

**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

**MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND RELEASE**

Plaintiff, Aaron Aseltine, on behalf of himself, and a proposed class of current and former Bank of America, N.A. Accountholders<sup>1</sup>, moves for entry of an order granting Preliminary Approval of a proposed Settlement embodied in a Settlement Agreement. The grounds for this motion, along with the Agreement and supporting exhibits, are set forth in a Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement filed contemporaneously herewith. The Court's approval of the Settlement is warranted for the reasons fully stated in said Memorandum.

The proposed Class Representative respectfully requests that the Preliminary Approval Order: (1) conditionally certify the Settlement Class, (2) appoint Aaron Aseltine as Class Representative (3) appoint Class Counsel, (4) preliminarily approve the Settlement, (5) approve the Notice Program and direct that the Notice be provided to the Settlement Class, (6) approve and order the opt-out and objection procedures set forth in the Settlement, (7) stay all deadlines in the

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<sup>1</sup> The capitalized terms herein shall have the same meanings as those defined in Section I of the Settlement Agreement.

Action pending Final Approval of the Settlement, and (8) set a date for a Final Approval Hearing, 150 days after the entry of this Order (or a date as soon thereafter that is available on the Court's calendar).

Dated: May 24, 2024.

Respectfully Submitted,

s/ Jonathan M. Streisfeld

Jeff Ostrow (pro hac vice)

Jonathan M. Streisfeld (pro hac vice)

**KOPELOWITZ OSTROW P.A.**

1 West Las Olas Blvd., Ste. 500

Fort Lauderdale, FL 33301

(954) 332-4200

ostrow@kolawyers.com

streisfeld@kolawyers.com

Sophia Gold (pro hac vice)

**KALIELGOLD PLLC**

950 Gilman Street, Suite 200

Berkeley, CA 94710

(202) 350-4783

sgold@kalielgold.com

David Wilkerson

N.C. State Bar No. 35742

**THE VAN WINKLE LAW FIRM**

11 North Market Street

Asheville, NC 28801

(828) 258-2991

dwilkerson@vwlawfirm.com

*Counsel for Plaintiff and the Settlement Class*

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND RELEASE**

## **INTRODUCTION**

Plaintiff, Aaron Aseltine,<sup>1</sup> respectfully submits this brief in support of Preliminary Approval of a proposed class action Settlement with Defendant BANA. The Settlement provides substantial monetary relief to the Settlement Class. If approved, the Settlement will comprise a common fund of \$21,000,000.00. Settlement Class Members will receive their Settlement Class Member Payments automatically, without having to submit a claim or take any other action.

The Settlement is an outstanding recovery for the Settlement Class in a case based upon a novel legal theory that faced a myriad of legal risks, and it easily satisfies all Fourth Circuit criteria for preliminary approval. Accordingly, Plaintiff respectfully requests this Court enter an Order: (1) granting Preliminary Approval of the Settlement; (2) certifying the proposed Settlement Class for settlement purposes under Federal Rule of Civil Procedure Rules 23(a) and 23(b)(3); (3) appointing Plaintiff as Class Representative; (4) approving the Notice Program set forth in the Settlement and the form and content of the Notices; (5) approving and ordering the opt-out and objection procedures set forth in the Settlement; (6) staying all deadlines in the Action pending Final Approval of the Settlement; (7) appointing as Class Counsel the law firms and attorneys identified herein; and (8) scheduling a Final Approval Hearing.

## **FACTUAL BACKGROUND**

### **I. The Litigation**

On March 8, 2023, Plaintiff filed a state court class action in Mecklenburg County, alleging claims for breach of contract and breach of the implied covenant of good faith and fair dealing and violations of North Carolina's and California's consumer protection laws, arising out of BANA's

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<sup>1</sup> All capitalized terms herein shall have the same meanings as those defined in the Settlement Agreement attached hereto as *Exhibit A*.

alleged imposition of improper fees on incoming wire transfers.

On April 25, 2023, BANA removed the Action to the District Court for the Western District of North Carolina. (DE# 1) and filed its' Corporate Disclosure Statement (DE# 2).

On June 1, 2023, BANA moved to dismiss the Complaint. (DE# 9). On June 22, 2023, Plaintiff responded to that motion, and on July 13, 2023, BANA filed its Reply to the Motion to Dismiss. (DE# 17 and 19). On September 27, 2023, the Court denied the motion to dismiss in its entirety. (DE# 20). BANA filed its Answer on October 11, 2023. (DE# 22).

Thereafter, 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, submit a joint stipulation to consent to jurisdiction of a U.S. Magistrate Judge. The Parties had a Federal Rule of Civil Procedure 16.1 Initial Discovery Conference where they agreed on a proposed court schedule. *See* Joint Declaration of Class Counsel Jeff Ostrow, Sophia Gold and David Wilkerson ("Joint Decl.") ¶ 4, attached as ***Exhibit B***. 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).

On November 15, 2023, the Parties exchanged their initial disclosures. *Id.* ¶ 6. On November 8, 2023, Plaintiff served interrogatories and document requests on BANA. *Id.* After

the Parties agreed 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. *Id.* 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. *Id.* 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. *Id.*

The Parties agreed to mediate on February 29, 2023, in California before a JAMS neutral, the Honorable Jay C. Gandhi (Ret.). *Id.* ¶ 7. In advance of the mediation, the Parties exchanged detailed mediation briefs and BANA responded to formal and informal discovery requests necessary for Plaintiff's evaluation of size of the class, liability, and damages. *Id.* The Parties mediated; however, no agreement was reached after a full day of negotiating. *Id.* The Parties continued their discussion over the next five weeks, ultimately agreeing to the material terms of a settlement on April 5, 2024. *Id.* On April 11, 2024, the Parties filed a Notice of Settlement with the Court. (DE# 32). Thereafter, the Parties negotiated the Settlement Agreement, which was signed on May 17, 2024.

## **II. The Settlement**

### **A. Overview**

Under the Settlement, BANA has agreed to a non-reversionary common cash Settlement

Fund of \$21,000,000.00. Agreement ¶¶ 1.48, 2.1. The Settlement Fund will be used to pay Settlement Class Member Payments, Settlement Administration Costs, any Court approved Attorneys' Fees and Costs, and any Service Award to the Class Representative. *Id.* ¶ 1.48.

The Settlement Fund will be distributed to Settlement Class Members according to the distribution plan set out in the Agreement. *Id.* ¶ 6.6. Importantly, Settlement Class Members *do not* need to submit a claim form to receive payment. Current Accountholders will receive automatic *pro rata* distributions straight to their accounts. Past Accountholders will receive a check in the mail. Settlement Class Member Payments shall be distributed *pro rata* based on the number of Incoming Wire Transfer Fees that each Settlement Class Member paid that was not refunded. *Id.* ¶ 6.62.

Any funds remaining in the Net Settlement Fund as a result of uncashed checks 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. *Id.* ¶ 6.7. 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. *Id.* There will be no reversion to BANA. *Id.*

## **B. The Settlement Class**

The proposed Settlement Class is defined as the following:

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

*Id.* ¶ 1.45. The class period is March 8, 2019, through August 31, 2023. *Id.* ¶ 1.11. In exchange for the consideration stated above, the Settlement Class shall release BANA from any claims that were or could have been alleged in this Action related to Incoming Wire Transfer Fees. *Id.* ¶¶ 1.37, 11.1.

### **C. Settlement Administrator and Proposed Notice Program**

The proposed Settlement Administrator is Kroll, LLC, a nationally recognized and experienced class action administrator. The Parties' proposed Notice Program is designed to reach as many Settlement Class members as possible at a reasonable cost to the Settlement Class. In Class Counsel's view and experience, it is the best notice practicable under the circumstances. Notice shall be provided through the following means: (1) Email Notice to Current Accountholders who have agreed to receive account statements electronically; (2) Postcard Notice to Past Accountholders and those Current Accountholders who have not agreed to receive statements electronically, as well as those whose Email Notices are returned undeliverable; and (3) Long Form Notice, which will be available on the Settlement Website and the Settlement Administrator will mail to Settlement Class members who request it. *Id.* ¶¶ 5. In addition, the Settlement Administrator will create and maintain a Settlement Website containing important information about the Settlement, and case-related documents, and will establish and maintain a toll-free telephone line that the Settlement Class members can use to get answers to frequently asked questions about the Settlement and request the Long Form Notice. *Id.* ¶¶ 5.3.

The Notice will include, among other information, a description of the material terms of the Settlement; a date by which Settlement Class members may opt-out of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access the Settlement Agreement and other related documents and information. *Id.*, Exhibits. 1-3.

### **D. Release**

The Release is narrowly tailored to the claims made in the Action. As of the Effective Date



of the Settlement, Plaintiffs and each Settlement Class Member agrees to release any claims arising out of or relating in any way to the allegations made in the Action. *Id.* ¶¶ 1.37.

#### **E. Opt-Outs and Objections**

The Notice will inform Settlement Class Members of their right to opt out or object. *Id.*, Exhibits 1-3. Settlement Class Members may opt-out of the Settlement Class at any time during the opt-out period. *Id.* ¶ 8.1. The Opt-Out Deadline ends 30 days prior to the Final Approval Hearing and will be specified in each of the Notices. *Id.* ¶¶ 1.295. The Notices will also inform Settlement Class Members of their right to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs, and Service Award. *Id.*, Exhibits. 1-3. The Objection Deadline is 30 days prior to the original date set for the Final Approval Hearing. ¶¶ 1.30, 8.2.2. Objections must include information identified in the Agreement including information about the objector, their counsel, and previous objections they or counsel have made to ensure that any objections are made for a proper purpose. *Id.* ¶ 8.2.

#### **F. Attorneys' Fees and Costs, and Service Award**

To date, Class Counsel has not been paid for their diligent efforts or reimbursed for litigation costs incurred. The Settlement Agreement provides that Class Counsel will apply for an award of Attorneys' Fees and Costs. *Id.* ¶ 9.2. BANA has agreed not to oppose a request for fees up to \$7,000,000.00, which represents 33.33% of the cash Settlement Fund. *Id.* ¶ 9.3. Such award will serve to compensate Class Counsel for the time, risk and expense they incurred pursuing claims on behalf of the Settlement Class.

Class Counsel will also ask the Court to approve a Service Award for the Class Representative. BANA will not oppose a request of \$5,000.00. *Id.* ¶ 10.1.

## **LEGAL STANDARD**

Federal Rule of Civil Procedure 23 requires court approval of class action settlements. Fed. R. Civ. P. 23(e). “The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations.” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). Accordingly, the Court may approve a settlement only upon a finding that the settlement is fair and adequate. *See id.* The relevant factors in determining “fairness” are “that the settlement was reached as a result of good-faith bargaining at arm’s length, without collusion, on the basis of (1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel.” *Id.* at 159. Adequacy is assessed through “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *Id.* at 159.

## **ARGUMENT**

### **I. The Court Should Approve the Settlement.**

The Parties reached a settlement in a novel case that provides substantial cash compensation to Settlement Class Members. The Settlement was the result of arm’s-length negotiations by experienced counsel for both Plaintiffs and BANA, and is an outstanding result for the Settlement Class.

Under Rule 23, a settlement must be “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The Fourth Circuit has bifurcated the preliminary approval analysis into “consideration

of the fairness of settlement negotiations and the adequacy of the consideration to the class.” *Gaston v. LexisNexis Risk Sols. Inc.*, No. 5:16-cv-00009, 2021 WL 244807, at \*5 (W.D.N.C. Jan. 25, 2021) (citing *In re Jiffy Lube Secs. Litig.*, 927 F.2d at 158–59). The 2018 amendments to Rule 23(e) also formalize a list of core considerations for settlement approval such as: (1) whether class representatives and class counsel have adequately represented the class, (2) whether the proposal was negotiated at arm’s length, (3) whether the relief provided for the class is adequate, and (4) whether the proposal treats Settlement Class Members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). The Fourth Circuit has held that the *Jiffy Lube* standards “almost completely overlap with the new Rule 23(e)(2) factors, rendering the analysis the same.” *See Herrera v. Charlotte School of Law, LLC*, 818 F. App’x 165, 176 n.4 (4th Cir. 2020) (citing *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, 952 F.3d 471, 474 n.8 (4th Cir. 2020)). At the preliminary approval stage, “the Court need only find that the settlement is within ‘the range of possible approval.’” *Gaston*, 2021 WL 244807, at \*5 (quoting *Scott v. Family Dollar Stores, Inc.*, No. 3:08-cv-00540, 2018 WL 1321048, at \*3 (W.D.N.C. Mar. 14, 2018)). The Settlement here, reached after surviving a motion to dismiss on a novel issue, by sophisticated counsel provides significant monetary relief to the Settlement Class and fits comfortably within the range of approval.

**A. The Settlement Is Fair.**

Each of the Fourth Circuit’s relevant fairness factors weighs in favor of preliminarily approving the Settlement here. *See In re Jiffy Lube Secs. Litig.*, 927 F.2d at 158–59.

*First*, the proposed settlement was reached after BANA tested the sufficiency of the allegations by a motion to dismiss.

*Second*, the Settlement followed the exchange of critical documents and data from BANA.

No settlement discussions took place until after Plaintiff's counsel obtained and analyzed classwide damages to determine a reasonable settlement value. During the settlement discussions, BANA's representative was deposed regarding the damages data that BANA produced to allow the Parties to calculate damages. The discovery gave both sides "additional insight to evaluate the merits" of the case and has "laid the groundwork for the arm's-length negotiations that resulted in the settlement." *Gaston*, 2021 WL 244807, at \*6.

*Third*, the circumstances of the settlement negotiations demonstrate the Settlement was the result of a fair, arm's length process that was often contentious. The Parties engaged in a formal mediation with Judge Jay Gandhi (Ret.) followed by many weeks of additional negotiations during which additional discovery took place.

*Finally*, counsel for both sides have significant experience in consumer class action litigation involving bank-fee practices. Class Counsel is highly experienced in consumer class action litigation, as demonstrated by their firm resumes, and they have brought that significant experience to bear in litigating and settling this case. *See* Joint Decl. ¶¶ 9 - 21, Exhibits 1-3; *see also* Fed. R. Civ. P. 23(e)(2)(A). Class Counsel collectively have decades of experience litigating consumer class actions against financial institutions and have litigated and settled dozens of class actions involving various types of improper fees, including against Bank of America. *Id.* Counsel "may be evaluated by their affiliation with well-regarded law firms with strong experience in the relative field," and by any measure, Class Counsel satisfies this prong. *See In re Neustar, Inc. Securities Litig.*, No. 1:14cv885, 2015 WL 5674798, at \*11 (E.D. Va. Sept. 23, 2015) (quoting *In re Am. Capital S'holder Derivative Litig.*, No. 11-2424-PJM, 2013 WL 3322294, at \*4 (D. Md. June 28, 2013)). Based on their experience, Class Counsel endorse the Settlement as fair and adequate. Joint Decl. ¶ 24. Counsel's "endorse[ment of] the settlement as fair and adequate under

the circumstances . . . should be afforded due consideration in determining whether a class settlement is fair and adequate.” *Gaston*, 2021 WL 244807, at \*6.

**B. The Settlement Provides Substantial Relief to Settlement Class Members.**

23. The substantial relief provided by the Settlement also favors approval. Under the Settlement, BANA will provide a \$21,000,000.00 Settlement Fund, which alone represents a significant portion of the estimated classwide damages should Plaintiffs have prevailed on every issue at class certification, trial, and on appeal. Joint Decl. ¶ 23. Under Plaintiffs’ damages model, the Settlement represents approximately 23.5% of the total damages available at trial, assuming Plaintiffs prevailed on liability. Under Defendant’s damages model, however, the Settlement represent approximately 78% of the total damages available at trial. *Id.* In short, the Settlement is more than reasonable when evaluating the benefits.

Courts assess the adequacy of relief provided under a settlement based on four factors: (1) the costs, risks, and delay of trial and appeal, (2) the effectiveness of the proposed method of distributing relief to the class, (3) the terms of the proposed award of attorney’s fees, and (4) the existence of other agreements reached by the Parties outside the settlement. Fed. R. Civ. P. 23(e)(2)(C); *see also Jiffy Lube*, 927 F.2d at 159. Each factor is met here.

***1. Costs, risks, and delay of trial and appeal***

Plaintiff’s claims are strong, but maintaining these claims through trial and appeal would entail significant risk, uncertainty, and costs for both sides. BANA would have undoubtedly challenged class certification and moved for summary judgment. Where, as here, the Court determined Plaintiff offered a reasonable interpretation of the contract that favors his claims at the motion to dismiss stage, his ultimate success would be to prove those claims are worthy of class certification and a judgment on the merits. Appeals of class certification, summary judgment, and

trial rulings would prompt delay, and the resolution of potential appeals by both sides “would require protracted adversarial litigation and appeals at substantial risk and expense to both Parties.” *Gaston*, 2021 WL 244807, at \*6. This strong likelihood of “substantial future costs favors approving the proposed settlement.” *Id.*

**2. *Effectiveness of the proposed method of distributing relief to the class***

The Settlement Fund will be automatically distributed to Settlement Class Members, without any need for a claim form, either by check or direct deposit. Under the terms of the Settlement, BANA will directly deposit payments under the Settlement into the accounts of Settlement Class Members who are current accountholders as of the date of Final Approval of the Settlement. Settlement ¶ 6.6.3.3. For those Settlement Class Members that are not Current Accountholders at the time of Final Approval, the Settlement Administrator will mail them a check. *Id.* ¶ 6.6.3.4. Any remaining funds after the initial disbursement will be distributed to the Settlement Class Members that successfully cashed check or received direct deposits, to the extent economically feasible. *Id.* ¶ 6.7. If there are funds remaining after this second distribution or the distribution is not economically feasible, Class Counsel will petition the Court to distribute the remaining funds to an appropriate *cy pres* recipient, either a consumer protection or financial services charity. *Id.*

**3. *Terms of the proposed award of attorney’s fees***

Under the terms of the Settlement, Class Counsel may move for an award of attorneys’ fees. Settlement ¶ 9.3. Plaintiffs intend to seek up to 33.33% of the Settlement Fund, or \$7,000,000.00, in attorneys’ fees and will move for approval of an attorneys’ fee award at least 45 before the original date set for the Final Approval Hearing. Although the motion for an award of attorneys’ fees is not yet before this Court, a fee award of 33.33% of the common cash fund is

consistent with fee awards in this Circuit and in similar cases. “Within the Fourth Circuit, contingent fees of roughly 33% are common.” *Earls v. Forga Contracting, Inc.*, No. 1:19-CV-00190-MR-WCM, 2020 WL 3063921, at \*4 (W.D.N.C. June 9, 2020); *see also Kelly v. The Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 WL 434473, at \*3 (D. Md. January 28, 2020) (“Contingent fees of up to one-third are common in [the 4th] circuit.”).

**4. *Existence of other agreements reached by the parties outside the settlement***

Courts also consider whether there are additional agreements between the Parties outside of the settlement agreement that could cast doubt on the fairness or adequacy of the settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). The Settlement here “contains the Parties’ entire agreement on and understanding of the subject-matter at issue in the Action,” and “supersedes all prior negotiations and proposals, whether written or oral.” Settlement ¶ 13.9.2.

**C. The Settlement Treats Settlement Class Members Equitably.**

The Settlement provides relief to Settlement Class Members on a *pro rata* basis depending on the total amount of Incoming Wire Transfer Fees that the Settlement Class Member paid and not refunded during the Class Period. This method for calculating each Settlement Class Member’s recovery treats each member equitably based on the extent to which they were impacted by BANA’s conduct.

**II. The Court Should Certify the Settlement Class.**

**A. The Proposed Class Is Ascertainable.**

Under Rule 23, a class definition must be sufficiently definite, so that “a court can readily identify the class members in reference to objective criteria.” *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014). This ascertainability requirement is easily satisfied in this case, as the members of the Class are identifiable based on objective criteria applied to BANA’s well-

maintained records covering every Incoming Wire Transfer Fee and Settlement Class member during the Class Period.

**B. The Proposed Class Satisfies the Requirements of Rule 23(a).**

Under Federal Rule of Civil Procedure 23(a), a class may be certified when “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative Parties are typical of the claims or defenses of the class; and (4) the representative Parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). The Settlement Class here satisfies each of these requirements.

**1. Numerosity**

Class certification is appropriate when class members are “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). While “[n]o specified number is needed to maintain a class action,” *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984), courts within the Fourth Circuit generally “find classes of at least 40 members sufficiently large to satisfy the impracticability requirement,” *In re Titanium Dioxide Antitrust Litig.*, 284 F.R.D. 328, 337 (D. Md. 2012), *amended*, 962 F. Supp. 2d 840 (D. Md. 2013) (citation omitted). Here, the Settlement Class contains over a million Settlement Class members, satisfying numerosity.

**2. Commonality**

Rule 23(a)(2)’s requirement that there are “questions of law or fact common to the class,” is also satisfied. A common question is “one that can be resolved for each class member in a single hearing,” and does not turn on the “individual circumstances of each class member.” *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006) (quotation omitted). A common question must be “capable of classwide resolution” such that “determination of its truth or falsity



will resolve an issue that is central” to each class member’s claims “in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Rule 23(a) does not require commonality of all issues; rather, “even a single common question will do.” *Id.* at 359 (quotation omitted),

Here, there are several common legal and factual questions that are common to all members and satisfy Rule 23(a)(2). Common questions include: (1) whether BANA breached its contract and/or violated the consumer protection laws of North Carolina and California through its Incoming Wire Transfer Fee policies and practices; and (2) the proper method or methods by which to measure damages.

### **3.      *Typicality***

Under Rule 23(a)(3)’s typicality requirement, class representatives are “typical” if they are “part of the class and possess the same interest and suffer the same injury as the class members.” *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 338 (4th Cir. 1998). “The essence of the typicality requirement is captured by the notion that ‘as goes the claim of the named plaintiff, so goes the claims of the class.’” *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006) (citing *Broussard*, 155 F.3d at 340).

Typicality is satisfied because the proposed Class Representative asserts the same claims stemming from the same conduct by BANA as to the absent Settlement Class members. His Incoming Wire Transfer Fee claims arise from the same factual circumstances, are based on the same legal theories, are subject to the same defenses, and rise or fall with the claims of the absent Settlement Class members.

### **4.      *Adequacy of Representation***

The Rule 23(a)(4) adequacy inquiry “serves to uncover conflicts of interest between named Parties and the class they seek to represent.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625

(1997). For a conflict of interest to defeat class certification, that conflict “must be fundamental,” “must go to the heart of the litigation,” and “must be more than merely speculative or hypothetical.” *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 430-31 (4th Cir. 2003) (quoting 6 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 18:14 (4th ed. 2002)).

There is no such conflict here. As discussed above, the proposed Class Representative asserts the same claims based on the same alleged conduct as the absent Settlement Class members. There is likewise no conflict between the Settlement Class members, as they will all be compensated under the Settlement on a *pro rata* basis.

Class Counsel also satisfies the adequacy requirement. Class Counsel has effectively handled numerous consumer protection and complex class actions, including in the area of financial services, and bank fees specifically. *See* Joint Decl. ¶¶ 9-22, Exhibits. 1-3. Class Counsel are qualified, experienced, and able to conduct this litigation and will fully and adequately represent the Settlement Class.

**C. The Proposed Class Satisfies the Requirements of Rule 23(b).**

**1. Predominance**

The first requirement under Rule 23(b)(3) is that questions of law or fact common to Settlement Class members predominate over questions affecting only individual members. Fed. R. Civ. P. 23(b)(3). This inquiry tests whether the proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623; *see also Gunnells*, 348 F.3d at 428.

Here, Plaintiff seeks to remedy common legal grievances based on BANA’s assessment of certain fees, allegedly in violation of BANA’s account agreements. The common questions of the legality of this practice and BANA’s policies associated with the practice predominate over questions—if any—affecting only individual Settlement Class members, providing a common link

between all the Settlement Class members and BANA. *See Jeffreys v. Comm'ns Workers of Am., AFL-CIO*, 212 F.R.D. 320, 323 (E.D. Va. 2003) (finding predominance satisfied where [t]he question in each individual controversy” would be resolved according to the same legal inquiry); *Talbott v. GC Servs. Ltd. P'Ship*, 191 F.R.D. 99, 105-06 (W.D. Va. 2000) (finding predominance satisfied based on the “standardized nature” of the defendant’s conduct). “The fact that damages will differ from class member to class member does not defeat the finding of predominance because liability is common to the class.” *Jeffreys*, 212 F.R.D. at 323.

## **2. Superiority**

Finally, the Court must determine whether a class action is superior to other methods of adjudication for the fair and efficient adjudication of the controversy. *See Fed. R. Civ. P. 23(b)(3)*. The factors to be considered are: (1) individual class members’ interest in controlling individual cases; (2) the existence of related litigation; (3) the desirability of concentrating the litigation in one forum; and (4) manageability. *Droste v. Vert Capital Corp.*, No. 3:14-cv-467, 2015 WL 1526432, at \*8 (E.D. Va. April 2, 2015). In settlement cases, courts need not consider the last factor. *Amchem Prods.*, 521 U.S. at 593. Here, a class action is superior to individual suits.

