF THE SETTLEMENT AMOUNT

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 such 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. All Settlement Administration Costs shall be payable out of the Settlement Amount. The Settlement Amount represents the total extent of BANA's monetary obligations under this Settlement Agreement and includes all sums to be paid under this Settlement as the consideration to eligible Settlement Class Members, including a Service Award, if any, the Fee and Cost Award, if any, and all Settlement Administration Costs.

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 with the Settlement Amount, less any funds previously provided to the Settlement Administrator for the Settlement Administration Costs, as set forth in Paragraph 6.1 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 ("QSF") provisions of the tax code 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 QSF 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 Amount 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 Fee and Cost 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 Amount. BANA shall have no responsibility for any other costs, including, as further detailed in this Settlement Agreement, any Attorneys' Fees and Costs, including any taxes or tax-related costs relating to the Settlement Amount but all such fees, expenses, and costs shall be paid out of the Settlement Amount as approved by the Court.

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

6.6. Use and Disbursal of Settlement Amount

6.6.1. Purpose and Use. The Settlement Amount shall be used only in the manner and for the purposes set forth in this Settlement. No portion of the Settlement Amount shall be disbursed except as expressly set forth herein. The Settlement Amount shall be used only for payments to Settlement Class Members, Settlement Administration Costs, Attorneys' Fees and Costs (described in Section 10), and the Service Award (described in Section 11).

6.6.2. Settlement Class Member Payments.

6.6.2.1. 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.

6.6.2.2. Within twenty-one (21) days of the Effective Date, the Settlement Administrator shall provide to (i) Class Counsel and to BANA's Counsel the sum total of all Settlement Class Member Payments for Settlement Class Members, including the breakdown of Settlement Class Members who are Current Accountholders as of the Effective Date who will receive their Settlement Class Member Payments in the form of a credit to their BANA primary consumer deposit account ("Credit Settlement Class Member Payment Amount") and Settlement Class Members who are Past Accountholders who will receive their Settlement Class Member Payment in the form of a check; (ii) BANA, the Class List with the applicable Credit Settlement Class Member Payment Amount owed to each Credit Settlement Class Member; and (iii) cause to be transmitted to BANA the total Credit Settlement Class Member Payment Amount for deposit into the BANA accounts of Settlement Class Members who are Current Accountholders as of the Effective Date.

6.6.2.3. 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 Settlement Class Member's primary consumer deposit Account.

6.6.2.4. 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, as determined in the payment allocation for Settlement Class Members described herein who are Past Accountholders as of the Effective Date. Within sixty (60) 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. The Settlement checks and payment notices shall include the appropriate release text.

6.6.2.5. The payment notices accompanying the Settlement checks shall notify the recipients that the checks must be cashed within one hundred and eighty (180) days from the date on the payment notice and that the enclosed check shall not be valid after that date.

6.6.2.6. For a jointly held Account, checks will be payable to all Accountholders named on the Account and mailed to the first Accountholder listed on the Account.

6.6.2.7. 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. After two hundred and forty (240) days from the Effective Date, any excess funds remaining from the Settlement Amount 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. The payment notices accompanying the Settlement checks for a second distribution shall notify the recipients that the checks must be cashed within ninety (90) days from the date on the payment notice and that the enclosed check shall not be valid after that date. 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, Class Counsel shall petition the Court to distribute any remaining funds to a consumer protection or financial services organization as a *cy pres* recipient.

7. SETTLEMENT BENEFITS

7.1. Amounts of Settlement Class Member Payments. Settlement Class Members are entitled to payment by distributing the proceeds from the Settlement Amount to the Settlement Class Members depending on the total number of Class Fees the Settlement Class Member was assessed during the Class Period. Payments from the Settlement Amount to each Settlement Class Member shall be distributed on a *pro rata* basis and calculated as follows:

(Net Settlement Amount divided by the total number of Class Fees the Settlement Class Members collectively were assessed in connection with the transactions at issue);

Multiplied by;

Total number of Class Fees the Settlement Class Member was charged and paid in connection with the transactions at issue.

7.2. All Settlement Class Member Payments Come From Settlement Amount. All payments to Settlement Class Members shall be funded by the Settlement Amount only after the Effective Date. All proceedings with respect to the notice, administration, and processing of payments to Settlement Class Members and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court. The Class Representative and Settlement Class Members shall look solely to the Settlement Amount as full, final, and complete satisfaction of all Released Claims. Except as set forth herein, BANA shall have no obligation under this Settlement Agreement or the 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 the 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. The 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.

7.3. Settlement Check Language. Each Settlement check and payment notice shall state: “This payment is tendered to you as a class member in *Checchia, et al. v. Bank of America, N.A.*, 2:21-cv-3585 (E.D.P.A.) in consideration for your release from liability of Defendant Bank of America, N.A. and other Released Parties as set forth in the Settlement Agreement and Release.” Each Settlement check will disclose that it is invalid if it is not cashed within one hundred and eighty (180) days. 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 in the same manner as set forth in Paragraph 5.2.3 (with any costs incurred treated as Settlement Administration Costs). If, after a second attempt, such Settlement check is again returned as undeliverable, no further effort needs to be taken by the Settlement Administrator. All Settlement Class Members who do not cash their Settlement checks within one hundred and eighty (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.

7.4. No Reversion. BANA shall not have a reversionary interest in the Settlement Amount.

If there is a balance remaining of the Settlement Amount after two hundred and forty (240) days from the date of distribution of the Settlement Amount (whether by reason of tax refunds, uncashed checks or otherwise), or reasonably soon thereafter, the Settlement Administrator shall distribute the remaining balance as ordered by the Court and as further set forth in Paragraph 6.7.

8. TERMINATION OF THE SETTLEMENT

8.1. This Settlement is contingent upon Court approval. If the Court fails to grant Final Approval the Settlement in any material respect, the Settlement will be subject to termination by the Party adversely affected by such failure. Notwithstanding this paragraph, the Court's determination as to the motion of Fee and Cost Award and 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 Settlement Agreement or Settlement.

8.2. The Settlement Administrator shall provide Class Counsel and BANA's Counsel a list of Successful Opt-Outs within five (5) business days following the end of the Opt-Out Deadline

8.3. If this Settlement is terminated, then the Settlement and the relevant portions of this Settlement Agreement shall be canceled and terminated without prejudice, and this Settlement Agreement shall be null and void and shall have no further force or effect.

8.4. Except as otherwise provided herein, in the event the Settlement Agreement 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 as of February 18, 2022. BANA retains all rights regarding any defenses on the statute of limitations that it had as of February 18, 2022. In such circumstances, the Parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming the Action.

8.5. Except as otherwise expressly provided herein, in the event the Settlement 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 Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Amount previously paid by or on behalf of BANA, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Cost Award, if any, with respect to such income) 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 Settlement Agreement.

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

9. PROCEDURES FOR OPT-OUTS AND OBJECTIONS

9.1. Out-Out Procedures.

9.1.1. The Class Notice shall inform proposed Settlement Class Members how they may opt-out of the Settlement and shall explain the implications of doing so, including the possibility that opting-out may preclude later participation in any later class action against the Released Parties.

9.1.2. 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 Check Fee Class Action” at the Settlement Administrator’s address as shown in the Class Notice. The proposed Settlement Class Member’s opt-out request must contain his or her original signature, current postal address, and a specific affirmative statement that the proposed Settlement Class Member wishes to be excluded from the Settlement Class. 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. Opt-Out requests must be postmarked no later than the Opt-Out Deadline.

9.1.3. Persons who purport to opt-out of the Settlement Class as a group, aggregate, or class involving more than one purported class member shall *not* be considered to have validly opted-out. This paragraph does not apply to a joint Account in which a timely opt-out request is submitted pursuant to paragraph 9.1.2.

9.2. List of Successful Opt-Outs. Not later than five (5) business days following 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.

9.3. Representation of Opt-Outs. Class Counsel agrees that this Settlement is fair, reasonable, and in the Settlement Class Members' best interests. Class Counsel furthermore agrees that potential Settlement Class Members who seek to opt-out should be represented by counsel who believe the Settlement is not fair, reasonable, and not in the Settlement Class Members' best interests. Accordingly, Class Counsel shall not solicit Settlement Class Members who opt-out for purposes of legal representation and, if contacted, shall refer any such Persons to the applicable referral service maintained by the bar association in those Persons' respective jurisdictions for any subsequent representation, if a referral request is made to Class Counsel.

9.4. Objections from Settlement Class Members.

9.4.1. Any Settlement Class Member who does not opt-out but instead wishes to object to the Settlement or any matters described in the Class Notice may do so by filing with the Court a timely notice of his or her intention to object. Such notice 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, including evidence that 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 Fairness Hearing, if any; (vi) a list of all Persons who will be called to testify at the Final Fairness 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 Fairness 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 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) has filed an objection to any proposed class action settlement within the last 3 years; (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; and (xii) the objector's signature (an attorney's signature is not sufficient). To be timely, written notice of an objection in the appropriate form must be filed with the Settlement Administrator and/or Court by the Objection Deadline as ordered by the Court in the Preliminary Approval Order and served concurrently therewith upon Class Counsel and BANA's Counsel.