First, individual suits are unlikely here because the probable recovery (even of full damages) is relatively small per Settlement Class Member (each fee is either \$15 or \$16), particularly compared to the expense of litigation. *See In re NeuStar, Inc.*, 2015 WL 5674798, at \*8 (finding superiority satisfied where individual actions were “unlikely due to the size of probable recovery and expense of individual litigation). Where the “policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights,” *Amchem*, 521 U.S. at 617, a suit like this is well-suited for class action litigation. Second, Class Counsel is not aware of other

pending individual litigation against BANA regarding the practices at issue in this Action. Joint Decl. ¶ 25. Another action that was pending in California was recently dismissed. *Id.* And third, it would promote judicial economy to resolve this case as a class before this Court rather than requiring individual plaintiffs to file separate lawsuits. *In re NeuStar, Inc.*, 2015 WL 5674798, at \*9. Accordingly, a class action is a superior method of adjudication.

### **III. The Court Should Appoint Class Counsel.**

Fed. R. Civ. P. 23(g) requires a Court to appoint class counsel. In appointing class counsel, the Court “must” consider: (a) the work counsel has done in identifying or investigating potential claims in the action; (b) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (c) counsel’s knowledge of the applicable law; and (d) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). *See also In re Neustar*, 2015 WL 5674798, at \*13. The court “may” also consider “any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B).

Proposed Class Counsel have expended a great deal of time, effort, and expense investigating, litigating, and resolving this Action. Further, as set forth in the firm resumes, each attorney from each firm is highly experienced in complex consumer class action litigation. *See* Joint Decl. Exhibits. 1-3. It is clear from their track-record of success that Class Counsel are skilled and knowledgeable concerning class action practice. Class Counsel have the experience to properly represent the Settlement Class. Accordingly, Plaintiffs request that the Court appoint Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A., Sophia Gold of KalieGold PLLC, and David M. Wilkerson of The Van Winkle Law Firm as Class Counsel.

#### **IV. The Court Should Approve the Class Notice Program and Appoint the Settlement Administrator.**

The Parties' proposed Notice Program is formulated to conform with the procedural and substantive requirements of Rule 23. Due process and Rule 23 require that Settlement Class members receive notice of the settlement and an opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B). The mechanics of the notice process are left to the discretion of the Court, subject only to the broad reasonableness standards imposed by due process.

Here, the Notice Program contemplates notice via direct mail and email. A Long Form Notice is also available for Settlement Class members who request it, and it will be posted on the Settlement Website and available on request from the Settlement Administrator. To ensure that notice reaches as many Settlement Class members as possible, the Settlement Administrator will perform reasonable address traces for the initial Postcard Notice and Email Notice.

The Notice will include important information about the Settlement, including how to opt-out or object, and where to find more information about the case or contact Class Counsel. The substance of the Notice will fully apprise Settlement Class members of their rights. Additionally, the Notices are designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Settlement Class members. The design of the Notice follows principles embodied in the Federal Judicial Center’s illustrative “model” notices posted at [www.fjc.gov](http://www.fjc.gov). The Notice contains plain-language summaries of key information about Settlement Class members’ rights and options. Under Rule 23(e), the notice must generally describe the settlement in sufficient detail to alert those with adverse viewpoints to investigate and come forward to be heard. The proposed Notice contains critical information required to apprise Settlement Class members of their rights. This approach to notice is adequate and provides sufficient detail to allow Settlement Class members with adverse viewpoints to come forward and be heard.

This robust Notice Program is informative, practical, and reasonably designed to reach the vast majority of Settlement Class members. There is no claim form, and the Notice Program will be overseen by Kroll, LLC, a reputable settlement administrator with deep experience in the field. The Notice Program proposed here is the best notice that is practicable and is equivalent or superior to notice campaigns approved in similar class action settlements.

**V. Proposed Schedule of Events and Conclusion.**

In connection with Preliminary Approval, the Court should also set the Final Approval Hearing date and time. Other deadlines in the approval process, including the deadlines for opting out from or objecting to the Settlement, will be determined based on the original Final Approval Hearing date. Class Counsel propose the following schedule:

<b>Notice Program Begins (Email Notice and Postcard Notice Goes Out)</b>	45 days after Preliminary Approval Order
<b>Notice Program Complete</b>	60 days prior to original Final Approval Hearing date
<b>Deadline to file Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Award</b>	45 days prior to original Final Approval Hearing date
<b>Opt-Out Deadline</b>	30 days prior to original Final Approval Hearing date
<b>Objection Deadline</b>	30 days prior to original Final Approval Hearing date
<b>Deadline to Respond to Objections</b>	5 days prior to original Final Approval Hearing date
<b>Final Approval Hearing</b>	_____, 2024, at ____ am/pm. (Preferably the week of October 21, 2024, or after)

For the foregoing reasons, Plaintiffs respectfully request the Court: (1) conditionally certify the Settlement Class, (2) appoint Aaron Aseltine as Class Representatives, (3) appoint Class Counsel, (4) preliminarily approve the Settlement, (5) approve the Notice Program and direct that Notice be provided to the Settlement Class, (6) approve and order the opt-out and objection procedures set forth in the Settlement, (7) stay all deadlines in the Action pending Final Approval of the Settlement, and (8) set a date for a Final Approval Hearing. A Proposed Preliminary Order is attached hereto as ***Exhibit C***.

Dated: May 24, 2024.

Respectfully submitted,

s/ Jonathan M. Streisfeld  
Jeff Ostrow (pro hac vice)  
Jonathan M. Streisfeld (pro hac vice)  
**KOPELOWITZ OSTROW P.A.**  
1 West Las Olas Blvd., Ste. 500  
Fort Lauderdale, FL 33301  
(954) 332-4200  
ostrow@kolawyers.com  
streisfeld@kolawyers.com

Sophia Gold (pro hac vice)  
**KALIELGOLD PLLC**  
950 Gilman Street, Suite 200  
Berkeley, CA 94710  
(202) 350-4783  
sgold@kalielgold.com

David Wilkerson  
N.C. State Bar No. 35742  
**THE VAN WINKLE LAW FIRM**  
11 North Market Street  
Asheville, NC 28801  
(828) 258-2991  
dwilkerson@vwlawfirm.com

*Counsel for Plaintiff and the Settlement Class*

# EXHIBIT A



**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 Class<sup>1</sup> 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

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<sup>1</sup> 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

**If to Class Representative:**

Jeff Ostrow  
Jonathan Streisfeld  
KOPELOWITZ OSTROW P.A.  
One West Las Olas Blvd., Ste. 500  
Fort Lauderdale, FL 33301  
954.332.4200  
ostrow@kolawyers.com

David M. Wilkerson  
THE VAN WINKLE FIRM  
11 North Market Street  
Asheville, NC 28801  
828.258.2991  
dwilkerson@vwlawfirm.com

Sophia Gold  
KALIELGOLD PLLC  
950 Gilman Street, Suite 200  
Berkeley, CA 94710  
202.350.4783  
sgold@kalielgold.com

**If to BANA:**

Laura A. Stoll  
Laura G. Brys  
GOODWIN PROCTER LLP  
601 South Figueroa St., Suite 4100  
Los Angeles, California 90017  
213.426.2584  
lstoll@goodwinlaw.com  
lbrys@goodwinlaw.com

Bradley R. Kutrow  
MCGUIRE WOODS LLP  
201 North Tryon Street Suite 3000  
Charlotte, NC 28202-2146  
704.343.2000  
bkutrow@mcguirewoods.com

**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)

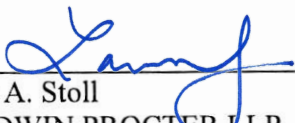
David Wilkerson  
THE VAN WINKLE FIRM

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

**EXHIBIT 1**  
**(EMAIL NOTICE)**

FROM: EMAIL ADDRESS  
To: EMAIL ADDRESS  
RE: LEGAL NOTICE OF CLASS ACTION SETTLEMENT

IF YOU HAD A CONSUMER CHECKING AND/OR SAVINGS ACCOUNT WITH BANK OF AMERICA, N.A., AND PAID CERTAIN WIRE TRANSFER FEES ON INCOMING PAYMENTS INTO YOUR ACCOUNT BETWEEN MARCH 8, 2019, AND AUGUST 31, 2023, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

*Para una notificación en español, visite nuestro sitio de web: \_\_\_\_\_ .com*

**The District Court for the Western District of North Carolina has authorized this Notice. It is not a solicitation from a lawyer.**

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

*For more information, including a more detailed description of your rights and options, please click here or visit  
www. \_\_\_\_\_ .com*

A Settlement has been reached with Bank of America, N.A. (“BANA”) in a class action lawsuit alleging certain wire transfer fees on incoming payments into consumer checking and/or savings accounts (“Incoming Wire Transfer Fees”) should not have been assessed from **March 8, 2019, through August 31, 2023**.

You may be a member of the Settlement Class in *Aseltine v. Bank of America, N.A.*, in which the Plaintiff, Aaron Aseltine, alleges BANA improperly assessed and collected Incoming Wire Transfer Fees on accounts opened on or before August 31, 2012. BANA maintains it did nothing wrong and that its contract with Accountholders permitted the fees charged but has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not made a decision regarding which side is right.

**Who is included?** BANA records indicate that you are a “Settlement Class member” in this Settlement because you are in the following Settlement Class: All United States Accountholders of BANA consumer checking and/or savings accounts opened on or before August 31, 2012, who, during the Class Period, paid and were not refunded an Incoming Wire Transfer Fee.

**What does the Settlement provide?** BANA will create a \$21,000,000.00 Settlement Fund. After deducting Attorneys’ Fees and Costs, a Service Award to the Class Representative, and the Settlement Administration Costs, the Net Settlement Fund will be divided pro rata among all Settlement Class Members.

**What are my options?** If you do nothing and the Settlement is approved and becomes final, you will automatically receive a Settlement Class Member Payment, either by credit or check, and your rights will be affected. If you do not want to be legally bound by the Settlement or receive a Settlement Class Member Payment, you must opt-out of the Settlement by \_\_\_\_\_, 2024. Unless you opt-out of the Settlement, you will not be able to sue or continue to sue BANA for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (and do not opt-out), you may object to it by \_\_\_\_\_, 2024.

**The Court’s Final Approval Hearing.** The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2024. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel’s request for attorneys’ fees (up to one-third of the Settlement Fund) and litigation costs; and (3) a Service Award of up to \$5,000.00 for the Class Representative. You or your lawyer may appear at the hearing at your own expense, but you do not have to.

*For more information, including a copy of the Long Form Notice and Settlement Agreement, visit  
www. \_\_\_\_\_ .com or call 1- \_\_\_\_\_ .*

**EXHIBIT 2**  
**(POSTCARD NOTICE)**

Aseltine v. Bank of America, N.A. Settlement  
P.O. Box \_\_\_\_\_  
Portland, OR \_\_\_\_\_

FIRST-CLASS MAIL  
U.S. POSTAGE  
PAID  
Portland, OR  
PERMIT NO. 2882

**Legal Notice**

**If you had a consumer checking and/or savings account with Bank of America, N.A., and paid Incoming Wire Transfer Fees between March 8, 2019, and August 31, 2023, you may be entitled to a payment from a class action settlement.**

**1- \_\_\_\_\_  
www. \_\_\_\_\_ .com**

<<MAIL ID>>  
<<NAME 1>>  
<<NAME 2>>  
<<ADDRESS LINE 1>>  
<<ADDRESS LINE 2>>  
<<ADDRESS LINE 3>>  
<<ADDRESS LINE 4>>  
<<ADDRESS LINE 5>>  
<<CITY, STATE ZIP>>  
<<COUNTRY>>

*Para una notificación en español, visite nuestro sitio de web: \_\_\_\_\_ .com*

A Settlement has been reached with Bank of America, N.A (“BANA”) in a class action lawsuit alleging certain wire transfer fees on incoming payments into consumer checking and savings accounts (“Incoming Wire Transfer Fees”) should not have been assessed from **March 8, 2019, through August 31, 2023**.

You may be a member of the Settlement Class in *Aseltine v. Bank of America, N.A.*, in which the Plaintiff, Aaron Aseltine, alleges BANA improperly assessed and collected Incoming Wire Transfer Fees on accounts opened on or before August 31, 2012. BANA maintains it did nothing wrong and that its contract with Accountholders permitted the fees charged but has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not decided which side is right.

**Who is included?** BANA records indicate that you are a “Settlement Class member” in this Settlement because you are in the following Settlement Class: All United States Accountholders of BANA consumer checking and/or savings accounts opened on or before August 31, 2012, who, during the Class Period, paid and were not refunded an Incoming Wire Transfer Fee.

**What does the Settlement provide?** BANA will create a \$21,000,000.00 Settlement Fund. After deducting Attorneys’ Fees and Costs, a Service Award to the Class Representative, and the Settlement Administration Costs, the Net Settlement Fund will be divided pro rata among all Settlement Class Members.

**What are my options?** If you do nothing and the Settlement is approved and becomes final, you will automatically receive a Settlement Class Member Payment, either by credit or check, and your rights will be affected. If you do not want to be legally bound by the Settlement or receive a Settlement Class Member Payment, you must opt-out of the Settlement by \_\_\_\_\_, **2024**. Unless you opt-out of the Settlement, you will not be able to sue or continue to sue BANA for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (and do not opt-out), you may object to it by \_\_\_\_\_, **2024**.

**The Court’s Final Approval Hearing.** The Court will hold a Final Approval Hearing on \_\_\_\_\_, **2024**. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel’s request for attorneys’ fees (up to one-third of the Settlement Fund) and litigation costs; and (3) a Service Award of up to \$5,000.00 for the Class Representative. You or your lawyer may appear at the hearing at your own expense, but you do not have to.

**More information, including the Long Form Notice and Settlement Agreement are available at** [www.settlement-wcm.com](http://www.settlement-wcm.com) **or by calling 1-800-368-7262.**



**EXHIBIT 3**  
**(LONG FORM NOTICE)**

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

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

**IF YOU HAD A CONSUMER CHECKING AND/OR SAVINGS ACCOUNT WITH BANK OF AMERICA, N.A., AND PAID CERTAIN WIRE TRANSFER FEES ON INCOMING PAYMENTS INTO YOUR ACCOUNT FROM MARCH 8, 2019, THROUGH AUGUST 31, 2023, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

*Para una notificación en español, visite nuestro sitio de web: \_\_\_\_\_ .com*

The District Court for the Western District of North Carolina has authorized this Notice.  
It is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
<b>DO NOTHING.</b>	If you were assessed and were not refunded Incoming Wire Transfer Fees challenged in this case, then you will receive a Settlement Class Member Payment from the Settlement Fund so long as you do not opt-out of the Settlement (described in the next box).
<b>OPT-OUT and EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS.</b>	You can choose to opt-out of the Settlement which means you are excluding yourself from the Settlement. This means you choose not to participate in the Settlement. You will keep your individual claims against Bank of America, N.A. (“BANA”), but you will not receive a Settlement Class Member Payment. The deadline to opt-out of the Settlement is _____, 2024. If you opt-out but still want to recover against BANA, then you will have to file a separate lawsuit or claim.
<b>OBJECT TO THE SETTLEMENT.</b>	If you do not opt-out, but instead wish to object to the Settlement or any matters described in the Notice, you may do so by filing with the Court an objection. The deadline to object to the Settlement is _____, 2024.

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

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

The lawsuit that is being settled is entitled *Aaron Aseltine v. Bank of America, N.A.*, Civil Action No. 3:23-cv-00235 (the “Action”). The person who sued is called the “Class Representative” or “Plaintiff.” BANA is the Defendant. The case is a “class action.” That means the Class Representative is acting on behalf of the Settlement Class. The transactions at issue occurred **between March 8, 2019, and August 31, 2023**.

The Settlement Class consists of all Accountholders in the United States of a BANA consumer checking and/or savings accounts opened on or before August 31, 2012, who, during the Class Period, paid and were not refunded an Incoming Wire Transfer Fee.

BANA denies all wrongdoing and liability and denies that Plaintiff’s claims entitle him or the Settlement Class members to any relief and denies that anyone was harmed by the conduct that the Plaintiff alleges.

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

You received the Settlement Class Notice because BANA’s records indicate you are in the Settlement Class that was alleged to have been charged one or more of the Incoming Wire Transfer Fees at issue. The Court directed the Notice be sent to all Settlement Class members because each Settlement Class member has a right to know about the proposed Settlement and the options available to him or her before the Court decides whether to approve the Settlement.

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

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

There is legal uncertainty about whether a judge or a jury will find that BANA breached its agreements with customers or otherwise acted improperly by assessing the Incoming Wire Transfer Fees that are the subject of this Action. There is also uncertainty about whether the Class Representative’s claims are subject to other defenses that might result in no or less recovery to Settlement Class members. Even if the Class Representative was to win at trial, there is no assurance that the Settlement Class members would be awarded more than the \$21,000,000.00 that BANA is paying in this Settlement, and it may take years of litigation before any payments would be made. By settling, the Settlement Class will avoid these, and other risks, and the delays associated with continued litigation.

While BANA disputes Plaintiff’s claims, it has agreed to settle to avoid the costs, distractions, and risks of litigation. Thus, even though BANA denies that it did anything improper, it believes the Settlement is in its best interest and in the best interests of all of the Settlement Class members.

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

If you received the Settlement Class Notice, BANA’s records indicate that you are a Settlement Class member who is entitled to receive a payment.

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

You have three options: (1) do nothing and you will receive a Settlement Class Member Payment according to the terms of this Settlement, but you give up your rights to sue BANA separately about the same legal claims in this lawsuit; (2) opt-out of the Settlement and you will not receive a Settlement Class Member Payment; or (3) participate in the Settlement but object to it. Each of these options is described in a separate section below.

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

If you do nothing, you will receive a Settlement Class Member Payment.

The deadline for sending a letter to opt-out of the Settlement is \_\_\_\_\_, 2024.

The deadline to file an objection to the Settlement with the Court is \_\_\_\_\_, 2024.

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

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

If you believe the Settlement is unreasonable, unfair, or inadequate, and the Court should reject the Settlement, you can object to the Settlement terms. The Court will decide if your objection is valid. If the Court agrees with you, then the Settlement may not be approved, and no payments will be made to you or any other Settlement Class Member. If your objection (and any other objection) is overruled, and the Settlement is approved, then you will still get a Settlement Class Member Payment.

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

The Court must decide the Settlement is fair, reasonable, and adequate before it will approve it. The Court has already given Preliminary Approval of the Settlement, which is why you received the Settlement Class Notice via email or mail. The Court will make a final decision regarding the Settlement at a Final Approval Hearing, which is currently scheduled for \_\_\_\_\_, 2024.

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

BANA has agreed to create a cash Settlement Fund of \$21,000,000.00. As discussed separately below, Attorneys' Fees and Costs, a Service Award to the Class Representative, and all Settlement Administration Costs will be paid out of this amount. Subject to Court approval, the Net Settlement Fund (money remaining after payment of Attorneys' Fees, Costs, a Service Award, and Settlement Administration Costs) will be divided among all Settlement Class Members based on the formula described in the Settlement Agreement.

## **10. How much of the Settlement Fund will be used to pay for attorneys' fees and costs?**

Class Counsel will request the Court award up to one-third of the Settlement Fund (\$7,000,000.00) as attorneys' fees, plus reimbursement of Class Counsel's litigation costs incurred in prosecuting the Action. The Court will decide the amount of attorneys' fees to award Class Counsel.

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

Class Counsel, on behalf of the Class Representative, will request a Service Award of up to \$5,000.00 for the Class Representative. The Service Award must be approved by the Court.

Subject to Court approval, the Net Settlement Fund, will be divided among all Settlement Class Members entitled to

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

Settlement Class Member Payments in accordance with the formula outlined in the Settlement Agreement found at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). Current Accountholders of BANA as of the Effective Date of the Settlement Agreement will receive a credit to their BANA accounts. Past Accountholders of BANA will receive a check from the Settlement Administrator.

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

No. Any amount you are entitled to under the terms of the Settlement will be distributed to you, unless you choose to opt-out of the Settlement. Opting-out from the Settlement means you choose not to participate in the Settlement. You will keep your individual claims against BANA, but you will not receive a Settlement Class Member Payment. In that case, if you choose to seek recovery against BANA, then you will have to file a separate lawsuit or claim.

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

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2024, to consider whether the Settlement should be approved. If there are no objections and the Court approves the Settlement, then Settlement Class Member Payments should be made within approximately 45 to 60 days after the Settlement's Effective Date. The 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.

#### 15. How do I opt-out from the Settlement?

If you do not want to receive a Settlement Class Member Payment, or if you want to keep any right you may have to sue BANA for the claims alleged in this lawsuit, then you must opt-out of the Settlement.

To opt-out, you **must** send a letter to the Settlement Administrator that you want to be excluded from the Settlement. Your letter can simply say, "I hereby elect to opt-out of the Settlement in the *Aaron Aseltine v. Bank of America, N.A.* class action." Be sure to include your name, your address, your email address (if any), and your signature. Your opt-out request must be **postmarked by** \_\_\_\_\_, 2024, and sent to the following address:

Aseltine v. Bank of America, N.A. Settlement  
Opt-Out Requests: Bank of America Incoming Wire Fee Class Action  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

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

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

#### 17. If I opt-out of the Settlement, can I still obtain a Settlement Class Member Payment?

No. If you opt-out, you will not be entitled to a payment.

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

You can object to the Settlement, the attorneys' fees and costs, and/or the Service Award that you do not like, provided you do not opt-out of the Settlement. (Settlement Class members who opt-out of the Settlement have no right to object to how Settlement Class Members are treated.) To object, you must do so by filing with the Court a notice of your intention to object. Your objection must include the following:

- the objector's full name, address, telephone number, and e-mail address (if any);
- information identifying the objector as a Settlement Class Member, including evidence the objector is a member of the Settlement Class;
- a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- the identity of all counsel representing or assisting the objector, if any;
- the identity of all counsel representing the objector who will appear at the Final Fairness Hearing, if any;
- a list of all Persons who will be called to testify at the Final Fairness Hearing in support of the objection, if any;

- a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
- 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;
- 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;
- 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 3 years;
- 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
- the objector's signature (an attorney's signature is not sufficient).

If your objection is made by or through an attorney, the objection must also include:

- the identity and number of the Settlement Class Members represented by objector's counsel;
- the number of such represented Settlement Class members who have opted-out of the Settlement Class; and
- the number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected.

The objection must also include the dates when the objector is available for deposition, which dates may be no later than 5 days before the Final Approval Hearing.

Be advised that if you object to the Settlement and retain an attorney for purposes of objecting, you are solely responsible for paying that attorney's fees and costs. If the attorney intends to seek attorneys' fees and costs from anyone other than the objector(s) he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BANA's Counsel, not later than 30 days before the Final Approval Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney's hourly rate.

If you fail to comply with the provisions herein, you will waive and forfeit any and all rights to appear and/or object separately and will be bound by the terms of the Settlement Agreement and the orders and judgments of the Court.

To be timely, written notice of an objection must be filed with the Settlement Administrator and/or Court by \_\_\_\_\_, 2024, and served at the same time to Class Counsel and Defendant's counsel to the following addresses:

CLERK OF COURT	CLASS COUNSEL	BANA'S COUNSEL
United States Courthouse W.D. North Carolina 319 U.S. Courthouse Building 100 Otis Street Asheville, NC 28801	Jeff Ostrow Jonathan Streisfeld KOPELOWITZ OSTROW P.A. 1 West Las Olas Blvd. Suite 500 Fort Lauderdale, FL 33301  Sophia Gold KALIELGOLD PLLC 950 Gilman Street, Suite 200 Berkeley, CA 94710  David Wilkerson THE VAN WINKLE FIRRM 11 North Market Street Asheville, NC 28801	Laura A. Stoll Laura G. Brys GOODWIN PROCTOR LLP 601 S. Figueroa St. Suite 4100 Los Angeles, CA 90017  Bradley R. Kutrow MCGUIRE WOODS LLP 201 North Tryon Street Suite 3000 Charlotte, NC 28202-2146

## **19. What is the difference between objecting and opting-out of the Settlement?**

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

## **20. What happens if I object to the Settlement?**

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

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

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2024. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for Attorneys' Fees and Costs and how much the Class Representative should get as a Service Award for acting as the Class Representative.

## **22. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. You or your lawyer may appear at the hearing at your own expense if you desire to do so, but you do not have to. If you have submitted an objection, then you may want to attend.

## **23. May I speak at the hearing?**

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file a "Notice of Intent to Appear" with the Court no later than \_\_\_\_\_, 2024, and in that notice you must:

- state how much time the Settlement Class Member anticipates needing to present the objection;
- identify, by name, address, and telephone number all witnesses the Settlement Class Member proposes to have testify;
- summarize in detail the anticipated testimony of all such witnesses;
- identify all exhibits the Settlement Class Member intends to offer in support of the objection; and
- attach complete copies of all such exhibits.

You must also deliver a copy of the Notice of Intent to Appear with the above listed items to Class Counsel and BANA's counsel. The Notice of Intent to Appear may be incorporated in the objection.

## **24. What happens if I do nothing at all?**

If you do nothing at all, and if the Settlement is approved, then you may receive a Settlement Class Member Payment that represents your share of the Net Settlement Fund. You will be considered a part of the Settlement Class, and you will give up claims against BANA for the conduct identified in the Settlement. You will not give up any other claims you might have against BANA that are not released in this Settlement.

## **25. Do I have a lawyer in this case?**



The Court ordered that the lawyers and their law firms referred to in this Settlement Class Notice as Class Counsel will represent you and the other Settlement Class Members. You may hire your own attorney, at your own expense if you desire to do so, but you do not have to.

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

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

**27. Who determines what the attorneys' fees will be?**

The Court will be asked to approve the amount of attorneys' fees at the Final Approval Hearing. Class Counsel will file an application for attorneys' fees and will specify the amount being sought as discussed above. Once filed, you may review the Motion for Final Approval, which will include the attorneys' fees and costs and Service Award application, at the Settlement Website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

**GETTING MORE INFORMATION**

This Settlement Class Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

For additional information about the Settlement and/or to obtain copies of the Settlement Agreement, the pleadings in this case, or to change your address for purposes of receiving a Settlement Class Member Payment, you should contact the Settlement Administrator as follows:

Aseltine v. Bank of America Settlement  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_(XXX) XXX-XXXX\_\_\_\_\_  
[www.\\_\\_\\_\\_\\_.com](http://www._____.com)

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



# EXHIBIT B

**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

**JOINT DECLARATION IN SUPPORT OF PLAINTIFF’S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND RELEASE**

We, Sophia Gold, Jeff Ostrow, and David Wilkerson, declare and state that:

1. We are counsel of record for Plaintiff and the proposed Settlement Class. We submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Release. Unless otherwise noted, we have personal knowledge of the facts set forth in this Declaration and could and would testify competently to them if called upon to do so.

**Background and Procedural History**

2. This national putative class action alleges that Defendant Bank of America, N.A. (“Defendant” or “BANA”) breached its contract with its customers and violated the consumer protection laws of North Carolina and California through its practice of charging undisclosed fees on incoming wire transfers (“Action”).

3. Following the Court’s Order on the Motion to Dismiss, 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, submit a joint stipulation to consent to jurisdiction of a U.S. Magistrate Judge.

4. The Parties had a Federal Rule of Civil Procedure 16.1 Initial Discovery Conference where they agreed on a proposed court schedule.

5. Thereafter, the Parties then began discovery.

6. Plaintiff served initial disclosures and interrogatories and document requests on BANA. 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.

7. The Parties agreed to mediate on February 29, 2024, in California before a JAMS neutral, the Honorable Jay C. Gandhi (Ret.). In advance of the mediation, the Parties exchanged detailed mediation briefs and BANA responded to formal and informal discovery requests necessary for Plaintiff's evaluation of size of the class, liability, and damages. The Parties mediated; however, no agreement was reached after a full day of negotiating. The Parties continued their discussion over the next five weeks, ultimately agreeing to the material terms of a settlement on April 5, 2024. Thereafter, the Parties negotiated the Settlement Agreement, which was signed on May 17, 2024.

8. Under the Settlement, BANA has agreed to a non-reversionary common cash Settlement Fund of \$21,000,000.

**Class Counsel Experience and Expertise**

9. Counsel for both sides have significant experience in consumer class-action litigation involving deceptive practices, including those involving bank fees. Class Counsel are highly experienced in consumer class action litigation, as demonstrated by their firm resumes, and have brought that significant experience to bear in litigating and settling this case.

10. Class Counsel collectively have decades of experience litigating consumer class actions (including those against financial institutions) and have litigated and settled dozens of class actions involving deceptive practices, banking fees, and other types of allegedly wrongful conduct by financial institutions.

11. Class Counsel have emerged as leaders in nationwide litigation against financial institutions over the assessment of improper fees.

**KalielGold PLLC**

15. KalielGold PLLC (“KG”) has extensive experience in consumer protection class actions in both state and federal court and has represented accountholders in hundreds of class actions against financial institutions.

16. Sophia Gold is a graduate of the University of California, Berkeley, School of Law and a member in good standing of the District of Columbia Bar and the State Bar of California. She has substantial experience with consumer class actions in both state and federal courts. She has won contested motions for class certification; briefed, argued, and overturned dispositive lower court rulings at the federal appellate level; and worked extensively with economics and information technology experts to build damages models. She has also successfully resolved

numerous class actions by settlement, resulting in hundreds of millions of dollars in relief for millions of class members. Her firm, KalieGold PLLC has extensive class action experience and has been appointed as class counsel in numerous class actions in which courts have recognized the firm's expertise in the area of class action litigation in particular. *See, e.g., Hinton v. Atlantic Union Bank*, No. 20-cv-00651 (E.D. Va.) ("Class Counsel's expertise, perseverance, and skill allowed them to obtain an excellent result for the Settlement Class."); *Kelly v. Community Bank*, No. 18-cv-00919 (N.D.N.Y.) (determining Class Counsel to be "qualified, experienced, and able to conduct the litigation of this Action"); *Gonzalez v. Banner Bank*, No. 20-cv-05151 (E.D. Wash.) (Class counsel "were diligent in their representation of the Class"); *Lambert v. Navy Federal Credit Union*, No. 19-cv-00103 (E.D. Va.) (Class Counsel's "tenacity in the face of significant risk and complexity allowed to achieve an outstanding recovery that provides substantial benefits to Settlement Class Members."); *Walters v. Target Corporation*, No. 16-cv-01678 (S.D. Cal.) ("It is undisputed that Class Counsel achieved this result through tenacity and skill in presenting novel and complex legal issues."); *Figueroa v. Capital One, N.A.*, No. 18-cv-00692 (S.D. Cal.) (praising Class Counsel for the "very positive result achieved for the class" in a case involving a "novel legal issue"); *White v. Members 1st Credit Union*, No. 19-cv-00556 (M.D. Pa.) (finding Class Counsel to be "highly trained in class action law and procedure" and noting their "ability to negotiate the instant Settlement at the early stages of this litigation demonstrates their high level of skill and efficiency"); *Perks v. Activehouse d/b/a Earnin*, No. 19-cv-05543 (N.D. Cal.) ("Class Counsel have substantial experience in litigating and settling consumer class actions."). KG's tenacity is frequently reflected in the results it achieves for the classes it represents, especially in cases involving similar bank fees. *See, e.g., Roberts v. Capital One*, No. 16-cv-04841 (S.D.N.Y.) (\$17 million settlement approved for the class); *Perks v. TD Bank*, Case No. 18-cv-11176 (S.D.N.Y.) (\$41.5 million settlement approved for the class); *Morris et al. v. Bank of America, N.A.*, No. 18-cv-00157 (W.D.N.C.) (\$75 million settlement approved for the class). KG's experience is

further detailed in the firm's resume, attached hereto as **Exhibit 1**.

**Kopelowitz Ostrow P.A.**

17. Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A. ("KO") are graduates of the Nova Southeastern University Shepard Broad College of Law and members of The Florida Bar. Mr. Ostrow is also a member of the District of Columbia Bar. Both have extensive experience litigating nationwide and state consumer class actions, having practiced for over 26 years. Although the firm handles a variety of consumer class actions, they focus a significant amount of our resources pursuing financial institutions and other corporations that assess their customers unlawful fees. KO has been appointed class counsel in dozens of cases throughout the country and have tried several to verdict. The firm is well positioned to understand the risks of this Action and why settlement at this stage of the litigation was the best option for the putative class. Based upon our experience as one of the leading financial services and unlawful fee class action firms for over a decade, we are confident that the settlement obtained here is a good result. KO has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative class in this litigation. The KO firm resume, and a listing of cases demonstrative of KO's success in litigation against financial institutions, is attached as **Exhibit 2**.

**The Van Winkle Law Firm**

21. David M. Wilkerson is a graduate of the University of South Carolina Law School and member of good standing of the North Carolina Bar and the South Carolina Bar. He is a Senior Principal at The Van Winkle Law Firm with nearly 25 years of experience. He currently serves as class counsel in numerous class actions around the nation and practices in the area of complex business litigation. He served for six years on the council for the Antitrust and Complex Litigation

Section of the North Carolina Bar Association and served on the North Carolina Business Court Rules Committee. His recent leadership in class actions includes, but is not limited to, serving as co-lead counsel in *Gaston v. Lexis Nexis Risk Solutions, et al.*, No. 5:16-cv-9 (W.D.N.C.); class counsel in *In Re Blue Cross Antitrust*, No. 2:13-cv-20000 (N.D.A.L.); interim liaison counsel in *In Re Sanderson and Koch Broiler Chicken Grower Litigation*, No. 7:10-cv-00031 (E.D.N.C.); co-lead counsel in *Morris v. Bank of America, N.A.*, No. 3:18-CV-157 (W.D.N.C.); class counsel in *Boardman v. Green Dot Corporation*, No. 3:21-cv-00174 (W.D.N.C.); and co-lead counsel in *Millwood v. State Farm Life Insurance Company*, No. 7:19-cv-01445 (D.S.C.) He practices in courts around the nation. Since 2021, he has argued cases in the Ninth Circuit Court of Appeals, the Federal Circuit Court of Appeals, the United States Patent and Trademark Appeal Board in Washington, D.C., and served as counsel in class actions in South Carolina, Oklahoma, Virginia, and Missouri, among others. The Van Winkle firm resume, including biographical information for David M. Wilkerson, and a listing of cases demonstrative of Van Winkle's success in litigation against financial institutions, is attached as **Exhibit 3**.

### **Settlement**

23. Under the Settlement, BANA will provide a \$21,000,000.00 Settlement Fund, which represents a significant portion of the estimated classwide damages should Plaintiffs have prevailed on every issue at class certification, trial, and on appeal. Under Plaintiffs' damages model, the Settlement represents approximately 23.5% of the total damages available at trial, assuming Plaintiffs prevailed on liability. Under Defendant's damages model, however, the Settlement represent approximately 78% of the total damages available at trial.

24. Based on their ample experience in similar cases, Class Counsel believe the Settlement is fair and adequate.

25. Class Counsel is not aware of other pending individual litigation against BANA regarding the practices at issue in this Action. Another action that was pending in California was recently dismissed.

26. Proposed Class Counsel have expended a great deal of time, effort, and expense investigating, litigating, and resolving this Action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true of my own personal knowledge. Executed in Berkeley, California this 24th day of May, 2024.

/s/ Sophia G. Gold  
SOPHIA G. GOLD

I declare under penalty of perjury t under the laws of the United States of America that the foregoing is true of my own personal knowledge. Executed in Ft. Lauderdale, Florida this 24th day of May, 2024.

/s/ Jeff Ostrow  
JEFF OSTROW

I declare under penalty of perjury t under the laws of the United States of America that the foregoing is true of my own personal knowledge. Executed in Asheville, North Carolina this 24th day of May, 2024.

/s/ David Wilkerson  
DAVID WILKERSON



# EXHIBIT 1

**KALIELGOLD PLLC**

KalielGold PLLC was founded in 2017 and is a 100% contingency Plaintiff-side law firm. Our attorneys have decades of combined experience and have secured hundreds of millions of dollars for their clients. Our firm's practice focuses on representing consumers in class action litigation and specifically on cases in the consumer financial services sector. In the four years since our firm was founded, our firm has been appointed lead counsel or co-lead counsel in numerous class action and putative class action lawsuits in state and federal courts nationwide including most recently in *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.); *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.); *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1<sup>st</sup> Cir. Haw.); *Liggio v. Apple Federal Credit Union*, No. 18-cv-01059 (E.D. Va.); *Morris et al. v. Bank of America, N.A.*, No. 3:18-cv-00157-RJC-DSC (W.D.N.C.); *Brooks et al. v. Canvas Credit Union*, 2019CV30516 (Dist. Ct. for Denver Cnty., Colo.); *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.); *White v. Members 1<sup>st</sup> Credit Union*, Case No. 1:19-cv-00556-JEJ (M.D. Pa.); *Plummer v. Centra Credit Union*, Case No. 03D01-1804-PL-001903 (Cnty. Of Bartholomew, Ind.); *Holt v. Community America Credit Union*, Case No. 4:19-cv-00629-FJG (W.D. Mo.); *Trinity Management v. Charles Puckett*, Case No. GCG-17-558960 (Super. Ct., San Francisco Cnty, Cal.); *Martin v. Le&N Federal Credit Union*, No. 19-CI-022873 (Jefferson Cir. Ct., Div. One); *Clark v. Hills Bank and Trust Company*, No. LACV080753 (Iowa Dist. Ct. Johnson Cnty.); *Morris v. Provident Credit Union*, Case No. CGC-19-581616 (Super. Ct., San Francisco Cnty., Cal.).

As shown in the biographies of our attorneys and the list of class counsel appointments, KalielGold PLLC is well versed in class action litigation and zealously advocates for its clients. To learn more about KalielGold PLLC, or any of the firm's attorneys, please visit [www.kalielgold.com](http://www.kalielgold.com).

**JEFFREY D. KALIEL**

Jeffrey Kaliel earned his law degree from Yale Law School in 2005. He graduated from Amherst College summa cum laude in 2000 with a degree in Political Science, and spent one year studying Philosophy at Cambridge University, England.

Over the last 10 years, Jeff has built substantial class action experience. He has received "Washington D.C. Rising Stars Super Lawyers 2015" recognition.

Jeff has been appointed lead Class Counsel in numerous nationwide and state-specific class actions. In those cases, Jeff has won contested class certification motions, defended dispositive motions, engaged in data-intensive discovery and worked extensively with economics and information technology experts to build damages models. Jeff has also successfully resolved numerous class actions by settlement, resulting in hundreds of millions of dollars in relief for millions of class members.

Currently Jeff is actively litigating several national class action cases, including actions against financial services entities and other entities involved in predatory lending and financial services targeting America's most vulnerable populations.

Jeff's class action successes extend beyond financial services litigation. He seeks to lead cases that serve the public interest. Jeff has worked with nonprofits such as the Humane Society, Compassion Over Killing, and the National Consumers League to fight for truth in the marketplace on food and animal products.

Jeff has over a decade of experience in high-stakes litigation. He was in the Honors Program at the Department of Homeland Security, where he worked on the Department's appellate litigation. Jeff also helped investigate the DHS response to Hurricane Katrina in preparation for a Congressional inquiry. Jeff also served as a Special Assistant US Attorney in the Southern District of California, prosecuting border-related crimes.

Jeff is a former Staff Sergeant in the Army, with Airborne and Mountain Warfare qualifications. He is a veteran of the second Iraq war, having served in Iraq in 2003.

Jeff is admitted to practice in California and Washington, DC, and in appellate and district courts across the country.

Jeff lives in Washington, D.C. with his wife, Debbie, and their three children.

**SOPHIA GOREN GOLD**

Sophia Goren Gold is a third-generation Plaintiff's lawyer. A *summa cum laude* graduate of Wake Forest University and the University of California, Berkeley, School of Law, Sophia has spent her entire career fighting for justice.

A fierce advocate for those in need, Sophia's practice centers around taking on financial institutions, insurance companies, and other large corporate interests. Sophia has participated in hundreds of individual and class cases in both state and federal courts across the country. Collectively, she has helped secure tens of millions of dollars in relief on behalf of the classes she represents.

In addition to providing monetary relief, Sophia's extensive litigation experience has resulted in real-world positive change. For example, she brought litigation which resulted in the elimination of the Tampon Tax in the State of Florida, and she was influential in changing the state of Delaware's Medicaid policy, resulting in greater access to life-saving medication.

Sophia is currently representing consumers in numerous cases involving the assessment of improper fees by banks and credit unions, such as overdraft fees, insufficient funds fees, and out of network ATM fees. She is also currently representing consumers who have been the victims of unfair and deceptive business practices.

Sophia is admitted to practice in California and Washington, D.C. When not working, Sophia enjoys spending time with her husband, daughter, and their goldendoodle.

**BRITTANY CASOLA**

Brittany Casola attended the University of Central Florida in Orlando and graduated in 2012 with a bachelor's degree in Political Science and a minor in Spanish. Brittany earned her Juris Doctorate from California Western School of Law in 2015 and graduated magna cum laude in the top 10% of her class.

Throughout the course of her law school career, she served as a judicial extern to the Honorable Anthony J. Battaglia for the United States District Court, Southern District of California and worked multiple semesters as a certified legal intern for the San Diego County District Attorney's Office. Brittany was awarded Academic Excellence Awards in law school for receiving the highest grade in Trial Practice, Health Law & Policy, and Community Property.

Before joining KalielGold PLLC, Brittany worked as a judicial law clerk for the Honorable Anthony J. Battaglia and as an associate attorney for Carlson Lynch LLP, specializing in consumer complex litigation.

**AMANDA ROSENBERG**

Amanda Rosenberg graduated *cum laude* from the University of California, Hastings College of the Law in 2011 and the University of California, San Diego in 2008, where she earned departmental Honors with Highest Distinction in history.

Before joining KalielGold PLLC, Amanda represented and advised small businesses and financial institutions in litigation matters including employment disputes, merchant disputes, credit and charge card disputes, wrongful foreclosures, and securities. She has successfully litigated cases in California, Illinois, and Michigan.

Amanda is an active volunteer in her community and has helped numerous individuals understand and navigate their rights in the workplace.

In law school, Amanda worked as an extern for the Honorable Judge Vaughn Walker in the United States District Court, Northern District of California. Amanda was awarded academic excellence awards for receiving the highest grades in Trial Advocacy and Litigating Class Action Employment.

When not working, Amanda loves exploring Michigan's outdoors with her husband, kids, and rescue dog.

**CLASS COUNSEL APPOINTMENTS**

- *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.);
- *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.);
- *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.);
- *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1<sup>st</sup> Cir. Haw.);
- *Brooks et al. v. Canvas Credit Union*, 2019CV30516 (Dist. Ct. for Denver Cnty., Colo.);
- *Liggio v. Apple Federal Credit Union*, Civil No. 18-cv-01059 (E.D. Va.);
- *Morris et al. v. Bank of America, N.A.*, Civil No. 3:18-cv-00157-RJC-DSC (W.D.N.C.);
- *White v. Members 1<sup>st</sup> Credit Union*, Case No. 1:19-cv-00556-JEJ (M.D. Pa.);
- *Plummer v. Centra Credit Union*, Case No. 03D01-1804-PL-001903 (Bartholomew Cnty., Ind.);
- *Holt v. Community America Credit Union*, Case No. 4:19-cv-00629-FJG (W.D. Mo.);
- *Trinity Management v. Charles Puckett*, Case No. GCG-17-558960 (Super. Ct., San Francisco, Cnty., Cal.);
- *Martin v. Le&N Federal Credit Union*. No. 19-CI-022873 (Jefferson Cir. Ct., Division One);
- *Clark v. Hills Bank and Trust Company*, No. LACV080753 (Iowa Dist. Ct. Johnson Cnty.);
- *Morris v. Provident Credit Union*, Case No. CGC-19-581616 (Super. Ct. San Francisco Cnty., Cal.);
- *Bodnar v. Bank of America, N.A.*, 5:14-cv-03224 (E.D. Pa.);
- *In re Higher One OneAccount Marketing and Sales Practice Litigation.*, No. 12-md-02407-VLB (D. Conn.);
- *Shannon Schulte, et al. v. Fifth Third Bank.*, No. 1:09-cv-06655 (N.D. Ill.);
- *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.);
- *Nick Allen, et al. v. UMB Bank, N.A., et al.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson Cnty., Mo.);
- *Thomas Casto, et al. v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha Cnty., W. Va.);
- *Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa Cnty., Okla.);
- *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.);
- *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al*, No. 1:10-cv-21080 (S.D. Fla.);
- *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.);
- *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick Cnty., Kan.);
- *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.); *Galdamez v. I.Q. Data International, Inc.*, No. 1:15-cv-1605 (E.D. Va.);
- *Brown et al. v. Transurban USA, Inc. et al.*, No. 1:15-CV-00494 (E.D. Va.);
- *Grayson v. General Electric Co.*, No. 3:13-cv-01799 (D. Conn.);
- *Galdamez v. I.Q. Data International, Inc.*, No. 1:15-cv-1605 (E.D. Va.).

# EXHIBIT 2





## FIRM RESUME

One West Las Olas Boulevard, Suite 500  
Fort Lauderdale, Florida 33301

**Telephone:** 954.525.4100

**Facsimile:** 954.525.4300

**Website:** [www.kolawyers.com](http://www.kolawyers.com)

**Miami Fort Lauderdale Boca Raton**

## OUR FIRM

For over two decades, Kopelowitz Ostrow Ferguson Weiselberg Gilbert (KO) has provided comprehensive, results-oriented legal representation to individual, business, and government clients throughout Florida and the rest of the country. KO has the experience and capacity to represent its clients effectively and has the legal resources to address almost any legal need. The firm's 25 attorneys have practiced at several of the nation's largest and most prestigious firms and are skilled in almost all phases of law, including consumer class actions, multidistrict litigation involving mass tort actions, complex commercial litigation, and corporate transactions. In the class action arena, the firm has experience not only representing individual aggrieved consumers, but also defending large institutional clients, including multiple Fortune 100 companies.

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## WHO WE ARE

The firm has a roster of accomplished attorneys. Clients have an opportunity to work with some of the finest lawyers in Florida and the United States, each one committed to upholding KO's principles of professionalism, integrity, and personal service. Among our roster, you'll find attorneys whose accomplishments include Board Certified in their specialty; serving as in-house counsel for major corporations, as city and county attorneys handling government affairs, and as public defenders and prosecutors; achieving multi-millions of dollars through verdicts and settlements in trials, arbitrations, and alternative dispute resolution procedures; successfully winning appeals at every level in Florida state and federal courts; and serving government in various elected and appointed positions.

KO has the experience and resources necessary to represent large putative classes. The firm's attorneys are not simply litigators, but rather, experienced trial attorneys with the support staff and resources needed to coordinate complex cases.

# CLASS ACTION PLAINTIFF

Since its founding, KO has initiated and served as lead class counsel in dozens of high-profile class actions. Although the actions are diverse by subject area, KO has established itself as one of the leading firms that sue national and regional banks and credit unions related to the unlawful assessment of fees. Their efforts spanning a decade plus have resulted in recoveries in excess of \$500 million and monumental practices changes that have changed the industry and saving clients billions of dollars.

Additionally, other past and current cases have been prosecuted for breaches of insurance policies; data breaches; data privacy; wiretapping; biometric privacy; gambling; false advertising; defective consumer products and vehicles; antitrust violations; and suits on behalf of students against colleges and universities arising out of the COVID-19 pandemic.

The firm has in the past litigated certified and proposed class actions against Blue Cross Blue Shield and United Healthcare related to their improper reimbursements of health insurance benefits. Other insurance cases include auto insurers failing to pay benefits owed to insureds with total loss vehicle claims. Other class action cases include cases against Microsoft Corporation related to its Xbox 360 gaming platform, ten of the largest oil companies in the world in connection with the destructive propensities of ethanol and its impact on boats, Nationwide Insurance for improper mortgage fee assessments, and several of the nation's largest retailers for deceptive advertising and marketing at their retail outlets and factory stores.

## CLASS ACTION DEFENSE

The firm also brings experience in successfully defended many class actions on behalf of banking institutions, mortgage providers and servicers, advertising conglomerates, aircraft manufacturer and U.S. Dept. of Defense contractor, a manufacturer of breast implants, and a national fitness chain.

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## MASS TORT LITIGATION

The firm also has extensive experience in mass tort litigation, including serving as Lead Counsel in the Zantac Litigation, one of the largest mass torts in history. The firm also has handled cases against 3M related to defective earplugs, several vaginal mesh manufacturers, Bayer in connection with its pesticide Roundup, Bausch & Lomb for its Renu with MoistureLoc product, Wyeth Pharmaceuticals related to Prempro, Bayer Corporation related to its birth control pill YAZ, and Howmedica Osteonics Corporation related to the Stryker Rejuvenate and AGB II hip implants. In connection with the foregoing, some of which has been litigated within the multidistrict arena, the firm has obtained tens of millions in recoveries for its clients.

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## OTHER AREAS OF PRACTICE

In addition to class action and mass tort litigation, the firm has extensive experience in the following practice areas: commercial and general civil litigation, corporate transactions, health law, insurance law, labor and employment law, marital and family law, real estate litigation and transaction, government affairs, receivership, construction law, appellate practice, estate planning, wealth preservation, healthcare provider reimbursement and contractual disputes, white collar and criminal defense, employment contracts, environmental, and alternative dispute resolution.