9.4.2. 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 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 fifteen (15) days before the Final Fairness Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney's hourly rate.

9.4.3. 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 and shall be bound by all the terms of the Settlement Agreement 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.

9.4.4. The Parties shall file their responses to objections, if any, no later than ten (10) days prior to the Final Fairness Hearing.

9.4.5. By filing an objection, objectors and their counsel submit to the jurisdiction of the Court for all purposes, including but not limited to, subpoenas and discovery.

9.4.6. 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) business days before the Final Fairness Hearing, and the objection must include the dates when the objector is available for deposition.

9.4.7. 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 Fairness 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 Fairness 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.

9.4.8. 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 releases contained in this Settlement Agreement.

10. ATTORNEYS' FEES AND COSTS

10.1. Application for Fee and Expense Award. As part of the Motion for Final Approval, Class Counsel will move for approval of a Fee and Cost Award. Class Counsel agrees that it will not seek in excess of 33.33% of the Settlement Amount for attorneys' fees. BANA agrees that Class Counsel shall be entitled to an award of reasonable Attorneys' Fees, to be determined by the Court.

10.2. Source of Payment. The Fee and Cost Award shall be paid from the Settlement Amount, with no further obligation by BANA.

10.3. No Additional Obligation by BANA. Any Fee and Cost Award shall be available to be distributed from the Settlement Amount for distribution to Class Counsel in accordance with this Settlement Agreement within five (5) business days after the Effective Date by the Settlement Administrator.

11. SERVICE AWARD TO CLASS REPRESENTATIVE

11.1. 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 Amount to the Class Representative for serving as class representative in support of the Settlement. BANA will not oppose such a request of \$5,000.00 for the Class Representative.

11.2. 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 Representative beyond the amount stated above for resolution of the Released Claims herein.

11.3. Source of Payment. Any Service Award shall be available to be distributed from the Settlement Amount for distribution to the Class Representative in accordance with this Settlement Agreement within five (5) business days after the Effective Date by the Settlement Administrator.

12. FINAL FAIRNESS HEARING AND FINAL APPROVAL

12.1. Final Fairness Hearing. The Parties will jointly request that the Court hold the Final Fairness Hearing to consider approval of the Settlement of the Action as provided for herein approximately one hundred and twenty (120) days after Preliminary Approval but in no event fewer than ninety (90) days after the CAFA Notice is served. At least forty-five (45) days before the Final Fairness Hearing, Class Counsel shall file the Motion for Final Approval seeking entry of the Final Approval Order. The Parties agree that the Final Approval Order and Final Judgment and Order of Dismissal constitutes a final judgment dismissing the Action with prejudice.

12.2. Final Approval. All relief contemplated by this Settlement Agreement is expressly contingent upon the Court's Final Approval.

13. RELEASE OF CLAIMS

13.1. Release of BANA and Released Parties. Upon the Effective Date, in exchange for the relief described herein, the Releasing Parties fully and finally release and discharge 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.

13.2. Covenant Not To Sue. The Class Representative, on behalf of himself and the Settlement Class Members, covenants and agrees: (i) not to file, commence, prosecute, 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 be excluded 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 Settlement Agreement shall be a complete defense to any of the Released Claims against any of the Released Parties.

14. DISPUTES RELATING TO THE SETTLEMENT

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

14.2. 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 Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this Settlement Agreement and to effectuate the Settlement.

15. MISCELLANEOUS PROVISIONS

15.1. Non-Disparagement: 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 which (i) disparages 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) includes evidence or information protected from disclosure by the agreement of the Parties in the Action.

15.2. 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. BANA specifically denies any wrongdoing or liability and specifically denies that a class could or should be certified in the Action for litigation purposes. This Settlement Agreement is entered into to resolve all claims amicably, to avoid the risk and expense of additional litigation, and does not imply or suggest in any way fault or wrongdoing. The Parties agree that this Settlement 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.

15.3. Admissibility of Settlement Agreement. This Settlement Agreement shall not be offered nor shall be admissible as evidence in any action or proceeding except (i) the hearings necessary to obtain and implement Court approval of this Settlement; and (ii) any hearing to enforce the terms of this Settlement Agreement or related order by the Court. This Settlement Agreement, whether or not consummated, any proceedings relating to the Settlement, and any of the terms of the Settlement 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 defense that has been or could have been asserted.