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## FIND US ONLINE

To learn more about KO, or any of the firm's other attorneys, please visit [www.kolawyers.com](http://www.kolawyers.com).

# CLASS ACTION AND MASS TORT SETTLEMENTS

## FINANCIAL INSTITUTIONS

*Devore, et al. v. Dollar Bank*, GD-21-008946 (Ct. Common Pleas Allegheny 2024) - \$7 million

*Nimsey v. Tinker Federal Credit Union*, C1-2019-6084 (Dist. Ct. Oklahoma 2024) - \$5.475 million

*Precision Roofing of N. Fla. Inc., et al. v. CenterState Bank*, 3:20-cv-352 (S.D. Fla. 2023) - \$2.65 million

*Checchia v. Bank of America, N.A.*, 2:21-cv-03585 (E.D. Pa. 2023) - \$8 million

*Quirk v. Liberty Bank*, X03-HHD-CV20-6132741-S (Jud. Dist. Ct. Hartford 2023) - \$1.4 million

*Meier v. Prosperity Bank*, 109569-CV (Dist. Ct. Brazoria 2023) - \$1.6 million

*Abercrombie v. TD Bank, N.A.*, 0:21-cv-61376 (S.D. Fla. 2022) - \$4.35 million

*Perks, et al. v. TD Bank, N.A.*, 1:18-cv-11176 (E.D.N.Y. 2022) - \$41.5 million

*Fallis v. Gate City Bank*, 09-2019-CV-04007 (Dist. Ct., Cty. of Cass, N.D. 2022) - \$1.8 million

*Mayo v. Affinity Plus Fed. Credit Union*, 27-CV-20-11786 (4th Judicial District Minn. 2022) - \$1 million

*Glass, et al. v. Delta Comm. Cred. Union*, 2019CV317322 (Sup. Ct. Fulton Cty., Ga. 2022) - \$2.8 million

*Roy v. ESL Fed. Credit Union*, 19-cv-06122 (W.D.N.Y. 2022) - \$1.9 million

*Wallace v. Wells Fargo*, 17CV317775 (Sup. Ct. Santa Clara 2021) - \$10 million

*Doxey v. Community Bank, N.A.*, 8:19-CV-919 (N.D.N.Y. 2021) - \$3 million

*Coleman v. Alaska USA Federal Credit Union*, 3:19-cv-0229-HRH (Dist. of Alaska 2021) - \$1 million

*Smith v. Fifth Third Bank*, 1:18-cv-00464-DRC-SKB (W.D. Ohio 2021) - \$5.2 million

*Lambert v. Navy Federal Credit Union*, 1:19-cv-00103-LO-MSN (S.D. Va. 2021) - \$16 million

*Roberts v. Capital One, N.A.*, 16 Civ. 4841 (LGS) (S.D.N.Y. 2021) - \$17 million

*Baptiste v. GTE Financial*, 20-CA-002728 (Cir. Ct. Hillsborough 2021) - \$975,000

*Morris v. Provident Credit Union*, CGC-19-581616 (Sup. Ct. San Francisco 2020) - \$1.1 million

*Lloyd v. Navy Federal Credit Union*, 17-cv-01280-BAS-RBB (S.D. Ca. 2019) - \$24.5 million

*Farrell v. Bank of America, N.A.*, 3:16-cv-00492-L-WVG (S.D. Ca. 2018) - \$66.6 million

*Bodnar v. Bank of America, N.A.*, 5:14-cv-03224-EGS (E.D. Pa. 2015) - \$27.5 million

*Morton v. Green Bank*, 11-135-IV (20<sup>th</sup> Judicial District Tenn. 2018) - \$1.5 million

*Hawkins v. First Tenn. Bank*, CT-004085-11 (13<sup>th</sup> Jud. Dist. Tenn. 2017) - \$16.75 million

*Payne v. Old National Bank*, 82C01-1012 (Cir. Ct. Vanderburgh 2016) - \$4.75 million

*Swift. v. Bancorpsouth*, 1:10-CV-00090 (N.D. Fla. 2016) - \$24.0 million

*Mello v. Susquehanna Bank*, 1:09-MD-02046 (S.D. Fla. 2014) - \$3.68 million

*Johnson v. Community Bank*, 3:11-CV-01405 (M.D. Pa. 2013) - \$1.5 million

*McKinley v. Great Western Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$2.2 million

*Blabut v. Harris Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$9.4 million

*Wolfgeher v. Commerce Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$18.3 million

*Case v. Bank of Oklahoma*, 09-MD-02036 (S.D. Fla. 2012) - \$19.0 million Settlement

*Hawthorne v. Umpqua Bank*, 3:11-CV-06700 (N.D. Cal. 2012) - \$2.9 million Settlement

*Simpson v. Citizens Bank*, 2:12-CV-10267 (E.D. Mich. 2012) - \$2.0 million

*Harris v. Associated Bank*, 1:09-MD-02036 (S.D. Fla. 2012) - \$13.0 million

*LaCour v. Whitney Bank*, 8:11-CV-1896 (M.D. Fla. 2012) - \$6.8 million

*Orallo v. Bank of the West*, 1:09-MD-202036 (S.D. Fla. 2012) - \$18.0 million

*Taulava v. Bank of Hawaii*, 11-1-0337-02 (1st Cir. Hawaii 2011) - \$9.0 million

# FALSE PRICING

## CONSUMER PROTECTION

## MASS TORT

*Gattinella v. Michael Kors* (USA), 14-Civ-5731 (WHP) (S.D. NY 2015) - \$4.875 million

*Stathakos v. Columbia Sportswear*, 4:15-cv-04543-YGR (N.D. Ca. 2018) - Injunctive relief prohibiting deceptive pricing practices

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*Lopez, et al. v. Volusion, LLC*, 1:20-cv-00761 (W.D. Tex. 2022) - \$4.3 million

*Gupta v. Aerics Software, Inc.*, 8:20-cv-00995 (C.D. Ca. 2022) - \$1.75 million

*In Re: CaptureRx Data Breach*, 5:21-cv-00523 (W.D. Tex. 2022) - \$4.75 million

*Ostendorf v. Grange Indemnity Ins. Co.*, 2:19-cv-01147-ALM-KAJ (E.D. Ohio 2020) – \$12.6 million

*Walters v. Target Corp.*, 3:16-cv-1678-L-MDD (S.D. Cal. 2020) – \$8.2 million

*Papa v. Grieco Ford Fort Lauderdale, LLC*, 18-cv-21897-JEM (S.D. Fla. 2019) - \$4.9 million

*Bloom v. Jenny Craig, Inc.*, 18-cv-21820-KMM (S.D. Fla. 2019) - \$3 million

*Masson v. Tallahassee Dodge Chrysler Jeep, LLC*, 1:17-cv-22967-FAM (S.D. Fla. 2018) - \$850,000

*DiPuglia v. US Coachways, Inc.*, 1:17-cv-23006-MGC (S.D. Fla. 2018) - \$2.6 million

*In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.) - \$88 million

*In re: 21st Century Oncology Customer Data Sec. Breach Litig.*, 8:16-md-2737-MSS-AEP (M.D. Fla. 2021) - \$21.8 million

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*In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.) - MDL No. 2924 – Co-Lead Counsel

*In re: Stryker Rejuvenate and ABG II Products Liability Litigation*, 13-MD-2411 (17th Jud. Cir. Fla. Complex Litigation Division)

*In re: National Prescription Opiate Litigation*, 1:17-md-02804-DAP (N.D. Ohio) - MDL 2804

*In re: Smith and Nephew BHR Hip Implant Products Liability Litigation*, MDL-17-md-2775

*Yasmin and YAZ Marketing, Sales Practices and Products Liability Litigation*, 3:09-md-02100-DRH-PMF (S.D. Ill.) – MDL 2100

*In re: Prempro Products Liab. Litigation*, MDL 507, No. 03-cv-1507 (E.D. Ark.)

*In Re: 3M Combat Arms Earplug Products Liability Litigation* (N.D. Fla.) - MDL 2885





# JEFF OSTROW

Managing Partner

## *Bar Admissions*

The Florida Bar

District of Columbia Bar

## *Court Admissions*

Supreme Court of the United States

U.S. Court of Appeals for the Eleventh Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Eastern District of Michigan

U.S. District Court, Western District of Tennessee

U.S. District Court, Western District of Wisconsin

U.S. District Court, Western District of Kentucky

U.S. District Court, Northern District of New York

U.S. District Court, District of Colorado

U.S. District Court, Eastern District of Texas

## *Education*

Nova Southeastern University, J.D. - 1997

University of Florida, B.S. – 1994

*ostrow@kolawyers.com*

Jeff Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice in 1997 immediately upon graduation from law school and has since grown the firm to 25 attorneys in 3 offices throughout south Florida. In addition to overseeing the firm's day-to-day operations and strategic direction, Mr. Ostrow practices full time in the areas of consumer class actions, sports and business law. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, which is the highest possible rating by the most widely recognized attorney rating organization in the world.

Mr. Ostrow often serves as outside General Counsel to companies, advising them in connection with their legal and regulatory needs. He has represented many Fortune 500® Companies in connection with their Florida litigation. He has handled cases covered by media outlets throughout the country and has been quoted many times on various legal topics in almost every major news publication, including the Wall Street Journal, New York Times, Washington Post, Miami Herald, and Sun-Sentinel. He has also appeared on CNN, ABC, NBC, CBS, Fox, ESPN, and almost every other major national and international television network in connection with his cases, which often involve industry changing litigation or athletes in Olympic swimming, professional boxing, the NFL, NBA and MLB.

Mr. Ostrow is an accomplished trial attorney who has experience representing both Plaintiffs and Defendants. He has successfully tried many cases to verdict involving multi-million-dollar damage claims in state and federal courts. He is currently court-appointed lead counsel and sits on plaintiffs' executive committees in multiple high profile nationwide multi-district litigation actions involving cybersecurity breaches and related privacy issues. He has spent the past decade serving as lead counsel in dozens of nationwide and statewide class action lawsuits against many of the world's largest financial institutions in connection with the unlawful use of funds. To date, his efforts have successfully resulted in the recovery of over \$1 billion for tens of millions of bank and credit union customers, as well

as monumental changes in the way they assess fees. Those changes have forever revolutionized an industry, resulting in billions of dollars of savings. In addition, Mr. Ostrow has served as lead class counsel in many consumer class actions against some of the world's largest airlines, pharmaceutical companies, clothing retailers, health and auto insurance carriers, technology companies, and oil conglomerates, along with serving as class action defense counsel for some of the largest advertising and marketing agencies in the world, banking institutions, real estate developers, and mortgage companies.

In addition to the law practice, he is the founder and president of ProPlayer Sports LLC, a full-service sports agency and marketing firm. He represents both Olympic Gold Medalist Swimmers, World Champion Boxers, and select NFL athletes, and is licensed by both the NFL Players Association as a certified Contract Advisor. At the agency, Mr. Ostrow handles all player-team negotiations of contracts, represents his clients in legal proceedings, negotiates all marketing and NIL engagements, and oversees public relations and crisis management. He has extensive experience in negotiating, mediating, and arbitrating a wide range of issues on behalf of clients with the NFL Players Association, the International Olympic Committee, the United States Olympic Committee, USA Swimming and the World Anti-Doping Agency. He has been an invited sports law guest speaker at New York University and Nova Southeastern University and has also served as a panelist at many industry-related conferences.

Mr. Ostrow received a Bachelor of Science in Business Administration from the University of Florida in 1994 and Juris Doctorate from Nova Southeastern University in 1997. He is a licensed member of The Florida Bar and the District of Columbia Bar, is fully admitted to practice before the U.S. Supreme Court, the U.S. District Courts for the Southern, Middle, and Northern Districts of Florida, Eastern District of Michigan, Northern District of Illinois, Western District of Tennessee, Western District of Wisconsin, and the U.S. Court of Appeals for the Eleventh Circuit. Mr. Ostrow is also member of several Bar Associations.

He is a lifetime member of the Million Dollar Advocates Forum. The Million Dollar Advocates Forum is the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have had multi-million dollar jury verdicts. Additionally, he is consistently named as one of the top lawyers in Florida by Super Lawyers®, a publication that recognizes the best lawyers in each state. Mr. Ostrow is an inaugural recipient of the University of Florida's Warrington College of Business Administration Gator 100 award for the fastest growing University of Florida alumni- owned law firm in the world.

When not practicing law, Mr. Ostrow serves on the Board of Governors of Nova Southeastern University's Wayne Huizenga School of Business and is a Member of the Broward County Courthouse Advisory Task Force. He is also the Managing Member of One West LOA LLC, a commercial real estate development company with holdings in downtown Fort Lauderdale. He has previously sat on the boards of a national banking institution and a national healthcare marketing company. Mr. Ostrow is a founding board member for the Jorge Nation Foundation, a 501(c)(3) non-profit organization that partners with the Joe DiMaggio Children's Hospital to send children diagnosed with cancer on all-inclusive Dream Trips to destinations of their choice. Mr. Ostrow resides in Fort Lauderdale, Florida, and has 3 sons, 2 of which currently attend the University of Florida.





# DAVID FERGUSON

Partner

***Bar Admissions***

The Florida Bar

***Court Admissions***

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

***Education***

Nova Southeastern University, J.D. - 1993

Nova Southeastern University, B.S. - 1990

***Email: [ferguson@kolawyers.com](mailto:ferguson@kolawyers.com)***

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David L. Ferguson is an accomplished trial attorney and chairs the firm's litigation department. He routinely leads high stakes litigation across a wide array of practice areas, including, but not limited to, employment law, complex business litigation, class actions, product liability, catastrophic personal injury, civil rights, and regulatory enforcement actions.

Mr. Ferguson is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, a testament to the fact that his peers (lawyers and judges in the community) have ranked him at the highest level of professional excellence. Mr. Ferguson is well regarded as a formidable advocate in court and for providing creative and insightful strategic advice, particularly in emergency and extremely complex situations.

While in law school, Mr. Ferguson served as a Staff Member of the Nova Law Review. He was also a member of the Moot Court Society and the winner of the Moot Court Intramural Competition.

## **Representation of the Broward Sheriff's Office**

Since 2013, Mr. Ferguson has had the privilege of representing the Broward Sheriff's Office ("BSO") in over 150 matters involving many different types of disputes and issues, including: defense of civil rights lawsuits in state and federal court; negotiating collective bargaining agreements with unions; and arbitrations brought by unions or employees subjected to termination or other significant discipline. Mr. Ferguson has had many arbitration final hearings and state and federal jury trials for BSO representing the agency as well as the Sheriff and numerous Deputies individually.

## **Class/Mass Actions**

Mr. Ferguson has experience in class actions against large banks and some of the world's largest companies, including technology companies and oil conglomerates.

Additionally, during his career Mr. Ferguson has defended many large companies in MDL's, and mass and class actions, including medical equipment manufacturers, pharmaceutical companies, an aircraft parts and engine manufacturer and defense contractor, nationwide retailers, and a massive sugar manufacturer.

## **Large Fraud and Ponzi Cases**

Mr. Ferguson has a great deal of experience litigating cases involving massive fraud claims, most often for victims, but also for select defendants. Mr. Ferguson's clients have included individual victims who have lost multiple millions of dollars in fraud schemes to large businesses with tremendous damages, including one international lending institution with damages in excess of \$150 million. Additionally, Mr. Ferguson successfully represented several individuals and entities subjected to significant claims by a receiver and the United States Marshals Service in a massive billion-dollar Ponzi scheme involving a notorious Ft. Lauderdale lawyer and his law firm.

## **Regulatory Agency Enforcement Actions**

Mr. Ferguson has extensive experience defending individuals and entities in significant enforcement actions brought by regulatory agencies, including the CFTC, FTC, and SEC.

## **Employment, Human Resources, and Related Matters**

Mr. Ferguson has represented numerous business and individuals in employment and human resource related matters. Mr. Ferguson has represented several Fortune 50 companies, including Pratt & Whitney/UTC, Home Depot, and Office Depot in all phases of employment related matters. Mr. Ferguson has litigated virtually every type of discrimination and employment related claim, including claims based upon race, pregnancy, disability, national origin, religion, age, sexual preference, sexual harassment, worker's compensation, unemployment, FMLA leave, FLSA overtime, unpaid wages, whistleblower, and retaliation.

Mr. Ferguson primarily represents companies, but also represents select individuals who have claims against their present or former employers. In addition to the wide variety of employment claims discussed above, as plaintiff's counsel Mr. Ferguson has also handled federal False Claims Act (Qui Tam) and the Foreign Corrupt Practices Act claims brought by individuals.

## **Business Disputes**

Throughout his legal career, as counsel for plaintiffs and defendants, Mr. Ferguson has handled a myriad of commercial cases involving all types of business disputes, including claims for breach of partnership agreements, breach of shareholder or limited liability company operating agreements; dissolution of corporations and limited liability companies; appointment of receivers; breaches of fiduciary duty; conversion; constructive trust; theft; negligent or intentional misrepresentation or omissions; fraudulent inducement; tortious interference; professional negligence or malpractice; derivative actions, breach of contract, real estate disputes, and construction disputes.

## **Noncompetition and Trade Secret Litigation**

Mr. Ferguson routinely represents companies and individuals in commercial disputes involving unfair and deceptive trade practices, unfair competition and/or tortious interference with contracts or valuable business relationships. Often these cases involve the enforcement of noncompetition agreements and protection of valuable trade secrets. Mr. Ferguson has extensive experience representing businesses seeking to enforce their noncompetition agreements and/or protect trade secrets through suits for injunctive relief and damages and representing subsequent employers and individuals defending against such claims. He has obtained numerous injunctions for his clients and has also successfully defended against them numerous times, including getting injunctions dissolved that were entered against his clients without notice or prior to his representation. Mr. Ferguson has also obtained contempt sanctions and entitlement to punitive damages against individuals and entities who have stolen trade secrets from his clients.



# ROBERT C. GILBERT

Partner

## Bar Admissions

The Florida Bar

District of Columbia Bar

## Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the 11th Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

## Education

University of Miami School of Law, J.D. - 1985

Florida International University, B.S. - 1982

**Email:** [gilbert@kolawyers.com](mailto:gilbert@kolawyers.com)

Robert C. “Bobby” Gilbert has over three decades of experience handling class actions, multidistrict litigation and complex business litigation throughout the United States. He has been appointed lead counsel, co-lead counsel, coordinating counsel or liaison counsel in many federal and state court class actions. Bobby has served as trial counsel in class actions and complex business litigation tried before judges, juries and arbitrators. He has also briefed and argued numerous appeals, including two precedent-setting cases before the Florida Supreme Court.

Bobby was appointed as Plaintiffs’ Coordinating Counsel in *In re Checking Account Overdraft Litig.*, MDL 2036, class action litigation brought against many of the nation’s largest banks that challenged the banks’ internal practice of reordering debit card transactions in a manner designed to maximize the frequency of customer overdrafts. In that role, Bobby managed the large team of lawyers who prosecuted the class actions and served as the plaintiffs’ liaison with the Court regarding management and administration of the multidistrict litigation. He also led or participated in settlement negotiations with the banks that resulted in settlements exceeding \$1.1 billion, including Bank of America (\$410 million), Citizens Financial (\$137.5 million), JPMorgan Chase Bank (\$110 million), PNC Bank (\$90 million), TD Bank (\$62 million), U.S. Bank (\$55 million), Union Bank (\$35 million) and Capital One (\$31.7 million).

Bobby has been appointed to leadership positions in numerous other class actions and multidistrict litigation proceedings. He is currently serving as co-lead counsel in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.), as well as liaison counsel in *In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.); liaison counsel in *In re 21st Century Oncology Customer Data Security Breach Litig.*, MDL 2737 (M.D. Fla.); and *In re Farm-Raised Salmon and Salmon Products Antitrust Litig.*, No. 19-21551 (S.D. Fla.). He previously served as liaison counsel for indirect purchasers in *In re Terazosin Hydrochloride Antitrust Litig.*, MDL 1317 (S.D. Fla.), an antitrust class action that settled for over \$74 million.

For the past 18 years, Bobby has represented thousands of Florida homeowners in class actions to recover full compensation under the Florida Constitution based on the Florida Department of Agriculture's taking and destruction of the homeowners' private property. As lead counsel, Bobby argued before the Florida Supreme Court to establish the homeowners' right to pursue their claims; served as trial counsel in non-jury liability trials followed by jury trials that established the amount of full compensation owed to the homeowners for their private property; and handled all appellate proceedings. Bobby's tireless efforts on behalf of the homeowners resulted in judgments exceeding \$93 million.

Bobby previously served as an Adjunct Professor at Vanderbilt University Law School, where he co-taught a course on complex litigation in federal courts that focused on multidistrict litigation and class actions. He continues to frequently lecture and make presentations on a variety of topics.

Bobby has served for many years as a trustee of the Greater Miami Jewish Federation and previously served as chairman of the board of the Alexander Muss High School in Israel, and as a trustee of The Miami Foundation.



# JONATHAN M. STREISFELD

Partner

## ***Bar Admissions***

The Florida Bar

## ***Court Admissions***

Supreme Court of the United States

U.S. Court of Appeals for the First, Second, Fourth, Fifth Ninth, and Eleventh Circuits

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Western District of Michigan

U.S. District Court, Western District of New York

U.S. District Court, Western District of Tennessee

## ***Education***

Nova Southeastern University, J.D. - 1997

Syracuse University, B.S. - 1994

***Email: [streisfeld@kolawyers.com](mailto:streisfeld@kolawyers.com)***

Jonathan M. Streisfeld joined KO as a partner in 2008. Mr. Streisfeld concentrates his practice in the areas of consumer class actions, business litigation, and appeals nationwide. He is a Martindale Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics.

Mr. Streisfeld has vast and successful experience in class action litigation, serving as class counsel in nationwide and statewide consumer class action lawsuits against the nation's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$500,000,000 for tens of millions of bank and credit union customers, as well as profound changes in the way banks assess fees. Additionally, he has and continues to serve as lead and class counsel for consumers in many class actions involving false advertising and pricing, defective products, data breach and privacy, automobile defects, airlines, mortgages, and payday lending. Mr. Streisfeld has also litigated class actions against some of the largest health and automobile insurance carriers and oil conglomerates, and defended class and collective actions in other contexts.

Mr. Streisfeld has represented a variety of businesses and individuals in a broad range of business litigation matters, including contract, fraud, breach of fiduciary duty, intellectual property, real estate, shareholder disputes, wage and hour, and deceptive trade practices claims. He also assists business owners and individuals with documenting contractual relationships and resolving disputes. Mr. Streisfeld has also provided legal representation in bid protest proceedings.

Mr. Streisfeld oversees the firm's appellate and litigation support practice, representing clients in the appeal of final and non-final orders, as well as writs of certiorari, mandamus, and prohibition. His appellate practice includes civil and marital and family law matters.

Previously, Mr. Streisfeld served as outside assistant city attorney for the City of Plantation and Village of Wellington in a broad range of litigation matters. As a member of The Florida Bar, Mr. Streisfeld has served as a member of the Executive Council of the Appellate Practice Section and is a past Chair of the Section's Communications Committee. Mr. Streisfeld currently serves as a member of the Board of Temple Kol Ami Emanu-El.





# KEN GRUNFELD

Partner

## ***Bar Admissions***

The Pennsylvania Bar

The New Jersey Bar

## ***Court Admissions***

U.S. Court of Appeals for the Third, Fourth, Fifth, Ninth, Tenth and Eleventh Circuits

U.S. District Ct, Eastern District of Pennsylvania

U.S. District Ct, Middle District of Pennsylvania

U.S. District Ct, Western District of Pennsylvania

U.S. District Ct, District of New Jersey

U.S. District Ct, Eastern District of Michigan

U.S. District Ct, Western District of Wisconsin

## ***Education***

Villanova University School of Law, J.D., 1999

University of Michigan, 1996

***Email: [grunfeld@kolawyers.com](mailto:grunfeld@kolawyers.com)***

Ken Grunfeld is one of the newest KO partners, having just started working at the firm in 2023. Having worked at one of Philadelphia's largest and most prestigious defense firms for nearly a decade defending pharmaceutical manufacturers, national railroads, asbestos companies and corporate clients in consumer protection, products liability, insurance coverage and other complex commercial disputes while working, Mr. Grunfeld "switched sides" about 15 years ago.

Since then, he has become one of the city's most prolific and well-known Philadelphia class action lawyers. His cases have resulted in the recovery of hundreds of millions of dollars for injured individuals.

Mr. Grunfeld brings with him a wealth of pre-trial, trial, and appellate work experience in both state and federal courts. He has successfully taken many cases to verdict. Currently, he serves as lead counsel in a number of nationwide class actions. Whether by settlement or judgment, Mr. Grunfeld makes sure the offending companies' wrongful practices have been addressed. He believes the most important part of bringing a wrongdoer to justice is to ensure that it never happens again; class actions can be a true instrument for change if done well.

Mr. Grunfeld has been named a Super Lawyer numerous times throughout his career. He has been a member of the Philadelphia, Pennsylvania, and American Bar Associations, as well as a member of the American Association for Justice (AAJ). He was a Finalist for AAJ's prestigious Trial Lawyer of the Year Award in 2012 and currently serves as AAJ's Vice Chair of the Class Action Law Group. To his strong view that attorneys should act ethically, he volunteers his time as a Hearing Committee Member for the Disciplinary Board of the Supreme Court of Pennsylvania.

Mr. Grunfeld received his undergraduate degree from the University of Michigan. He is an active member of the Michigan Alumni Association, Philadelphia chapter and serves as a Michigan Alumni Student recruiter for local high schools. He received his Juris Doctor from the Villanova University School of Law. He was a member of the Villanova Law Review and graduated Order of the Coif.

Ken is a life-long Philadelphian. He makes his home in Bala Cynwyd, Pennsylvania, where he resides with his wife, Jennifer, and his year-old twins.

# KRISTEN LAKE CARDOSO

Partner



## ***Bar Admissions***

The Florida Bar  
The State Bar of California

## ***Court Admissions***

U.S. District Court, Southern District of Florida  
U.S. District Court, Middle District of Florida  
U.S. District Court, Central District of California  
U.S. District Court, Eastern District of California  
U.S. District Court, Northern District of Illinois  
U.S. District Court, Eastern District of Michigan

## ***Education***

Nova Southeastern University, J.D., 2007  
University of Florida, B.A., 2004

***Email: cardoso@kolawyers.com***

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Kristen Lake Cardoso is a litigation attorney focusing on consumer class actions and complex commercial litigation. She has gained valuable experience representing individuals and businesses in state and federal courts at both the trial and appellate levels in a variety of litigation matters, including contractual claims, violations of consumer protection statutes, fraud, breach of fiduciary duty, negligence, professional liability, real estate claims, enforcement of non-compete agreements, trade secret infringement, shareholder disputes, deceptive trade practices, and other business torts.

Currently, Ms. Cardoso serves as counsel in nationwide and statewide class action lawsuits concerning violations of state consumer protection statutes, false advertising, defective products, data breaches, and breaches of contract. Ms. Cardoso is actively litigating cases against major U.S. airlines for their failure to refund fares following flight cancellations and schedule changes, as well as cases against manufacturers for their sale and misleading marketing of products, including defective cosmetics and nutritional supplements. Ms. Cardoso has also represented students seeking reimbursements of tuition, room and board, and other fees paid to their colleges and universities for in-person education, housing, meals, and other services not provided when campuses closed during the COVID-19 pandemic. Additionally, Ms. Cardoso has represented consumers seeking recovery of gambling losses from tech companies that profit from illegal gambling games offered, sold, and distributed on their platforms.

Ms. Cardoso is admitted to practice law throughout the states of Florida and California, as well as in the United States District Courts for the Southern District of Florida, Middle District of Florida, Central District of California, Eastern District of California, Northern District of Illinois, and Eastern District of Michigan.

Ms. Cardoso attended the University of Florida, where she received her Bachelor's degree in Political Science, cum laude, and was inducted as a member of Phi Beta Kappa honor society. She received her law degree from Nova Southeastern University, magna cum laude. While in law school, Ms. Cardoso served as an Articles Editor for the Nova Law Review, was on the Dean's List, and was the recipient of a scholarship granted by the Broward County Hispanic Bar Association for her academic achievements. When not practicing law, Ms. Cardoso serves as a volunteer at Saint David Catholic School, including as a member of the school Advisory Board and an executive member of the Faculty Student Association. She has also served on various committees with the Junior League of Greater Fort Lauderdale geared towards improving the local community through leadership and volunteering.





# STEVEN SUKERT

Partner

## ***Bar Admissions***

The Florida Bar

The New York Bar

## ***Court Admissions***

United States District Court, Southern District of Florida

United States District Court, Middle District of Florida

United States District Court, Southern District of New York

United States District Court, Eastern District of New York

United States District Court, Northern District of Illinois

United States District Court, Central District of Illinois

## ***Education***

Georgetown University Law Center, J.D., 20018

Northwestern University, B.S., 2010

***Email: [sukert@kolawyers.com](mailto:sukert@kolawyers.com)***

Steven Sukert has experience in all aspects of complex litigation in federal and state court, including drafting successful dispositive motions and appeals, handling discovery, and arguing court hearings. Steven focuses his practice at KO on complex class actions and multi-district litigations in courts around the country, including in data privacy, bank overdraft fee, and other consumer protection cases.

Before joining KO, Steven gained experience at Gunster, Yoakley & Stewart, P.A. in Miami in high-stakes commercial cases often involving trade secret and intellectual property claims, consumer contract claims, and legal malpractice claims, as well as in international arbitrations. Steven co-authored an amicus brief in the Florida Supreme Court case *Airbnb, Inc. v. Doe* (Case No. SC20-1167), and helped organize the American Bar Association's inaugural International Arbitration Masterclass, in 2021.

Steven was born and raised in Miami. He returned to his home city after law school to clerk for the Honorable James Lawrence King in the U.S. District Court for the Southern District of Florida.

In 2018, Steven earned his J.D. from Georgetown University Law Center. While living in the nation's capital, he worked at the U.S. Department of Labor, Office of the Solicitor, where he won the Gary S. Tell ERISA Litigation Award; the Civil Fraud Section of the U.S. Department of Justice, where he worked on large Medicare fraud cases and pioneered the use of the False Claims Act in the context of pharmaceutical manufacturers who engaged in price fixing; and the Lawyers' Committee for Civil Rights Under Law, where his proposal for writing an amicus brief in the *Janus v. AFSCME* U.S. Supreme Court case was adopted by the organization's board of directors.

Steven has a degree in Molecular Biology from Northwestern University. Prior to his legal career, he worked as a biomedical laboratory researcher at the Diabetes Research Institute in Miami.

# CAROLINE HERTER

Associate



## ***Bar Admissions***

The Florida Bar

## ***Court Admissions***

U.S. District Court, Middle District of Florida

U.S. District Court, Southern District of Florida

U.S. Bankruptcy Court, Southern District of Florida

## ***Education***

University of Miami School of Law, J.D. - 2020

University of Miami, B.S. – 2016

***Email: [Herter@kolawyers.com](mailto:Herter@kolawyers.com)***

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Caroline Herter is a litigation attorney at the firm's Fort Lauderdale office. Caroline focuses her practice on consumer class actions, mass torts, and white-collar commercial litigation in state and federal courts nationwide. She has gained valuable experience representing individuals and businesses to hold wrongdoers accountable through claims involving personal injury, wrongful death, consumer fraud, products liability, breach of fiduciary duty, civil theft/conversion, corporate veil-piercing, fraudulent transfer, tortious interference, False Claims Act violations, and the like.

Before joining KO, Caroline worked at a boutique law firm in Miami where she represented plaintiffs in matters involving creditor's rights, insolvency, and asset recovery. She now applies this experience throughout her practice at KO, often combining equitable remedies with legal claims to ensure the best chance of recovery for her clients.

Notable cases that Caroline has been involved in include *In Re: Champlain Towers South Collapse Litigation*, where she was a member of the team serving as lead counsel for the families of the 98 individuals who lost their lives in the tragic condominium collapse. The case resulted in over \$1 billion recovered for class members, the second-largest settlement in Florida history. She also co-authored a successful petition for certiorari to the United States Supreme Court in *Olhausen v. Arriva Medical, LLC et al.*, a False Claims Act case involving the standard for determining a defendant's scienter, which led the high Court to reverse the Eleventh Circuit Court of Appeal's earlier ruling against her client.

Caroline earned her law degree from the University of Miami School of Law, summa cum laude, where she received awards for the highest grade in multiple courses. During law school Caroline was an editor of the University of Miami Law Review and a member of the Moot Court Board.

Outside of her law practice, Caroline serves on the Board of Directors of the non-profit organization Americans for Immigrant Justice.

# EXHIBIT 3



In its over 100-year history, The Van Winkle Law Firm has vigorously represented clients throughout North Carolina and the Southeast. Van Winkle attorneys have served as President of both the North Carolina Bar and North Carolina Bar Association, as well as served on the American Bar Association Board of Governors. Van Winkle has several attorneys admitted to the North Carolina Bar Association Legal Practice Hall of Fame. Van Winkle's experience in class action litigation includes cases filed around the nation, including appearances as lead counsel by several of its attorneys in the various Federal District Courts and before the Fourth Circuit Court of Appeals. In addition, Van Winkle attorneys have served as local and *de facto* liaison counsel in other complex litigation in association with firms outside North and South Carolina.

Van Winkle is the largest law firm in North Carolina west of Charlotte. It has enjoyed an "AV" rating for decades in Martindale-Hubble's listing of attorneys.



### David M. Wilkerson

Mr. Wilkerson is a Senior Partner in The Van Winkle Law Firm with 25 years of experience in civil litigation practice. He is admitted to practice in numerous Federal Districts and is licensed in both North Carolina and South Carolina. He is currently involved in numerous class action cases around the country. He serves as interim liaison counsel in *Haff Poultry, Inc. et. al. v Koch Foods, Inc., et. al.* (E.D.N.C. 7:18-cv-00031). He was appointed interim co-liaison counsel in *Piazza's Carpet v. Hickory Springs, et. al.* (W.D.N.C. 5:10-cv-11), prior to the cases being consolidated by the MDL panel in another district. Recent class cases include *In Re Cast Iron Soil Pipe and Fittings Antitrust Litigation* (E.D.T.N 1:14-md-02508), *RJS Haff Poultry, Inc. et al v. Tyson Foods, Inc.* (E.D.O.K 6:17-cv-00033), and *Peters v. Aetna, Inc., et. al.* (W.D.N.C. 1:15- cv-00109). Mr. Wilkerson currently serves on the Discovery Committee in the case of *In Re Blue Cross Blue Shield* (MDL 2406) (N.D.A.L 2:13-cv-2000). He recently served as co-lead counsel in *Morris et al. v. Bank of America*, Case No. 3:18-cv-00157 and *Gaston v. LexisNexis Risk Solutions, et. al.*, Case No. 5:16-cv-0009. He currently serves as class counsel in the District of South Carolina in *Millwood v. State Farm*, Civil Action No. 7:19-cv-01445-dcc.

David has been a member of the South Carolina Bar since 1998 and the North Carolina Bar since 2006. He served on the section council of the Antitrust and Complex Business Disputes Law Section of the North Carolina Bar Association from 2011 to 2017, where he chaired both the Legislative and Pro Bono Committees, and has spoken on class actions at CLE events. He has also served on the North Carolina Business Court Rules Committee.

# EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

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

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

The Parties<sup>1</sup> to the above-captioned action currently pending against BANA have agreed to a settlement, the terms and conditions of which are set forth in an executed Settlement Agreement and Release. The Parties reached the Settlement through arm's-length negotiations, after conducting appropriate discovery into the liability and damages at issue. Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the proposed Settlement Class would fully, finally, and forever resolve, discharge, and release their Incoming Wire Transfer Fee claims in exchange for defendant BANA's total payment of \$21,000,000.00, inclusive of all attorneys' fees, costs, Service Award to the Class Representative, and Settlement Administration Costs, to create a Settlement Fund to benefit the Settlement Class.

The Settlement has been filed with the Court, and Plaintiff has filed an Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement and Release, along with a Memorandum of Law (collectively "Motion"). Upon considering the Motion and exhibits thereto,

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

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



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

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

**Provisional Certification and Appointment of Class Representative and Class Counsel**

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

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

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

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

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

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

- ii. Commonality: The threshold for commonality under Rule 23(a)(2) is not high. Here, the commonality requirement is satisfied because there are multiple questions of law and fact that center on BANA's class-wide policies and practices and are common to the Settlement Class.

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

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

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

common judgment.

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

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

### **Preliminary Approval of the Settlement**

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

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

10. Subject to Final Approval of the proposed Settlement, and subject to the provision of Notice required by this Preliminary Approval Order, the Court approves the provisions of the Agreement making the Settlement and its release of claims binding on all Settlement Class Members,

whether or not they actually receive notice of the Action or the Settlement.

**Approval of Notice and Notice Program and Direction to Effectuate Notice**

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

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

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

**Final Approval Hearing, Opt-Outs, and Objections**

14. A Final Approval Hearing shall be held before the Court on \_\_\_\_\_, 2024, at \_\_:\_\_ a.m./p.m., in Courtroom # \_\_\_\_\_ of the United States District Court for the Western District of North Carolina, located at Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, NC 28202, to determine, among other things: (a) whether the Settlement is fair, reasonable, and adequate, and should be granted Final Approval; (b) whether Settlement Class Members should be bound by the Releases set forth in the Agreement; (c) whether the Settlement

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

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

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

who successfully opts-out of the Settlement shall be deemed to have waived any rights or benefits under the Settlement, and will have no standing to object to the Settlement.

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

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

within the last 3 years;

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

18. Any objection made by or through an attorney must also include: (a) the identity and number of the Settlement Class Members represented by objector's counsel; (b) the number of such represented Settlement Class Members who have opted-out of the Settlement Class; and (c) the number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected. If the attorney intends to seek fees and expenses from anyone other than the objector he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BANA's Counsel, not later than 15 days before the Final Approval Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney's hourly rate.

19. Any Settlement Class Member who, before the Objection Deadline, files and serves a written objection satisfying the requirements of this section may appear at the Final Approval Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of the Settlement.

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

#### **Motion for Final Approval**

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

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

#### **Effect of Failure to Approve Settlement or Termination**

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

#### **Stay/Bar of Other Proceedings**



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

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

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

DONE AND ORDERED in \_\_\_\_\_, North Carolina, this \_\_\_\_ day of \_\_\_\_\_, 2024.

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MAX O. COGBURN JR.  
United States District Judge

# EXHIBIT A

**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 Class<sup>1</sup> 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

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<sup>1</sup> 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

**If to Class Representative:**

Jeff Ostrow  
Jonathan Streisfeld  
KOPELOWITZ OSTROW P.A.  
One West Las Olas Blvd., Ste. 500  
Fort Lauderdale, FL 33301  
954.332.4200  
ostrow@kolawyers.com

David M. Wilkerson  
THE VAN WINKLE FIRM  
11 North Market Street  
Asheville, NC 28801  
828.258.2991  
dwilkerson@vwlawfirm.com

Sophia Gold  
KALIELGOLD PLLC  
950 Gilman Street, Suite 200  
Berkeley, CA 94710  
202.350.4783  
sgold@kalielgold.com

**If to BANA:**

Laura A. Stoll  
Laura G. Brys  
GOODWIN PROCTER LLP  
601 South Figueroa St., Suite 4100  
Los Angeles, California 90017  
213.426.2584  
lstoll@goodwinlaw.com  
lbrys@goodwinlaw.com

Bradley R. Kutrow  
MCGUIRE WOODS LLP  
201 North Tryon Street Suite 3000  
Charlotte, NC 28202-2146  
704.343.2000  
bkutrow@mcguirewoods.com

**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)

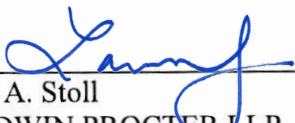
David Wilkerson  
THE VAN WINKLE FIRM

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

**EXHIBIT 1**  
**(EMAIL NOTICE)**

FROM: EMAIL ADDRESS  
To: EMAIL ADDRESS  
RE: LEGAL NOTICE OF CLASS ACTION SETTLEMENT

IF YOU HAD A CONSUMER CHECKING AND/OR SAVINGS ACCOUNT WITH BANK OF AMERICA, N.A., AND PAID CERTAIN WIRE TRANSFER FEES ON INCOMING PAYMENTS INTO YOUR ACCOUNT BETWEEN MARCH 8, 2019, AND AUGUST 31, 2023, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

*Para una notificación en español, visite nuestro sitio de web: \_\_\_\_\_ .com*

**The District Court for the Western District of North Carolina has authorized this Notice. It is not a solicitation from a lawyer.**

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

*For more information, including a more detailed description of your rights and options, please click here or visit  
www. \_\_\_\_\_ .com*

A Settlement has been reached with Bank of America, N.A. (“BANA”) in a class action lawsuit alleging certain wire transfer fees on incoming payments into consumer checking and/or savings accounts (“Incoming Wire Transfer Fees”) should not have been assessed from **March 8, 2019, through August 31, 2023**.

You may be a member of the Settlement Class in *Aseltine v. Bank of America, N.A.*, in which the Plaintiff, Aaron Aseltine, alleges BANA improperly assessed and collected Incoming Wire Transfer Fees on accounts opened on or before August 31, 2012. BANA maintains it did nothing wrong and that its contract with Accountholders permitted the fees charged but has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not made a decision regarding which side is right.

**Who is included?** BANA records indicate that you are a “Settlement Class member” in this Settlement because you are in the following Settlement Class: All United States Accountholders of BANA consumer checking and/or savings accounts opened on or before August 31, 2012, who, during the Class Period, paid and were not refunded an Incoming Wire Transfer Fee.

**What does the Settlement provide?** BANA will create a \$21,000,000.00 Settlement Fund. After deducting Attorneys’ Fees and Costs, a Service Award to the Class Representative, and the Settlement Administration Costs, the Net Settlement Fund will be divided pro rata among all Settlement Class Members.

**What are my options?** If you do nothing and the Settlement is approved and becomes final, you will automatically receive a Settlement Class Member Payment, either by credit or check, and your rights will be affected. If you do not want to be legally bound by the Settlement or receive a Settlement Class Member Payment, you must opt-out of the Settlement by \_\_\_\_\_, **2024**. Unless you opt-out of the Settlement, you will not be able to sue or continue to sue BANA for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (and do not opt-out), you may object to it by \_\_\_\_\_, **2024**.

**The Court’s Final Approval Hearing.** The Court will hold a Final Approval Hearing on \_\_\_\_\_, **2024**. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel’s request for attorneys’ fees (up to one-third of the Settlement Fund) and litigation costs; and (3) a Service Award of up to \$5,000.00 for the Class Representative. You or your lawyer may appear at the hearing at your own expense, but you do not have to.

*For more information, including a copy of the Long Form Notice and Settlement Agreement, visit  
www. \_\_\_\_\_ .com or call 1- \_\_\_\_\_ .*

**EXHIBIT 2**  
**(POSTCARD NOTICE)**



Aseltine v. Bank of America, N.A. Settlement  
P.O. Box \_\_\_\_\_  
Portland, OR \_\_\_\_\_

FIRST-CLASS MAIL  
U.S. POSTAGE  
PAID  
Portland, OR  
PERMIT NO. 2882

**Legal Notice**

**If you had a consumer checking and/or savings account with Bank of America, N.A., and paid Incoming Wire Transfer Fees between March 8, 2019, and August 31, 2023, you may be entitled to a payment from a class action settlement.**

**1- \_\_\_\_\_  
www. \_\_\_\_\_ .com**

<<MAIL ID>>  
<<NAME 1>>  
<<NAME 2>>  
<<ADDRESS LINE 1>>  
<<ADDRESS LINE 2>>  
<<ADDRESS LINE 3>>  
<<ADDRESS LINE 4>>  
<<ADDRESS LINE 5>>  
<<CITY, STATE ZIP>>  
<<COUNTRY>>

*Para una notificación en español, visite nuestro sitio de web: \_\_\_\_\_ .com*

A Settlement has been reached with Bank of America, N.A (“BANA”) in a class action lawsuit alleging certain wire transfer fees on incoming payments into consumer checking and savings accounts (“Incoming Wire Transfer Fees”) should not have been assessed from **March 8, 2019, through August 31, 2023**.

You may be a member of the Settlement Class in *Aseltine v. Bank of America, N.A.*, in which the Plaintiff, Aaron Aseltine, alleges BANA improperly assessed and collected Incoming Wire Transfer Fees on accounts opened on or before August 31, 2012. BANA maintains it did nothing wrong and that its contract with Accountholders permitted the fees charged but has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not decided which side is right.

**Who is included?** BANA records indicate that you are a “Settlement Class member” in this Settlement because you are in the following Settlement Class: All United States Accountholders of BANA consumer checking and/or savings accounts opened on or before August 31, 2012, who, during the Class Period, paid and were not refunded an Incoming Wire Transfer Fee.

**What does the Settlement provide?** BANA will create a \$21,000,000.00 Settlement Fund. After deducting Attorneys’ Fees and Costs, a Service Award to the Class Representative, and the Settlement Administration Costs, the Net Settlement Fund will be divided pro rata among all Settlement Class Members.

**What are my options?** If you do nothing and the Settlement is approved and becomes final, you will automatically receive a Settlement Class Member Payment, either by credit or check, and your rights will be affected. If you do not want to be legally bound by the Settlement or receive a Settlement Class Member Payment, you must opt-out of the Settlement by \_\_\_\_\_, 2024. Unless you opt-out of the Settlement, you will not be able to sue or continue to sue BANA for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (and do not opt-out), you may object to it by \_\_\_\_\_, 2024.

**The Court’s Final Approval Hearing.** The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2024. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel’s request for attorneys’ fees (up to one-third of the Settlement Fund) and litigation costs; and (3) a Service Award of up to \$5,000.00 for the Class Representative. You or your lawyer may appear at the hearing at your own expense, but you do not have to.

**More information, including the Long Form Notice and Settlement Agreement are available at** [www.settlement-wcm.com](http://www.settlement-wcm.com) **or by calling 1-800-333-3333.**

**EXHIBIT 3**  
**(LONG FORM NOTICE)**

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

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

**IF YOU HAD A CONSUMER CHECKING AND/OR SAVINGS ACCOUNT WITH BANK OF AMERICA, N.A., AND PAID CERTAIN WIRE TRANSFER FEES ON INCOMING PAYMENTS INTO YOUR ACCOUNT FROM MARCH 8, 2019, THROUGH AUGUST 31, 2023, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

*Para una notificación en español, visite nuestro sitio de web: \_\_\_\_\_ .com*

The District Court for the Western District of North Carolina has authorized this Notice.  
It is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
<b>DO NOTHING.</b>	If you were assessed and were not refunded Incoming Wire Transfer Fees challenged in this case, then you will receive a Settlement Class Member Payment from the Settlement Fund so long as you do not opt-out of the Settlement (described in the next box).
<b>OPT-OUT and EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS.</b>	You can choose to opt-out of the Settlement which means you are excluding yourself from the Settlement. This means you choose not to participate in the Settlement. You will keep your individual claims against Bank of America, N.A. (“BANA”), but you will not receive a Settlement Class Member Payment. The deadline to opt-out of the Settlement is _____, 2024. If you opt-out but still want to recover against BANA, then you will have to file a separate lawsuit or claim.
<b>OBJECT TO THE SETTLEMENT.</b>	If you do not opt-out, but instead wish to object to the Settlement or any matters described in the Notice, you may do so by filing with the Court an objection. The deadline to object to the Settlement is _____, 2024.

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

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

The lawsuit that is being settled is entitled *Aaron Aseltine v. Bank of America, N.A.*, Civil Action No. 3:23-cv-00235 (the “Action”). The person who sued is called the “Class Representative” or “Plaintiff.” BANA is the Defendant. The case is a “class action.” That means the Class Representative is acting on behalf of the Settlement Class. The transactions at issue occurred **between March 8, 2019, and August 31, 2023**.

The Settlement Class consists of all Accountholders in the United States of a BANA consumer checking and/or savings accounts opened on or before August 31, 2012, who, during the Class Period, paid and were not refunded an Incoming Wire Transfer Fee.

BANA denies all wrongdoing and liability and denies that Plaintiff’s claims entitle him or the Settlement Class members to any relief and denies that anyone was harmed by the conduct that the Plaintiff alleges.

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

You received the Settlement Class Notice because BANA’s records indicate you are in the Settlement Class that was alleged to have been charged one or more of the Incoming Wire Transfer Fees at issue. The Court directed the Notice be sent to all Settlement Class members because each Settlement Class member has a right to know about the proposed Settlement and the options available to him or her before the Court decides whether to approve the Settlement.

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

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

There is legal uncertainty about whether a judge or a jury will find that BANA breached its agreements with customers or otherwise acted improperly by assessing the Incoming Wire Transfer Fees that are the subject of this Action. There is also uncertainty about whether the Class Representative’s claims are subject to other defenses that might result in no or less recovery to Settlement Class members. Even if the Class Representative was to win at trial, there is no assurance that the Settlement Class members would be awarded more than the \$21,000,000.00 that BANA is paying in this Settlement, and it may take years of litigation before any payments would be made. By settling, the Settlement Class will avoid these, and other risks, and the delays associated with continued litigation.