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

15.5. No Assignments. 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, expenses, or litigation costs 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, expenses, or litigation costs.

15.6. 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.

15.7. Communications with Parties Relating to Settlement Agreement. All notices, requests for consent, and other formal communications under this Settlement 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.

If to Class Representative:	If to BANA:
Jeff Ostrow (<i>pro hac vice</i>) Jonathan Streisfeld (<i>pro hac vice</i>) KOPELOWITZ OSTROW P.A. One West Las Olas Blvd., Suite 500	Brian A. Kahn (<i>pro hac vice</i>) MCGUIREWOODS LLP 201 N. Tryon Street, Suite 3000 Charlotte, NC 28202

Fort Lauderdale, Florida 33301 (954) 525-4100 ostrow@kolawyers.com streisfeld@kolawyers.com Jeffrey Kaliel (pro hac vice) KALIELGOLD PLLC 1100 15 th Street N.W., 4th Floor Washington, D.C. 20005 (202) 350-4783 jkaliel@kaliellpc.com Kenneth J. Grunfeld (PA 84121) Golomb Spirt Grunfeld 1835 Market Street, Suite 2900 Philadelphia, PA 19104 (215) 985-9177 kgrunfeld@golomblegal.com	Telephone: (704) 343-2000 Fax: (704) 343-2300 bkahn@mcguirewoods.com
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15.8. Entire and Voluntary Agreement.

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

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

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

15.10. Settlement Agreement Controls Over Exhibits. All exhibits attached to this Settlement Agreement are hereby incorporated into this Settlement Agreement as though fully set

forth herein. If there is any conflict between the terms of the Settlement Agreement and the attached exhibits, the Settlement Agreement shall control.

15.11. Amendments and Modifications. This Settlement Agreement 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.

15.12. Authorization of Counsel. 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 Agreement 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 Settlement Agreement on behalf of a Party hereto warrants that such attorney or other Person has full authority to do so. The undersigned representatives of BANA represent that they are fully authorized to enter into and execute this Settlement Agreement on behalf of BANA. Class Counsel represent that 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 Settlement Agreement on behalf of Class Representative and the putative Settlement Class Members, subject to approval by the Court.

15.13. 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 Fed. R. Civ. P. 6 and the Civil Rules of Practice and Procedure for the Eastern District of Pennsylvania shall govern.

15.14. 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 Eastern District of Pennsylvania for any suit, action, proceeding, case, controversy, or dispute arising from or related to this Settlement Agreement and/or Exhibits hereto and the negotiation, performance, or breach of same.

15.15. Construction and Interpretation of Terms. The Parties have cooperated in drafting and preparing this Settlement 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 Agreement's purposes, and consistent with applicable precedent.

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

15.17. Standing of Released Parties. The Released Parties who are not signatories hereto shall be third-party beneficiaries under this Settlement Agreement and shall be entitled to enforce this Settlement Agreement 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.

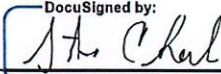
15.18. Applicable Law. This Settlement Agreement shall be interpreted under and governed by federal law. To the extent state law applies, the laws of the State of Pennsylvania shall apply, without regard to choice of law principles. All judicial proceedings regarding this Settlement shall be brought only in the Court for the Eastern District of Pennsylvania.

15.19. Counterparts. This Settlement Agreement may be executed in one or more

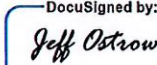
counterparts and by facsimile or email of PDF, both of which shall be deemed an original. Original signatures are not required. All executed counterparts shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts. A complete set of executed 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.

APPROVED BY PLAINTIFF AND CLASS COUNSEL

DocuSigned by:

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Steven Chiechina

Date: 6/4/2022


DocuSigned by:

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Jeff Ostrow
Jonathan Streisfeld
KOPELOWITZ OSTROW P.A.

Date: 6/4/2022


KEN GRUNFELD
KEN GRUNFELD (Jun 5, 2022 15:53 EDT)
Kenneth J. Grunfeld
GOLOMB SPIRT GRUNFELD, P.C.

Date: Jun 5, 2022

APPROVED BY BANA AND COUNSEL FOR BANA


John Livaditis
Senior Vice President
On behalf of Bank of America, N.A.

Date: 6/6/2022


Brian A. Kahn
McGuireWoods LLP

Date: June 6, 2022