While BANA disputes Plaintiff’s claims, it has agreed to settle to avoid the costs, distractions, and risks of litigation. Thus, even though BANA denies that it did anything improper, it believes the Settlement is in its best interest and in the best interests of all of the Settlement Class members.

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

If you received the Settlement Class Notice, BANA’s records indicate that you are a Settlement Class member who is entitled to receive a payment.

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

You have three options: (1) do nothing and you will receive a Settlement Class Member Payment according to the terms of this Settlement, but you give up your rights to sue BANA separately about the same legal claims in this lawsuit; (2) opt-out of the Settlement and you will not receive a Settlement Class Member Payment; or (3) participate in the Settlement but object to it. Each of these options is described in a separate section below.

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

If you do nothing, you will receive a Settlement Class Member Payment.

The deadline for sending a letter to opt-out of the Settlement is \_\_\_\_\_, 2024.

The deadline to file an objection to the Settlement with the Court is \_\_\_\_\_, 2024.

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

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

If you believe the Settlement is unreasonable, unfair, or inadequate, and the Court should reject the Settlement, you can object to the Settlement terms. The Court will decide if your objection is valid. If the Court agrees with you, then the Settlement may not be approved, and no payments will be made to you or any other Settlement Class Member. If your objection (and any other objection) is overruled, and the Settlement is approved, then you will still get a Settlement Class Member Payment.

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

The Court must decide the Settlement is fair, reasonable, and adequate before it will approve it. The Court has already given Preliminary Approval of the Settlement, which is why you received the Settlement Class Notice via email or mail. The Court will make a final decision regarding the Settlement at a Final Approval Hearing, which is currently scheduled for \_\_\_\_\_, 2024.

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

BANA has agreed to create a cash Settlement Fund of \$21,000,000.00. As discussed separately below, Attorneys' Fees and Costs, a Service Award to the Class Representative, and all Settlement Administration Costs will be paid out of this amount. Subject to Court approval, the Net Settlement Fund (money remaining after payment of Attorneys' Fees, Costs, a Service Award, and Settlement Administration Costs) will be divided among all Settlement Class Members based on the formula described in the Settlement Agreement.

## **10. How much of the Settlement Fund will be used to pay for attorneys' fees and costs?**

Class Counsel will request the Court award up to one-third of the Settlement Fund (\$7,000,000.00) as attorneys' fees, plus reimbursement of Class Counsel's litigation costs incurred in prosecuting the Action. The Court will decide the amount of attorneys' fees to award Class Counsel.

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

Class Counsel, on behalf of the Class Representative, will request a Service Award of up to \$5,000.00 for the Class Representative. The Service Award must be approved by the Court.

Subject to Court approval, the Net Settlement Fund, will be divided among all Settlement Class Members entitled to

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

Settlement Class Member Payments in accordance with the formula outlined in the Settlement Agreement found at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). Current Accountholders of BANA as of the Effective Date of the Settlement Agreement will receive a credit to their BANA accounts. Past Accountholders of BANA will receive a check from the Settlement Administrator.

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

No. Any amount you are entitled to under the terms of the Settlement will be distributed to you, unless you choose to opt-out of the Settlement. Opting-out from the Settlement means you choose not to participate in the Settlement. You will keep your individual claims against BANA, but you will not receive a Settlement Class Member Payment. In that case, if you choose to seek recovery against BANA, then you will have to file a separate lawsuit or claim.

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

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2024, to consider whether the Settlement should be approved. If there are no objections and the Court approves the Settlement, then Settlement Class Member Payments should be made within approximately 45 to 60 days after the Settlement's Effective Date. The 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.

#### 15. How do I opt-out from the Settlement?

If you do not want to receive a Settlement Class Member Payment, or if you want to keep any right you may have to sue BANA for the claims alleged in this lawsuit, then you must opt-out of the Settlement.

To opt-out, you **must** send a letter to the Settlement Administrator that you want to be excluded from the Settlement. Your letter can simply say, "I hereby elect to opt-out of the Settlement in the *Aaron Aseltine v. Bank of America, N.A.* class action." Be sure to include your name, your address, your email address (if any), and your signature. Your opt-out request must be **postmarked by** \_\_\_\_\_, 2024, and sent to the following address:

Aseltine v. Bank of America, N.A. Settlement  
Opt-Out Requests: Bank of America Incoming Wire Fee Class Action  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

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

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

#### 17. If I opt-out of the Settlement, can I still obtain a Settlement Class Member Payment?

No. If you opt-out, you will not be entitled to a payment.

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

You can object to the Settlement, the attorneys' fees and costs, and/or the Service Award that you do not like, provided you do not opt-out of the Settlement. (Settlement Class members who opt-out of the Settlement have no right to object to how Settlement Class Members are treated.) To object, you must do so by filing with the Court a notice of your intention to object. Your objection must include the following:

- the objector's full name, address, telephone number, and e-mail address (if any);
- information identifying the objector as a Settlement Class Member, including evidence the objector is a member of the Settlement Class;
- a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- the identity of all counsel representing or assisting the objector, if any;
- the identity of all counsel representing the objector who will appear at the Final Fairness Hearing, if any;
- a list of all Persons who will be called to testify at the Final Fairness Hearing in support of the objection, if any;

- a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
- 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;
- 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;
- 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 3 years;
- 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
- the objector's signature (an attorney's signature is not sufficient).

If your objection is made by or through an attorney, the objection must also include:

- the identity and number of the Settlement Class Members represented by objector's counsel;
- the number of such represented Settlement Class members who have opted-out of the Settlement Class; and
- the number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected.

The objection must also include the dates when the objector is available for deposition, which dates may be no later than 5 days before the Final Approval Hearing.

Be advised that if you object to the Settlement and retain an attorney for purposes of objecting, you are solely responsible for paying that attorney's fees and costs. If the attorney intends to seek attorneys' fees and costs from anyone other than the objector(s) he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BANA's Counsel, not later than 30 days before the Final Approval Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney's hourly rate.

If you fail to comply with the provisions herein, you will waive and forfeit any and all rights to appear and/or object separately and will be bound by the terms of the Settlement Agreement and the orders and judgments of the Court.

To be timely, written notice of an objection must be filed with the Settlement Administrator and/or Court by \_\_\_\_\_, 2024, and served at the same time to Class Counsel and Defendant's counsel to the following addresses:

CLERK OF COURT	CLASS COUNSEL	BANA'S COUNSEL
United States Courthouse W.D. North Carolina 319 U.S. Courthouse Building 100 Otis Street Asheville, NC 28801	Jeff Ostrow Jonathan Streisfeld KOPELOWITZ OSTROW P.A. 1 West Las Olas Blvd. Suite 500 Fort Lauderdale, FL 33301  Sophia Gold KALIELGOLD PLLC 950 Gilman Street, Suite 200 Berkeley, CA 94710  David Wilkerson THE VAN WINKLE FIRRM 11 North Market Street Asheville, NC 28801	Laura A. Stoll Laura G. Brys GOODWIN PROCTOR LLP 601 S. Figueroa St. Suite 4100 Los Angeles, CA 90017  Bradley R. Kutrow MCGUIRE WOODS LLP 201 North Tryon Street Suite 3000 Charlotte, NC 28202-2146



## **19. What is the difference between objecting and opting-out of the Settlement?**

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

## **20. What happens if I object to the Settlement?**

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

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

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2024. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for Attorneys' Fees and Costs and how much the Class Representative should get as a Service Award for acting as the Class Representative.

## **22. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. You or your lawyer may appear at the hearing at your own expense if you desire to do so, but you do not have to. If you have submitted an objection, then you may want to attend.

## **23. May I speak at the hearing?**

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file a "Notice of Intent to Appear" with the Court no later than \_\_\_\_\_, 2024, and in that notice you must:

- state how much time the Settlement Class Member anticipates needing to present the objection;
- identify, by name, address, and telephone number all witnesses the Settlement Class Member proposes to have testify;
- summarize in detail the anticipated testimony of all such witnesses;
- identify all exhibits the Settlement Class Member intends to offer in support of the objection; and
- attach complete copies of all such exhibits.

You must also deliver a copy of the Notice of Intent to Appear with the above listed items to Class Counsel and BANA's counsel. The Notice of Intent to Appear may be incorporated in the objection.

## **24. What happens if I do nothing at all?**

If you do nothing at all, and if the Settlement is approved, then you may receive a Settlement Class Member Payment that represents your share of the Net Settlement Fund. You will be considered a part of the Settlement Class, and you will give up claims against BANA for the conduct identified in the Settlement. You will not give up any other claims you might have against BANA that are not released in this Settlement.

## **25. Do I have a lawyer in this case?**

The Court ordered that the lawyers and their law firms referred to in this Settlement Class Notice as Class Counsel will represent you and the other Settlement Class Members. You may hire your own attorney, at your own expense if you desire to do so, but you do not have to.

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

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

## **27. Who determines what the attorneys' fees will be?**

The Court will be asked to approve the amount of attorneys' fees at the Final Approval Hearing. Class Counsel will file an application for attorneys' fees and will specify the amount being sought as discussed above. Once filed, you may review the Motion for Final Approval, which will include the attorneys' fees and costs and Service Award application, at the Settlement Website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

### **GETTING MORE INFORMATION**

This Settlement Class Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

For additional information about the Settlement and/or to obtain copies of the Settlement Agreement, the pleadings in this case, or to change your address for purposes of receiving a Settlement Class Member Payment, you should contact the Settlement Administrator as follows:

Aseltine v. Bank of America Settlement  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_  
(XXX) XXX-XXXX  
[www.\\_\\_\\_\\_\\_.com](http://www._____.com)

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

# EXHIBIT B

**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

**JOINT DECLARATION IN SUPPORT OF PLAINTIFF’S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND RELEASE**

We, Sophia Gold, Jeff Ostrow, and David Wilkerson, declare and state that:

1. We are counsel of record for Plaintiff and the proposed Settlement Class. We submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Release. Unless otherwise noted, we have personal knowledge of the facts set forth in this Declaration and could and would testify competently to them if called upon to do so.

**Background and Procedural History**

2. This national putative class action alleges that Defendant Bank of America, N.A. (“Defendant” or “BANA”) breached its contract with its customers and violated the consumer protection laws of North Carolina and California through its practice of charging undisclosed fees on incoming wire transfers (“Action”).

3. Following the Court’s Order on the Motion to Dismiss, 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, submit a joint stipulation to consent to jurisdiction of a U.S. Magistrate Judge.

4. The Parties had a Federal Rule of Civil Procedure 16.1 Initial Discovery Conference where they agreed on a proposed court schedule.

5. Thereafter, the Parties then began discovery.

6. Plaintiff served initial disclosures and interrogatories and document requests on BANA. 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.

7. The Parties agreed to mediate on February 29, 2024, in California before a JAMS neutral, the Honorable Jay C. Gandhi (Ret.). In advance of the mediation, the Parties exchanged detailed mediation briefs and BANA responded to formal and informal discovery requests necessary for Plaintiff's evaluation of size of the class, liability, and damages. The Parties mediated; however, no agreement was reached after a full day of negotiating. The Parties continued their discussion over the next five weeks, ultimately agreeing to the material terms of a settlement on April 5, 2024. Thereafter, the Parties negotiated the Settlement Agreement, which was signed on May 17, 2024.

8. Under the Settlement, BANA has agreed to a non-reversionary common cash Settlement Fund of \$21,000,000.

**Class Counsel Experience and Expertise**

9. Counsel for both sides have significant experience in consumer class-action litigation involving deceptive practices, including those involving bank fees. Class Counsel are highly experienced in consumer class action litigation, as demonstrated by their firm resumes, and have brought that significant experience to bear in litigating and settling this case.

10. Class Counsel collectively have decades of experience litigating consumer class actions (including those against financial institutions) and have litigated and settled dozens of class actions involving deceptive practices, banking fees, and other types of allegedly wrongful conduct by financial institutions.

11. Class Counsel have emerged as leaders in nationwide litigation against financial institutions over the assessment of improper fees.

**KalielGold PLLC**

15. KalielGold PLLC (“KG”) has extensive experience in consumer protection class actions in both state and federal court and has represented accountholders in hundreds of class actions against financial institutions.

16. Sophia Gold is a graduate of the University of California, Berkeley, School of Law and a member in good standing of the District of Columbia Bar and the State Bar of California. She has substantial experience with consumer class actions in both state and federal courts. She has won contested motions for class certification; briefed, argued, and overturned dispositive lower court rulings at the federal appellate level; and worked extensively with economics and information technology experts to build damages models. She has also successfully resolved

numerous class actions by settlement, resulting in hundreds of millions of dollars in relief for millions of class members. Her firm, KalieGold PLLC has extensive class action experience and has been appointed as class counsel in numerous class actions in which courts have recognized the firm's expertise in the area of class action litigation in particular. *See, e.g., Hinton v. Atlantic Union Bank*, No. 20-cv-00651 (E.D. Va.) ("Class Counsel's expertise, perseverance, and skill allowed them to obtain an excellent result for the Settlement Class."); *Kelly v. Community Bank*, No. 18-cv-00919 (N.D.N.Y.) (determining Class Counsel to be "qualified, experienced, and able to conduct the litigation of this Action"); *Gonzalez v. Banner Bank*, No. 20-cv-05151 (E.D. Wash.) (Class counsel "were diligent in their representation of the Class"); *Lambert v. Navy Federal Credit Union*, No. 19-cv-00103 (E.D. Va.) (Class Counsel's "tenacity in the face of significant risk and complexity allowed to achieve an outstanding recovery that provides substantial benefits to Settlement Class Members."); *Walters v. Target Corporation*, No. 16-cv-01678 (S.D. Cal.) ("It is undisputed that Class Counsel achieved this result through tenacity and skill in presenting novel and complex legal issues."); *Figueroa v. Capital One, N.A.*, No. 18-cv-00692 (S.D. Cal.) (praising Class Counsel for the "very positive result achieved for the class" in a case involving a "novel legal issue"); *White v. Members 1st Credit Union*, No. 19-cv-00556 (M.D. Pa.) (finding Class Counsel to be "highly trained in class action law and procedure" and noting their "ability to negotiate the instant Settlement at the early stages of this litigation demonstrates their high level of skill and efficiency"); *Perks v. Activehouse d/b/a Earnin*, No. 19-cv-05543 (N.D. Cal.) ("Class Counsel have substantial experience in litigating and settling consumer class actions."). KG's tenacity is frequently reflected in the results it achieves for the classes it represents, especially in cases involving similar bank fees. *See, e.g., Roberts v. Capital One*, No. 16-cv-04841 (S.D.N.Y.) (\$17 million settlement approved for the class); *Perks v. TD Bank*, Case No. 18-cv-11176 (S.D.N.Y.) (\$41.5 million settlement approved for the class); *Morris et al. v. Bank of America, N.A.*, No. 18-cv-00157 (W.D.N.C.) (\$75 million settlement approved for the class). KG's experience is

further detailed in the firm's resume, attached hereto as **Exhibit 1**.

**Kopelowitz Ostrow P.A.**

17. Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A. ("KO") are graduates of the Nova Southeastern University Shepard Broad College of Law and members of The Florida Bar. Mr. Ostrow is also a member of the District of Columbia Bar. Both have extensive experience litigating nationwide and state consumer class actions, having practiced for over 26 years. Although the firm handles a variety of consumer class actions, they focus a significant amount of our resources pursuing financial institutions and other corporations that assess their customers unlawful fees. KO has been appointed class counsel in dozens of cases throughout the country and have tried several to verdict. The firm is well positioned to understand the risks of this Action and why settlement at this stage of the litigation was the best option for the putative class. Based upon our experience as one of the leading financial services and unlawful fee class action firms for over a decade, we are confident that the settlement obtained here is a good result. KO has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative class in this litigation. The KO firm resume, and a listing of cases demonstrative of KO's success in litigation against financial institutions, is attached as **Exhibit 2**.

**The Van Winkle Law Firm**

21. David M. Wilkerson is a graduate of the University of South Carolina Law School and member of good standing of the North Carolina Bar and the South Carolina Bar. He is a Senior Principal at The Van Winkle Law Firm with nearly 25 years of experience. He currently serves as class counsel in numerous class actions around the nation and practices in the area of complex business litigation. He served for six years on the council for the Antitrust and Complex Litigation



Section of the North Carolina Bar Association and served on the North Carolina Business Court Rules Committee. His recent leadership in class actions includes, but is not limited to, serving as co-lead counsel in *Gaston v. Lexis Nexis Risk Solutions, et al.*, No. 5:16-cv-9 (W.D.N.C.); class counsel in *In Re Blue Cross Antitrust*, No. 2:13-cv-20000 (N.D.A.L.); interim liaison counsel in *In Re Sanderson and Koch Broiler Chicken Grower Litigation*, No. 7:10-cv-00031 (E.D.N.C.); co-lead counsel in *Morris v. Bank of America, N.A.*, No. 3:18-CV-157 (W.D.N.C.); class counsel in *Boardman v. Green Dot Corporation*, No. 3:21-cv-00174 (W.D.N.C.); and co-lead counsel in *Millwood v. State Farm Life Insurance Company*, No. 7:19-cv-01445 (D.S.C.) He practices in courts around the nation. Since 2021, he has argued cases in the Ninth Circuit Court of Appeals, the Federal Circuit Court of Appeals, the United States Patent and Trademark Appeal Board in Washington, D.C., and served as counsel in class actions in South Carolina, Oklahoma, Virginia, and Missouri, among others. The Van Winkle firm resume, including biographical information for David M. Wilkerson, and a listing of cases demonstrative of Van Winkle's success in litigation against financial institutions, is attached as **Exhibit 3**.

### **Settlement**

23. Under the Settlement, BANA will provide a \$21,000,000.00 Settlement Fund, which represents a significant portion of the estimated classwide damages should Plaintiffs have prevailed on every issue at class certification, trial, and on appeal. Under Plaintiffs' damages model, the Settlement represents approximately 23.5% of the total damages available at trial, assuming Plaintiffs prevailed on liability. Under Defendant's damages model, however, the Settlement represent approximately 78% of the total damages available at trial.

24. Based on their ample experience in similar cases, Class Counsel believe the Settlement is fair and adequate.

25. Class Counsel is not aware of other pending individual litigation against BANA regarding the practices at issue in this Action. Another action that was pending in California was recently dismissed.

26. Proposed Class Counsel have expended a great deal of time, effort, and expense investigating, litigating, and resolving this Action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true of my own personal knowledge. Executed in Berkeley, California this 24th day of May, 2024.

/s/ Sophia G. Gold  
SOPHIA G. GOLD

I declare under penalty of perjury t under the laws of the United States of America that the foregoing is true of my own personal knowledge. Executed in Ft. Lauderdale, Florida this 24th day of May, 2024.

/s/ Jeff Ostrow  
JEFF OSTROW

I declare under penalty of perjury t under the laws of the United States of America that the foregoing is true of my own personal knowledge. Executed in Asheville, North Carolina this 24th day of May, 2024.

/s/ David Wilkerson  
DAVID WILKERSON

# EXHIBIT 1

**KALIELGOLD PLLC**

KalielGold PLLC was founded in 2017 and is a 100% contingency Plaintiff-side law firm. Our attorneys have decades of combined experience and have secured hundreds of millions of dollars for their clients. Our firm's practice focuses on representing consumers in class action litigation and specifically on cases in the consumer financial services sector. In the four years since our firm was founded, our firm has been appointed lead counsel or co-lead counsel in numerous class action and putative class action lawsuits in state and federal courts nationwide including most recently in *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.); *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.); *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1<sup>st</sup> Cir. Haw.); *Liggio v. Apple Federal Credit Union*, No. 18-cv-01059 (E.D. Va.); *Morris et al. v. Bank of America, N.A.*, No. 3:18-cv-00157-RJC-DSC (W.D.N.C.); *Brooks et al. v. Canvas Credit Union*, 2019CV30516 (Dist. Ct. for Denver Cnty., Colo.); *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.); *White v. Members 1<sup>st</sup> Credit Union*, Case No. 1:19-cv-00556-JEJ (M.D. Pa.); *Plummer v. Centra Credit Union*, Case No. 03D01-1804-PL-001903 (Cnty. Of Bartholomew, Ind.); *Holt v. Community America Credit Union*, Case No. 4:19-cv-00629-FJG (W.D. Mo.); *Trinity Management v. Charles Puckett*, Case No. GCG-17-558960 (Super. Ct., San Francisco Cnty, Cal.); *Martin v. Le&N Federal Credit Union*, No. 19-CI-022873 (Jefferson Cir. Ct., Div. One); *Clark v. Hills Bank and Trust Company*, No. LACV080753 (Iowa Dist. Ct. Johnson Cnty.); *Morris v. Provident Credit Union*, Case No. CGC-19-581616 (Super. Ct., San Francisco Cnty., Cal.).

As shown in the biographies of our attorneys and the list of class counsel appointments, KalielGold PLLC is well versed in class action litigation and zealously advocates for its clients. To learn more about KalielGold PLLC, or any of the firm's attorneys, please visit [www.kalielgold.com](http://www.kalielgold.com).

**JEFFREY D. KALIEL**

Jeffrey Kaliel earned his law degree from Yale Law School in 2005. He graduated from Amherst College summa cum laude in 2000 with a degree in Political Science, and spent one year studying Philosophy at Cambridge University, England.

Over the last 10 years, Jeff has built substantial class action experience. He has received "Washington D.C. Rising Stars Super Lawyers 2015" recognition.

Jeff has been appointed lead Class Counsel in numerous nationwide and state-specific class actions. In those cases, Jeff has won contested class certification motions, defended dispositive motions, engaged in data-intensive discovery and worked extensively with economics and information technology experts to build damages models. Jeff has also successfully resolved numerous class actions by settlement, resulting in hundreds of millions of dollars in relief for millions of class members.

Currently Jeff is actively litigating several national class action cases, including actions against financial services entities and other entities involved in predatory lending and financial services targeting America's most vulnerable populations.

Jeff's class action successes extend beyond financial services litigation. He seeks to lead cases that serve the public interest. Jeff has worked with nonprofits such as the Humane Society, Compassion Over Killing, and the National Consumers League to fight for truth in the marketplace on food and animal products.

Jeff has over a decade of experience in high-stakes litigation. He was in the Honors Program at the Department of Homeland Security, where he worked on the Department's appellate litigation. Jeff also helped investigate the DHS response to Hurricane Katrina in preparation for a Congressional inquiry. Jeff also served as a Special Assistant US Attorney in the Southern District of California, prosecuting border-related crimes.

Jeff is a former Staff Sergeant in the Army, with Airborne and Mountain Warfare qualifications. He is a veteran of the second Iraq war, having served in Iraq in 2003.

Jeff is admitted to practice in California and Washington, DC, and in appellate and district courts across the country.

Jeff lives in Washington, D.C. with his wife, Debbie, and their three children.

**SOPHIA GOREN GOLD**

Sophia Goren Gold is a third-generation Plaintiff's lawyer. A *summa cum laude* graduate of Wake Forest University and the University of California, Berkeley, School of Law, Sophia has spent her entire career fighting for justice.

A fierce advocate for those in need, Sophia's practice centers around taking on financial institutions, insurance companies, and other large corporate interests. Sophia has participated in hundreds of individual and class cases in both state and federal courts across the country. Collectively, she has helped secure tens of millions of dollars in relief on behalf of the classes she represents.

In addition to providing monetary relief, Sophia's extensive litigation experience has resulted in real-world positive change. For example, she brought litigation which resulted in the elimination of the Tampon Tax in the State of Florida, and she was influential in changing the state of Delaware's Medicaid policy, resulting in greater access to life-saving medication.

Sophia is currently representing consumers in numerous cases involving the assessment of improper fees by banks and credit unions, such as overdraft fees, insufficient funds fees, and out of network ATM fees. She is also currently representing consumers who have been the victims of unfair and deceptive business practices.

Sophia is admitted to practice in California and Washington, D.C. When not working, Sophia enjoys spending time with her husband, daughter, and their goldendoodle.

**BRITTANY CASOLA**

Brittany Casola attended the University of Central Florida in Orlando and graduated in 2012 with a bachelor's degree in Political Science and a minor in Spanish. Brittany earned her Juris Doctorate from California Western School of Law in 2015 and graduated magna cum laude in the top 10% of her class.

Throughout the course of her law school career, she served as a judicial extern to the Honorable Anthony J. Battaglia for the United States District Court, Southern District of California and worked multiple semesters as a certified legal intern for the San Diego County District Attorney's Office. Brittany was awarded Academic Excellence Awards in law school for receiving the highest grade in Trial Practice, Health Law & Policy, and Community Property.

Before joining KalielGold PLLC, Brittany worked as a judicial law clerk for the Honorable Anthony J. Battaglia and as an associate attorney for Carlson Lynch LLP, specializing in consumer complex litigation.

**AMANDA ROSENBERG**

Amanda Rosenberg graduated *cum laude* from the University of California, Hastings College of the Law in 2011 and the University of California, San Diego in 2008, where she earned departmental Honors with Highest Distinction in history.

Before joining KalielGold PLLC, Amanda represented and advised small businesses and financial institutions in litigation matters including employment disputes, merchant disputes, credit and charge card disputes, wrongful foreclosures, and securities. She has successfully litigated cases in California, Illinois, and Michigan.

Amanda is an active volunteer in her community and has helped numerous individuals understand and navigate their rights in the workplace.

In law school, Amanda worked as an extern for the Honorable Judge Vaughn Walker in the United States District Court, Northern District of California. Amanda was awarded academic excellence awards for receiving the highest grades in Trial Advocacy and Litigating Class Action Employment.

When not working, Amanda loves exploring Michigan's outdoors with her husband, kids, and rescue dog.



**CLASS COUNSEL APPOINTMENTS**

- *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.);
- *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.);
- *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.).
- *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1<sup>st</sup> Cir. Haw.);
- *Brooks et al. v. Canvas Credit Union*, 2019CV30516 (Dist. Ct. for Denver Cnty., Colo.).
- *Liggio v. Apple Federal Credit Union*, Civil No. 18-cv-01059 (E.D. Va.);
- *Morris et al. v. Bank of America, N.A.*, Civil No. 3:18-cv-00157-RJC-DSC (W.D.N.C.);
- *White v. Members 1<sup>st</sup> Credit Union*, Case No. 1:19-cv-00556-JEJ (M.D. Pa.);
- *Plummer v. Centra Credit Union*, Case No. 03D01-1804-PL-001903 (Bartholomew Cnty., Ind.);
- *Holt v. Community America Credit Union*, Case No. 4:19-cv-00629-FJG (W.D. Mo.);
- *Trinity Management v. Charles Puckett*, Case No. GCG-17-558960 (Super. Ct., San Francisco, Cnty., Cal.);
- *Martin v. Le&N Federal Credit Union*. No. 19-CI-022873 (Jefferson Cir. Ct., Division One);
- *Clark v. Hills Bank and Trust Company*, No. LACV080753 (Iowa Dist. Ct. Johnson Cnty.);
- *Morris v. Provident Credit Union*, Case No. CGC-19-581616 (Super. Ct. San Francisco Cnty., Cal.).
- *Bodnar v. Bank of America, N.A.*, 5:14-cv-03224 (E.D. Pa.);
- *In re Higher One OneAccount Marketing and Sales Practice Litigation.*, No. 12-md-02407-VLB (D. Conn.).
- *Shannon Schulte, et al. v. Fifth Third Bank.*, No. 1:09-cv-06655 (N.D. Ill.);
- *Kelly Mathena v. Webster Bank*, No. 3:10-cv-01448 (D. Conn.);
- *Nick Allen, et al. v. UMB Bank, N.A., et al.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson Cnty., Mo.);
- *Thomas Casto, et al. v. City National Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha Cnty., W. Va.);
- *Eaton v. Bank of Oklahoma, N.A., and BOK Financial Corporation, d/b/a Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa Cnty., Okla.);
- *Lodley and Tehani Taulva, et al., v. Bank of Hawaii and Doe Defendants 1-50*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.);
- *Jessica Duval, et al. v. Citizens Financial Group, Inc., et al*, No. 1:10-cv-21080 (S.D. Fla.);
- *Mascaro, et al. v. TD Bank, Inc.*, No. 10-cv-21117 (S.D. Fla.);
- *Theresa Molina, et al., v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Judicial Dist., Dist. Ct. Sedgwick Cnty., Kan.);
- *Trombley v. National City Bank*, 1:10-cv-00232-JDB (D.D.C.); *Galdamez v. I.Q. Data International, Inc.*, No. 1:15-cv-1605 (E.D. Va.);
- *Brown et al. v. Transurban USA, Inc. et al.*, No. 1:15-CV-00494 (E.D. Va.);
- *Grayson v. General Electric Co.*, No. 3:13-cv-01799 (D. Conn.);
- *Galdamez v. I.Q. Data International, Inc.*, No. 1:15-cv-1605 (E.D. Va.).

# EXHIBIT 2



## FIRM RESUME

One West Las Olas Boulevard, Suite 500  
Fort Lauderdale, Florida 33301

**Telephone:** 954.525.4100

**Facsimile:** 954.525.4300

**Website:** [www.kolawyers.com](http://www.kolawyers.com)

**Miami Fort Lauderdale Boca Raton**

## OUR FIRM

For over two decades, Kopelowitz Ostrow Ferguson Weiselberg Gilbert (KO) has provided comprehensive, results-oriented legal representation to individual, business, and government clients throughout Florida and the rest of the country. KO has the experience and capacity to represent its clients effectively and has the legal resources to address almost any legal need. The firm's 25 attorneys have practiced at several of the nation's largest and most prestigious firms and are skilled in almost all phases of law, including consumer class actions, multidistrict litigation involving mass tort actions, complex commercial litigation, and corporate transactions. In the class action arena, the firm has experience not only representing individual aggrieved consumers, but also defending large institutional clients, including multiple Fortune 100 companies.

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## WHO WE ARE

The firm has a roster of accomplished attorneys. Clients have an opportunity to work with some of the finest lawyers in Florida and the United States, each one committed to upholding KO's principles of professionalism, integrity, and personal service. Among our roster, you'll find attorneys whose accomplishments include Board Certified in their specialty; serving as in-house counsel for major corporations, as city and county attorneys handling government affairs, and as public defenders and prosecutors; achieving multi-millions of dollars through verdicts and settlements in trials, arbitrations, and alternative dispute resolution procedures; successfully winning appeals at every level in Florida state and federal courts; and serving government in various elected and appointed positions.

KO has the experience and resources necessary to represent large putative classes. The firm's attorneys are not simply litigators, but rather, experienced trial attorneys with the support staff and resources needed to coordinate complex cases.

# CLASS ACTION PLAINTIFF

Since its founding, KO has initiated and served as lead class counsel in dozens of high-profile class actions. Although the actions are diverse by subject area, KO has established itself as one of the leading firms that sue national and regional banks and credit unions related to the unlawful assessment of fees. Their efforts spanning a decade plus have resulted in recoveries in excess of \$500 million and monumental practices changes that have changed the industry and saving clients billions of dollars.

Additionally, other past and current cases have been prosecuted for breaches of insurance policies; data breaches; data privacy; wiretapping; biometric privacy; gambling; false advertising; defective consumer products and vehicles; antitrust violations; and suits on behalf of students against colleges and universities arising out of the COVID-19 pandemic.

The firm has in the past litigated certified and proposed class actions against Blue Cross Blue Shield and United Healthcare related to their improper reimbursements of health insurance benefits. Other insurance cases include auto insurers failing to pay benefits owed to insureds with total loss vehicle claims. Other class action cases include cases against Microsoft Corporation related to its Xbox 360 gaming platform, ten of the largest oil companies in the world in connection with the destructive propensities of ethanol and its impact on boats, Nationwide Insurance for improper mortgage fee assessments, and several of the nation's largest retailers for deceptive advertising and marketing at their retail outlets and factory stores.

## CLASS ACTION DEFENSE

The firm also brings experience in successfully defended many class actions on behalf of banking institutions, mortgage providers and servicers, advertising conglomerates, aircraft manufacturer and U.S. Dept. of Defense contractor, a manufacturer of breast implants, and a national fitness chain.

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## MASS TORT LITIGATION

The firm also has extensive experience in mass tort litigation, including serving as Lead Counsel in the Zantac Litigation, one of the largest mass torts in history. The firm also has handled cases against 3M related to defective earplugs, several vaginal mesh manufacturers, Bayer in connection with its pesticide Roundup, Bausch & Lomb for its Renu with MoistureLoc product, Wyeth Pharmaceuticals related to Prempro, Bayer Corporation related to its birth control pill YAZ, and Howmedica Osteonics Corporation related to the Stryker Rejuvenate and AGB II hip implants. In connection with the foregoing, some of which has been litigated within the multidistrict arena, the firm has obtained tens of millions in recoveries for its clients.

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## OTHER AREAS OF PRACTICE

In addition to class action and mass tort litigation, the firm has extensive experience in the following practice areas: commercial and general civil litigation, corporate transactions, health law, insurance law, labor and employment law, marital and family law, real estate litigation and transaction, government affairs, receivership, construction law, appellate practice, estate planning, wealth preservation, healthcare provider reimbursement and contractual disputes, white collar and criminal defense, employment contracts, environmental, and alternative dispute resolution.

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## FIND US ONLINE

To learn more about KO, or any of the firm's other attorneys, please visit [www.kolawyers.com](http://www.kolawyers.com).

# CLASS ACTION AND MASS TORT SETTLEMENTS

## FINANCIAL INSTITUTIONS

*Devore, et al. v. Dollar Bank*, GD-21-008946 (Ct. Common Pleas Allegheny 2024) - \$7 million

*Nimsey v. Tinker Federal Credit Union*, C1-2019-6084 (Dist. Ct. Oklahoma 2024) - \$5.475 million

*Precision Roofing of N. Fla. Inc., et al. v. CenterState Bank*, 3:20-cv-352 (S.D. Fla. 2023) - \$2.65 million

*Checchia v. Bank of America, N.A.*, 2:21-cv-03585 (E.D. Pa. 2023) - \$8 million

*Quirk v. Liberty Bank*, X03-HHD-CV20-6132741-S (Jud. Dist. Ct. Hartford 2023) - \$1.4 million

*Meier v. Prosperity Bank*, 109569-CV (Dist. Ct. Brazoria 2023) - \$1.6 million

*Abercrombie v. TD Bank, N.A.*, 0:21-cv-61376 (S.D. Fla. 2022) - \$4.35 million

*Perks, et al. v. TD Bank, N.A.*, 1:18-cv-11176 (E.D.N.Y. 2022) - \$41.5 million

*Fallis v. Gate City Bank*, 09-2019-CV-04007 (Dist. Ct., Cty. of Cass, N.D. 2022) - \$1.8 million

*Mayo v. Affinity Plus Fed. Credit Union*, 27-CV-20-11786 (4th Judicial District Minn. 2022) - \$1 million

*Glass, et al. v. Delta Comm. Cred. Union*, 2019CV317322 (Sup. Ct. Fulton Cty., Ga. 2022) - \$2.8 million

*Roy v. ESL Fed. Credit Union*, 19-cv-06122 (W.D.N.Y. 2022) - \$1.9 million

*Wallace v. Wells Fargo*, 17CV317775 (Sup. Ct. Santa Clara 2021) - \$10 million

*Doxey v. Community Bank, N.A.*, 8:19-CV-919 (N.D.N.Y. 2021) - \$3 million

*Coleman v. Alaska USA Federal Credit Union*, 3:19-cv-0229-HRH (Dist. of Alaska 2021) - \$1 million

*Smith v. Fifth Third Bank*, 1:18-cv-00464-DRC-SKB (W.D. Ohio 2021) - \$5.2 million

*Lambert v. Navy Federal Credit Union*, 1:19-cv-00103-LO-MSN (S.D. Va. 2021) - \$16 million

*Roberts v. Capital One, N.A.*, 16 Civ. 4841 (LGS) (S.D.N.Y. 2021) - \$17 million

*Baptiste v. GTE Financial*, 20-CA-002728 (Cir. Ct. Hillsborough 2021) - \$975,000

*Morris v. Provident Credit Union*, CGC-19-581616 (Sup. Ct. San Francisco 2020) - \$1.1 million

*Lloyd v. Navy Federal Credit Union*, 17-cv-01280-BAS-RBB (S.D. Ca. 2019) - \$24.5 million

*Farrell v. Bank of America, N.A.*, 3:16-cv-00492-L-WVG (S.D. Ca. 2018) - \$66.6 million

*Bodnar v. Bank of America, N.A.*, 5:14-cv-03224-EGS (E.D. Pa. 2015) - \$27.5 million

*Morton v. Green Bank*, 11-135-IV (20<sup>th</sup> Judicial District Tenn. 2018) - \$1.5 million

*Hawkins v. First Tenn. Bank*, CT-004085-11 (13<sup>th</sup> Jud. Dist. Tenn. 2017) - \$16.75 million

*Payne v. Old National Bank*, 82C01-1012 (Cir. Ct. Vanderburgh 2016) - \$4.75 million

*Swift. v. Bancorpsouth*, 1:10-CV-00090 (N.D. Fla. 2016) - \$24.0 million

*Mello v. Susquehanna Bank*, 1:09-MD-02046 (S.D. Fla. 2014) - \$3.68 million

*Johnson v. Community Bank*, 3:11-CV-01405 (M.D. Pa. 2013) - \$1.5 million

*McKinley v. Great Western Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$2.2 million

*Blabut v. Harris Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$9.4 million

*Wolfgeher v. Commerce Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$18.3 million

*Case v. Bank of Oklahoma*, 09-MD-02036 (S.D. Fla. 2012) - \$19.0 million Settlement

*Hawthorne v. Umpqua Bank*, 3:11-CV-06700 (N.D. Cal. 2012) - \$2.9 million Settlement

*Simpson v. Citizens Bank*, 2:12-CV-10267 (E.D. Mich. 2012) - \$2.0 million

*Harris v. Associated Bank*, 1:09-MD-02036 (S.D. Fla. 2012) - \$13.0 million

*LaCour v. Whitney Bank*, 8:11-CV-1896 (M.D. Fla. 2012) - \$6.8 million

*Orallo v. Bank of the West*, 1:09-MD-202036 (S.D. Fla. 2012) - \$18.0 million

*Taulava v. Bank of Hawaii*, 11-1-0337-02 (1st Cir. Hawaii 2011) - \$9.0 million

# FALSE PRICING

## CONSUMER PROTECTION

## MASS TORT

*Gattinella v. Michael Kors* (USA), 14-Civ-5731 (WHP) (S.D. NY 2015) - \$4.875 million

*Stathakos v. Columbia Sportswear*, 4:15-cv-04543-YGR (N.D. Ca. 2018) - Injunctive relief prohibiting deceptive pricing practices

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*Lopez, et al. v. Volusion, LLC*, 1:20-cv-00761 (W.D. Tex. 2022) - \$4.3 million

*Gupta v. Aerics Software, Inc.*, 8:20-cv-00995 (C.D. Ca. 2022) - \$1.75 million

*In Re: CaptureRx Data Breach*, 5:21-cv-00523 (W.D. Tex. 2022) - \$4.75 million

*Ostendorf v. Grange Indemnity Ins. Co.*, 2:19-cv-01147-ALM-KAJ (E.D. Ohio 2020) – \$12.6 million

*Walters v. Target Corp.*, 3:16-cv-1678-L-MDD (S.D. Cal. 2020) – \$8.2 million

*Papa v. Grieco Ford Fort Lauderdale, LLC*, 18-cv-21897-JEM (S.D. Fla. 2019) - \$4.9 million

*Bloom v. Jenny Craig, Inc.*, 18-cv-21820-KMM (S.D. Fla. 2019) - \$3 million

*Masson v. Tallahassee Dodge Chrysler Jeep, LLC*, 1:17-cv-22967-FAM (S.D. Fla. 2018) - \$850,000

*DiPuglia v. US Coachways, Inc.*, 1:17-cv-23006-MGC (S.D. Fla. 2018) - \$2.6 million

*In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.) - \$88 million

*In re: 21st Century Oncology Customer Data Sec. Breach Litig.*, 8:16-md-2737-MSS-AEP (M.D. Fla. 2021) - \$21.8 million

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*In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.) - MDL No. 2924 – Co-Lead Counsel

*In re: Stryker Rejuvenate and ABG II Products Liability Litigation*, 13-MD-2411 (17th Jud. Cir. Fla. Complex Litigation Division)

*In re: National Prescription Opiate Litigation*, 1:17-md-02804-DAP (N.D. Ohio) - MDL 2804

*In re: Smith and Nephew BHR Hip Implant Products Liability Litigation*, MDL-17-md-2775

*Yasmin and YAZ Marketing, Sales Practices and Products Liability Litigation*, 3:09-md-02100-DRH-PMF (S.D. Ill.) – MDL 2100

*In re: Prempro Products Liab. Litigation*, MDL 507, No. 03-cv-1507 (E.D. Ark.)

*In Re: 3M Combat Arms Earplug Products Liability Litigation* (N.D. Fla.) - MDL 2885





# JEFF OSTROW

Managing Partner

## *Bar Admissions*

The Florida Bar

District of Columbia Bar

## *Court Admissions*

Supreme Court of the United States

U.S. Court of Appeals for the Eleventh Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Eastern District of Michigan

U.S. District Court, Western District of Tennessee

U.S. District Court, Western District of Wisconsin

U.S. District Court, Western District of Kentucky

U.S. District Court, Northern District of New York

U.S. District Court, District of Colorado

U.S. District Court, Eastern District of Texas

## *Education*

Nova Southeastern University, J.D. - 1997

University of Florida, B.S. - 1994

*ostrow@kolawyers.com*

Jeff Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice in 1997 immediately upon graduation from law school and has since grown the firm to 25 attorneys in 3 offices throughout south Florida. In addition to overseeing the firm's day-to-day operations and strategic direction, Mr. Ostrow practices full time in the areas of consumer class actions, sports and business law. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, which is the highest possible rating by the most widely recognized attorney rating organization in the world.

Mr. Ostrow often serves as outside General Counsel to companies, advising them in connection with their legal and regulatory needs. He has represented many Fortune 500® Companies in connection with their Florida litigation. He has handled cases covered by media outlets throughout the country and has been quoted many times on various legal topics in almost every major news publication, including the Wall Street Journal, New York Times, Washington Post, Miami Herald, and Sun-Sentinel. He has also appeared on CNN, ABC, NBC, CBS, Fox, ESPN, and almost every other major national and international television network in connection with his cases, which often involve industry changing litigation or athletes in Olympic swimming, professional boxing, the NFL, NBA and MLB.

Mr. Ostrow is an accomplished trial attorney who has experience representing both Plaintiffs and Defendants. He has successfully tried many cases to verdict involving multi-million-dollar damage claims in state and federal courts. He is currently court-appointed lead counsel and sits on plaintiffs' executive committees in multiple high profile nationwide multi-district litigation actions involving cybersecurity breaches and related privacy issues. He has spent the past decade serving as lead counsel in dozens of nationwide and statewide class action lawsuits against many of the world's largest financial institutions in connection with the unlawful use of funds. To date, his efforts have successfully resulted in the recovery of over \$1 billion for tens of millions of bank and credit union customers, as well

as monumental changes in the way they assess fees. Those changes have forever revolutionized an industry, resulting in billions of dollars of savings. In addition, Mr. Ostrow has served as lead class counsel in many consumer class actions against some of the world's largest airlines, pharmaceutical companies, clothing retailers, health and auto insurance carriers, technology companies, and oil conglomerates, along with serving as class action defense counsel for some of the largest advertising and marketing agencies in the world, banking institutions, real estate developers, and mortgage companies.

In addition to the law practice, he is the founder and president of ProPlayer Sports LLC, a full-service sports agency and marketing firm. He represents both Olympic Gold Medalist Swimmers, World Champion Boxers, and select NFL athletes, and is licensed by both the NFL Players Association as a certified Contract Advisor. At the agency, Mr. Ostrow handles all player-team negotiations of contracts, represents his clients in legal proceedings, negotiates all marketing and NIL engagements, and oversees public relations and crisis management. He has extensive experience in negotiating, mediating, and arbitrating a wide range of issues on behalf of clients with the NFL Players Association, the International Olympic Committee, the United States Olympic Committee, USA Swimming and the World Anti-Doping Agency. He has been an invited sports law guest speaker at New York University and Nova Southeastern University and has also served as a panelist at many industry-related conferences.

Mr. Ostrow received a Bachelor of Science in Business Administration from the University of Florida in 1994 and Juris Doctorate from Nova Southeastern University in 1997. He is a licensed member of The Florida Bar and the District of Columbia Bar, is fully admitted to practice before the U.S. Supreme Court, the U.S. District Courts for the Southern, Middle, and Northern Districts of Florida, Eastern District of Michigan, Northern District of Illinois, Western District of Tennessee, Western District of Wisconsin, and the U.S. Court of Appeals for the Eleventh Circuit. Mr. Ostrow is also member of several Bar Associations.

He is a lifetime member of the Million Dollar Advocates Forum. The Million Dollar Advocates Forum is the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have had multi-million dollar jury verdicts. Additionally, he is consistently named as one of the top lawyers in Florida by Super Lawyers®, a publication that recognizes the best lawyers in each state. Mr. Ostrow is an inaugural recipient of the University of Florida's Warrington College of Business Administration Gator 100 award for the fastest growing University of Florida alumni- owned law firm in the world.

When not practicing law, Mr. Ostrow serves on the Board of Governors of Nova Southeastern University's Wayne Huizenga School of Business and is a Member of the Broward County Courthouse Advisory Task Force. He is also the Managing Member of One West LOA LLC, a commercial real estate development company with holdings in downtown Fort Lauderdale. He has previously sat on the boards of a national banking institution and a national healthcare marketing company. Mr. Ostrow is a founding board member for the Jorge Nation Foundation, a 501(c)(3) non-profit organization that partners with the Joe DiMaggio Children's Hospital to send children diagnosed with cancer on all-inclusive Dream Trips to destinations of their choice. Mr. Ostrow resides in Fort Lauderdale, Florida, and has 3 sons, 2 of which currently attend the University of Florida.



# DAVID FERGUSON

Partner

## ***Bar Admissions***

The Florida Bar

## ***Court Admissions***

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

## ***Education***

Nova Southeastern University, J.D. - 1993

Nova Southeastern University, B.S. - 1990

***Email: [ferguson@kolawyers.com](mailto:ferguson@kolawyers.com)***

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David L. Ferguson is an accomplished trial attorney and chairs the firm's litigation department. He routinely leads high stakes litigation across a wide array of practice areas, including, but not limited to, employment law, complex business litigation, class actions, product liability, catastrophic personal injury, civil rights, and regulatory enforcement actions.

Mr. Ferguson is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, a testament to the fact that his peers (lawyers and judges in the community) have ranked him at the highest level of professional excellence. Mr. Ferguson is well regarded as a formidable advocate in court and for providing creative and insightful strategic advice, particularly in emergency and extremely complex situations.

While in law school, Mr. Ferguson served as a Staff Member of the Nova Law Review. He was also a member of the Moot Court Society and the winner of the Moot Court Intramural Competition.

## **Representation of the Broward Sheriff's Office**

Since 2013, Mr. Ferguson has had the privilege of representing the Broward Sheriff's Office ("BSO") in over 150 matters involving many different types of disputes and issues, including: defense of civil rights lawsuits in state and federal court; negotiating collective bargaining agreements with unions; and arbitrations brought by unions or employees subjected to termination or other significant discipline. Mr. Ferguson has had many arbitration final hearings and state and federal jury trials for BSO representing the agency as well as the Sheriff and numerous Deputies individually.

## **Class/Mass Actions**

Mr. Ferguson has experience in class actions against large banks and some of the world's largest companies, including technology companies and oil conglomerates.

Additionally, during his career Mr. Ferguson has defended many large companies in MDL's, and mass and class actions, including medical equipment manufacturers, pharmaceutical companies, an aircraft parts and engine manufacturer and defense contractor, nationwide retailers, and a massive sugar manufacturer.

## **Large Fraud and Ponzi Cases**

Mr. Ferguson has a great deal of experience litigating cases involving massive fraud claims, most often for victims, but also for select defendants. Mr. Ferguson's clients have included individual victims who have lost multiple millions of dollars in fraud schemes to large businesses with tremendous damages, including one international lending institution with damages in excess of \$150 million. Additionally, Mr. Ferguson successfully represented several individuals and entities subjected to significant claims by a receiver and the United States Marshals Service in a massive billion-dollar Ponzi scheme involving a notorious Ft. Lauderdale lawyer and his law firm.

## **Regulatory Agency Enforcement Actions**

Mr. Ferguson has extensive experience defending individuals and entities in significant enforcement actions brought by regulatory agencies, including the CFTC, FTC, and SEC.

## **Employment, Human Resources, and Related Matters**

Mr. Ferguson has represented numerous business and individuals in employment and human resource related matters. Mr. Ferguson has represented several Fortune 50 companies, including Pratt & Whitney/UTC, Home Depot, and Office Depot in all phases of employment related matters. Mr. Ferguson has litigated virtually every type of discrimination and employment related claim, including claims based upon race, pregnancy, disability, national origin, religion, age, sexual preference, sexual harassment, worker's compensation, unemployment, FMLA leave, FLSA overtime, unpaid wages, whistleblower, and retaliation.

Mr. Ferguson primarily represents companies, but also represents select individuals who have claims against their present or former employers. In addition to the wide variety of employment claims discussed above, as plaintiff's counsel Mr. Ferguson has also handled federal False Claims Act (Qui Tam) and the Foreign Corrupt Practices Act claims brought by individuals.

## **Business Disputes**

Throughout his legal career, as counsel for plaintiffs and defendants, Mr. Ferguson has handled a myriad of commercial cases involving all types of business disputes, including claims for breach of partnership agreements, breach of shareholder or limited liability company operating agreements; dissolution of corporations and limited liability companies; appointment of receivers; breaches of fiduciary duty; conversion; constructive trust; theft; negligent or intentional misrepresentation or omissions; fraudulent inducement; tortious interference; professional negligence or malpractice; derivative actions, breach of contract, real estate disputes, and construction disputes.

## **Noncompetition and Trade Secret Litigation**

Mr. Ferguson routinely represents companies and individuals in commercial disputes involving unfair and deceptive trade practices, unfair competition and/or tortious interference with contracts or valuable business relationships. Often these cases involve the enforcement of noncompetition agreements and protection of valuable trade secrets. Mr. Ferguson has extensive experience representing businesses seeking to enforce their noncompetition agreements and/or protect trade secrets through suits for injunctive relief and damages and representing subsequent employers and individuals defending against such claims. He has obtained numerous injunctions for his clients and has also successfully defended against them numerous times, including getting injunctions dissolved that were entered against his clients without notice or prior to his representation. Mr. Ferguson has also obtained contempt sanctions and entitlement to punitive damages against individuals and entities who have stolen trade secrets from his clients.





# ROBERT C. GILBERT

Partner

## Bar Admissions

The Florida Bar

District of Columbia Bar

## Court Admissions

Supreme Court of the United States

U.S. Court of Appeals for the 11th Circuit

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

## Education

University of Miami School of Law, J.D. - 1985

Florida International University, B.S. - 1982

**Email:** [gilbert@kolawyers.com](mailto:gilbert@kolawyers.com)

Robert C. “Bobby” Gilbert has over three decades of experience handling class actions, multidistrict litigation and complex business litigation throughout the United States. He has been appointed lead counsel, co-lead counsel, coordinating counsel or liaison counsel in many federal and state court class actions. Bobby has served as trial counsel in class actions and complex business litigation tried before judges, juries and arbitrators. He has also briefed and argued numerous appeals, including two precedent-setting cases before the Florida Supreme Court.

Bobby was appointed as Plaintiffs’ Coordinating Counsel in *In re Checking Account Overdraft Litig.*, MDL 2036, class action litigation brought against many of the nation’s largest banks that challenged the banks’ internal practice of reordering debit card transactions in a manner designed to maximize the frequency of customer overdrafts. In that role, Bobby managed the large team of lawyers who prosecuted the class actions and served as the plaintiffs’ liaison with the Court regarding management and administration of the multidistrict litigation. He also led or participated in settlement negotiations with the banks that resulted in settlements exceeding \$1.1 billion, including Bank of America (\$410 million), Citizens Financial (\$137.5 million), JPMorgan Chase Bank (\$110 million), PNC Bank (\$90 million), TD Bank (\$62 million), U.S. Bank (\$55 million), Union Bank (\$35 million) and Capital One (\$31.7 million).

Bobby has been appointed to leadership positions in numerous other class actions and multidistrict litigation proceedings. He is currently serving as co-lead counsel in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, 9:20-md-02924-RLR (S.D. Fla.), as well as liaison counsel in *In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.); liaison counsel in *In re 21st Century Oncology Customer Data Security Breach Litig.*, MDL 2737 (M.D. Fla.); and *In re Farm-Raised Salmon and Salmon Products Antitrust Litig.*, No. 19-21551 (S.D. Fla.). He previously served as liaison counsel for indirect purchasers in *In re Terazosin Hydrochloride Antitrust Litig.*, MDL 1317 (S.D. Fla.), an antitrust class action that settled for over \$74 million.

For the past 18 years, Bobby has represented thousands of Florida homeowners in class actions to recover full compensation under the Florida Constitution based on the Florida Department of Agriculture's taking and destruction of the homeowners' private property. As lead counsel, Bobby argued before the Florida Supreme Court to establish the homeowners' right to pursue their claims; served as trial counsel in non-jury liability trials followed by jury trials that established the amount of full compensation owed to the homeowners for their private property; and handled all appellate proceedings. Bobby's tireless efforts on behalf of the homeowners resulted in judgments exceeding \$93 million.

Bobby previously served as an Adjunct Professor at Vanderbilt University Law School, where he co-taught a course on complex litigation in federal courts that focused on multidistrict litigation and class actions. He continues to frequently lecture and make presentations on a variety of topics.

Bobby has served for many years as a trustee of the Greater Miami Jewish Federation and previously served as chairman of the board of the Alexander Muss High School in Israel, and as a trustee of The Miami Foundation.



# JONATHAN M. STREISFELD

Partner

## ***Bar Admissions***

The Florida Bar

## ***Court Admissions***

Supreme Court of the United States

U.S. Court of Appeals for the First, Second, Fourth, Fifth Ninth, and Eleventh Circuits

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

U.S. District Court, Northern District of Florida

U.S. District Court, Northern District of Illinois

U.S. District Court, Western District of Michigan

U.S. District Court, Western District of New York

U.S. District Court, Western District of Tennessee

## ***Education***

Nova Southeastern University, J.D. - 1997

Syracuse University, B.S. - 1994

***Email: [streisfeld@kolawyers.com](mailto:streisfeld@kolawyers.com)***

Jonathan M. Streisfeld joined KO as a partner in 2008. Mr. Streisfeld concentrates his practice in the areas of consumer class actions, business litigation, and appeals nationwide. He is a Martindale Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics.

Mr. Streisfeld has vast and successful experience in class action litigation, serving as class counsel in nationwide and statewide consumer class action lawsuits against the nation's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$500,000,000 for tens of millions of bank and credit union customers, as well as profound changes in the way banks assess fees. Additionally, he has and continues to serve as lead and class counsel for consumers in many class actions involving false advertising and pricing, defective products, data breach and privacy, automobile defects, airlines, mortgages, and payday lending. Mr. Streisfeld has also litigated class actions against some of the largest health and automobile insurance carriers and oil conglomerates, and defended class and collective actions in other contexts.

Mr. Streisfeld has represented a variety of businesses and individuals in a broad range of business litigation matters, including contract, fraud, breach of fiduciary duty, intellectual property, real estate, shareholder disputes, wage and hour, and deceptive trade practices claims. He also assists business owners and individuals with documenting contractual relationships and resolving disputes. Mr. Streisfeld has also provided legal representation in bid protest proceedings.

Mr. Streisfeld oversees the firm's appellate and litigation support practice, representing clients in the appeal of final and non-final orders, as well as writs of certiorari, mandamus, and prohibition. His appellate practice includes civil and marital and family law matters.

Previously, Mr. Streisfeld served as outside assistant city attorney for the City of Plantation and Village of Wellington in a broad range of litigation matters. As a member of The Florida Bar, Mr. Streisfeld has served as a member of the Executive Council of the Appellate Practice Section and is a past Chair of the Section's Communications Committee. Mr. Streisfeld currently serves as a member of the Board of Temple Kol Ami Emanu-El.



# KEN GRUNFELD

Partner

## ***Bar Admissions***

The Pennsylvania Bar

The New Jersey Bar

## ***Court Admissions***

U.S. Court of Appeals for the Third, Fourth, Fifth, Ninth, Tenth and Eleventh Circuits

U.S. District Ct, Eastern District of Pennsylvania

U.S. District Ct, Middle District of Pennsylvania

U.S. District Ct, Western District of Pennsylvania

U.S. District Ct, District of New Jersey

U.S. District Ct, Eastern District of Michigan

U.S. District Ct, Western District of Wisconsin

## ***Education***

Villanova University School of Law, J.D., 1999

University of Michigan, 1996

***Email: [grunfeld@kolawyers.com](mailto:grunfeld@kolawyers.com)***

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Ken Grunfeld is one of the newest KO partners, having just started working at the firm in 2023. Having worked at one of Philadelphia's largest and most prestigious defense firms for nearly a decade defending pharmaceutical manufacturers, national railroads, asbestos companies and corporate clients in consumer protection, products liability, insurance coverage and other complex commercial disputes while working, Mr. Grunfeld "switched sides" about 15 years ago.

Since then, he has become one of the city's most prolific and well-known Philadelphia class action lawyers. His cases have resulted in the recovery of hundreds of millions of dollars for injured individuals.

Mr. Grunfeld brings with him a wealth of pre-trial, trial, and appellate work experience in both state and federal courts. He has successfully taken many cases to verdict. Currently, he serves as lead counsel in a number of nationwide class actions. Whether by settlement or judgment, Mr. Grunfeld makes sure the offending companies' wrongful practices have been addressed. He believes the most important part of bringing a wrongdoer to justice is to ensure that it never happens again; class actions can be a true instrument for change if done well.

Mr. Grunfeld has been named a Super Lawyer numerous times throughout his career. He has been a member of the Philadelphia, Pennsylvania, and American Bar Associations, as well as a member of the American Association for Justice (AAJ). He was a Finalist for AAJ's prestigious Trial Lawyer of the Year Award in 2012 and currently serves as AAJ's Vice Chair of the Class Action Law Group. To his strong view that attorneys should act ethically, he volunteers his time as a Hearing Committee Member for the Disciplinary Board of the Supreme Court of Pennsylvania.



Mr. Grunfeld received his undergraduate degree from the University of Michigan. He is an active member of the Michigan Alumni Association, Philadelphia chapter and serves as a Michigan Alumni Student recruiter for local high schools. He received his Juris Doctor from the Villanova University School of Law. He was a member of the Villanova Law Review and graduated Order of the Coif.

Ken is a life-long Philadelphian. He makes his home in Bala Cynwyd, Pennsylvania, where he resides with his wife, Jennifer, and his year-old twins.

# KRISTEN LAKE CARDOSO

Partner



## ***Bar Admissions***

The Florida Bar  
The State Bar of California

## ***Court Admissions***

U.S. District Court, Southern District of Florida  
U.S. District Court, Middle District of Florida  
U.S. District Court, Central District of California  
U.S. District Court, Eastern District of California  
U.S. District Court, Northern District of Illinois  
U.S. District Court, Eastern District of Michigan

## ***Education***

Nova Southeastern University, J.D., 2007  
University of Florida, B.A., 2004

***Email: cardoso@kolawyers.com***

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Kristen Lake Cardoso is a litigation attorney focusing on consumer class actions and complex commercial litigation. She has gained valuable experience representing individuals and businesses in state and federal courts at both the trial and appellate levels in a variety of litigation matters, including contractual claims, violations of consumer protection statutes, fraud, breach of fiduciary duty, negligence, professional liability, real estate claims, enforcement of non-compete agreements, trade secret infringement, shareholder disputes, deceptive trade practices, and other business torts.

Currently, Ms. Cardoso serves as counsel in nationwide and statewide class action lawsuits concerning violations of state consumer protection statutes, false advertising, defective products, data breaches, and breaches of contract. Ms. Cardoso is actively litigating cases against major U.S. airlines for their failure to refund fares following flight cancellations and schedule changes, as well as cases against manufacturers for their sale and misleading marketing of products, including defective cosmetics and nutritional supplements. Ms. Cardoso has also represented students seeking reimbursements of tuition, room and board, and other fees paid to their colleges and universities for in-person education, housing, meals, and other services not provided when campuses closed during the COVID-19 pandemic. Additionally, Ms. Cardoso has represented consumers seeking recovery of gambling losses from tech companies that profit from illegal gambling games offered, sold, and distributed on their platforms.

Ms. Cardoso is admitted to practice law throughout the states of Florida and California, as well as in the United States District Courts for the Southern District of Florida, Middle District of Florida, Central District of California, Eastern District of California, Northern District of Illinois, and Eastern District of Michigan.

Ms. Cardoso attended the University of Florida, where she received her Bachelor's degree in Political Science, cum laude, and was inducted as a member of Phi Beta Kappa honor society. She received her law degree from Nova Southeastern University, magna cum laude. While in law school, Ms. Cardoso served as an Articles Editor for the Nova Law Review, was on the Dean's List, and was the recipient of a scholarship granted by the Broward County Hispanic Bar Association for her academic achievements. When not practicing law, Ms. Cardoso serves as a volunteer at Saint David Catholic School, including as a member of the school Advisory Board and an executive member of the Faculty Student Association. She has also served on various committees with the Junior League of Greater Fort Lauderdale geared towards improving the local community through leadership and volunteering.



# STEVEN SUKERT

Partner

## ***Bar Admissions***

The Florida Bar

The New York Bar

## ***Court Admissions***

United States District Court, Southern District of Florida

United States District Court, Middle District of Florida

United States District Court, Southern District of New York

United States District Court, Eastern District of New York

United States District Court, Northern District of Illinois

United States District Court, Central District of Illinois

## ***Education***

Georgetown University Law Center, J.D., 20018

Northwestern University, B.S., 2010

***Email: [sukert@kolawyers.com](mailto:sukert@kolawyers.com)***

Steven Sukert has experience in all aspects of complex litigation in federal and state court, including drafting successful dispositive motions and appeals, handling discovery, and arguing court hearings. Steven focuses his practice at KO on complex class actions and multi-district litigations in courts around the country, including in data privacy, bank overdraft fee, and other consumer protection cases.

Before joining KO, Steven gained experience at Gunster, Yoakley & Stewart, P.A. in Miami in high-stakes commercial cases often involving trade secret and intellectual property claims, consumer contract claims, and legal malpractice claims, as well as in international arbitrations. Steven co-authored an amicus brief in the Florida Supreme Court case *Airbnb, Inc. v. Doe* (Case No. SC20-1167), and helped organize the American Bar Association's inaugural International Arbitration Masterclass, in 2021.

Steven was born and raised in Miami. He returned to his home city after law school to clerk for the Honorable James Lawrence King in the U.S. District Court for the Southern District of Florida.

In 2018, Steven earned his J.D. from Georgetown University Law Center. While living in the nation's capital, he worked at the U.S. Department of Labor, Office of the Solicitor, where he won the Gary S. Tell ERISA Litigation Award; the Civil Fraud Section of the U.S. Department of Justice, where he worked on large Medicare fraud cases and pioneered the use of the False Claims Act in the context of pharmaceutical manufacturers who engaged in price fixing; and the Lawyers' Committee for Civil Rights Under Law, where his proposal for writing an amicus brief in the *Janus v. AFSCME* U.S. Supreme Court case was adopted by the organization's board of directors.

Steven has a degree in Molecular Biology from Northwestern University. Prior to his legal career, he worked as a biomedical laboratory researcher at the Diabetes Research Institute in Miami.

# CAROLINE HERTER

Associate



## ***Bar Admissions***

The Florida Bar

## ***Court Admissions***

U.S. District Court, Middle District of Florida

U.S. District Court, Southern District of Florida

U.S. Bankruptcy Court, Southern District of Florida

## ***Education***

University of Miami School of Law, J.D. - 2020

University of Miami, B.S. – 2016

***Email: [Herter@kolawyers.com](mailto:Herter@kolawyers.com)***

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Caroline Herter is a litigation attorney at the firm's Fort Lauderdale office. Caroline focuses her practice on consumer class actions, mass torts, and white-collar commercial litigation in state and federal courts nationwide. She has gained valuable experience representing individuals and businesses to hold wrongdoers accountable through claims involving personal injury, wrongful death, consumer fraud, products liability, breach of fiduciary duty, civil theft/conversion, corporate veil-piercing, fraudulent transfer, tortious interference, False Claims Act violations, and the like.

Before joining KO, Caroline worked at a boutique law firm in Miami where she represented plaintiffs in matters involving creditor's rights, insolvency, and asset recovery. She now applies this experience throughout her practice at KO, often combining equitable remedies with legal claims to ensure the best chance of recovery for her clients.

Notable cases that Caroline has been involved in include *In Re: Champlain Towers South Collapse Litigation*, where she was a member of the team serving as lead counsel for the families of the 98 individuals who lost their lives in the tragic condominium collapse. The case resulted in over \$1 billion recovered for class members, the second-largest settlement in Florida history. She also co-authored a successful petition for certiorari to the United States Supreme Court in *Olhausen v. Arriva Medical, LLC et al.*, a False Claims Act case involving the standard for determining a defendant's scienter, which led the high Court to reverse the Eleventh Circuit Court of Appeal's earlier ruling against her client.

Caroline earned her law degree from the University of Miami School of Law, summa cum laude, where she received awards for the highest grade in multiple courses. During law school Caroline was an editor of the University of Miami Law Review and a member of the Moot Court Board.

Outside of her law practice, Caroline serves on the Board of Directors of the non-profit organization Americans for Immigrant Justice.

# EXHIBIT 3



In its over 100-year history, The Van Winkle Law Firm has vigorously represented clients throughout North Carolina and the Southeast. Van Winkle attorneys have served as President of both the North Carolina Bar and North Carolina Bar Association, as well as served on the American Bar Association Board of Governors. Van Winkle has several attorneys admitted to the North Carolina Bar Association Legal Practice Hall of Fame. Van Winkle's experience in class action litigation includes cases filed around the nation, including appearances as lead counsel by several of its attorneys in the various Federal District Courts and before the Fourth Circuit Court of Appeals. In addition, Van Winkle attorneys have served as local and *de facto* liaison counsel in other complex litigation in association with firms outside North and South Carolina.

Van Winkle is the largest law firm in North Carolina west of Charlotte. It has enjoyed an "AV" rating for decades in Martindale-Hubbe's listing of attorneys.



### David M. Wilkerson

Mr. Wilkerson is a Senior Partner in The Van Winkle Law Firm with 25 years of experience in civil litigation practice. He is admitted to practice in numerous Federal Districts and is licensed in both North Carolina and South Carolina. He is currently involved in numerous class action cases around the country. He serves as interim liaison counsel in *Haff Poultry, Inc. et. al. v Koch Foods, Inc., et. al.* (E.D.N.C. 7:18-cv-00031). He was appointed interim co-liaison counsel in *Piazza's Carpet v. Hickory Springs, et. al.* (W.D.N.C. 5:10-cv-11), prior to the cases being consolidated by the MDL panel in another district. Recent class cases include *In Re Cast Iron Soil Pipe and Fittings Antitrust Litigation* (E.D.T.N 1:14-md-02508), *RJS Haff Poultry, Inc. et al v. Tyson Foods, Inc.* (E.D.O.K 6:17-cv-00033), and *Peters v. Aetna, Inc., et. al.* (W.D.N.C. 1:15- cv-00109). Mr. Wilkerson currently serves on the Discovery Committee in the case of *In Re Blue Cross Blue Shield* (MDL 2406) (N.D.A.L 2:13-cv-2000). He recently served as co-lead counsel in *Morris et al. v. Bank of America*, Case No. 3:18-cv-00157 and *Gaston v. LexisNexis Risk Solutions, et. al.*, Case No. 5:16-cv-0009. He currently serves as class counsel in the District of South Carolina in *Millwood v. State Farm*, Civil Action No. 7:19-cv-01445-dcc.

David has been a member of the South Carolina Bar since 1998 and the North Carolina Bar since 2006. He served on the section council of the Antitrust and Complex Business Disputes Law Section of the North Carolina Bar Association from 2011 to 2017, where he chaired both the Legislative and Pro Bono Committees, and has spoken on class actions at CLE events. He has also served on the North Carolina Business Court Rules Committee.

# EXHIBIT C



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

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

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

The Parties<sup>1</sup> to the above-captioned action currently pending against BANA have agreed to a settlement, the terms and conditions of which are set forth in an executed Settlement Agreement and Release. The Parties reached the Settlement through arm's-length negotiations, after conducting appropriate discovery into the liability and damages at issue. Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the proposed Settlement Class would fully, finally, and forever resolve, discharge, and release their Incoming Wire Transfer Fee claims in exchange for defendant BANA's total payment of \$21,000,000.00, inclusive of all attorneys' fees, costs, Service Award to the Class Representative, and Settlement Administration Costs, to create a Settlement Fund to benefit the Settlement Class.

The Settlement has been filed with the Court, and Plaintiff has filed an Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement and Release, along with a Memorandum of Law (collectively "Motion"). Upon considering the Motion and exhibits thereto,

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

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

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

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

**Provisional Certification and Appointment of Class Representative and Class Counsel**

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

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

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

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

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

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

- ii. Commonality: The threshold for commonality under Rule 23(a)(2) is not high. Here, the commonality requirement is satisfied because there are multiple questions of law and fact that center on BANA's class-wide policies and practices and are common to the Settlement Class.

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

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

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

common judgment.

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

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

### **Preliminary Approval of the Settlement**

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

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

10. Subject to Final Approval of the proposed Settlement, and subject to the provision of Notice required by this Preliminary Approval Order, the Court approves the provisions of the Agreement making the Settlement and its release of claims binding on all Settlement Class Members,

whether or not they actually receive notice of the Action or the Settlement.

**Approval of Notice and Notice Program and Direction to Effectuate Notice**

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

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

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

**Final Approval Hearing, Opt-Outs, and Objections**

14. A Final Approval Hearing shall be held before the Court on \_\_\_\_\_, 2024, at \_\_:\_\_ a.m./p.m., in Courtroom # \_\_\_\_\_ of the United States District Court for the Western District of North Carolina, located at Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, NC 28202, to determine, among other things: (a) whether the Settlement is fair, reasonable, and adequate, and should be granted Final Approval; (b) whether Settlement Class Members should be bound by the Releases set forth in the Agreement; (c) whether the Settlement

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

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

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

who successfully opts-out of the Settlement shall be deemed to have waived any rights or benefits under the Settlement, and will have no standing to object to the Settlement.

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

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



within the last 3 years;

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

18. Any objection made by or through an attorney must also include: (a) the identity and number of the Settlement Class Members represented by objector's counsel; (b) the number of such represented Settlement Class Members who have opted-out of the Settlement Class; and (c) the number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected. If the attorney intends to seek fees and expenses from anyone other than the objector he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BANA's Counsel, not later than 15 days before the Final Approval Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney's hourly rate.

19. Any Settlement Class Member who, before the Objection Deadline, files and serves a written objection satisfying the requirements of this section may appear at the Final Approval Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of the Settlement.

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

#### **Motion for Final Approval**

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

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

#### **Effect of Failure to Approve Settlement or Termination**

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

#### **Stay/Bar of Other Proceedings**

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

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

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

DONE AND ORDERED in \_\_\_\_\_, North Carolina, this \_\_\_\_ day of \_\_\_\_\_, 2024.

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MAX O. COGBURN JR.  
United States District Judge

**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

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND RELEASE**

## **INTRODUCTION**

Plaintiff, Aaron Aseltine,<sup>1</sup> respectfully submits this brief in support of Preliminary Approval of a proposed class action Settlement with Defendant BANA. The Settlement provides substantial monetary relief to the Settlement Class. If approved, the Settlement will comprise a common fund of \$21,000,000.00. Settlement Class Members will receive their Settlement Class Member Payments automatically, without having to submit a claim or take any other action.

The Settlement is an outstanding recovery for the Settlement Class in a case based upon a novel legal theory that faced a myriad of legal risks, and it easily satisfies all Fourth Circuit criteria for preliminary approval. Accordingly, Plaintiff respectfully requests this Court enter an Order: (1) granting Preliminary Approval of the Settlement; (2) certifying the proposed Settlement Class for settlement purposes under Federal Rule of Civil Procedure Rules 23(a) and 23(b)(3); (3) appointing Plaintiff as Class Representative; (4) approving the Notice Program set forth in the Settlement and the form and content of the Notices; (5) approving and ordering the opt-out and objection procedures set forth in the Settlement; (6) staying all deadlines in the Action pending Final Approval of the Settlement; (7) appointing as Class Counsel the law firms and attorneys identified herein; and (8) scheduling a Final Approval Hearing.

## **FACTUAL BACKGROUND**

### **I. The Litigation**

On March 8, 2023, Plaintiff filed a state court class action in Mecklenburg County, alleging claims for breach of contract and breach of the implied covenant of good faith and fair dealing and violations of North Carolina's and California's consumer protection laws, arising out of BANA's

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<sup>1</sup> All capitalized terms herein shall have the same meanings as those defined in the Settlement Agreement attached hereto as *Exhibit A*.

alleged imposition of improper fees on incoming wire transfers.

On April 25, 2023, BANA removed the Action to the District Court for the Western District of North Carolina. (DE# 1) and filed its' Corporate Disclosure Statement (DE# 2).

On June 1, 2023, BANA moved to dismiss the Complaint. (DE# 9). On June 22, 2023, Plaintiff responded to that motion, and on July 13, 2023, BANA filed its Reply to the Motion to Dismiss. (DE# 17 and 19). On September 27, 2023, the Court denied the motion to dismiss in its entirety. (DE# 20). BANA filed its Answer on October 11, 2023. (DE# 22).

Thereafter, 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, submit a joint stipulation to consent to jurisdiction of a U.S. Magistrate Judge. The Parties had a Federal Rule of Civil Procedure 16.1 Initial Discovery Conference where they agreed on a proposed court schedule. *See* Joint Declaration of Class Counsel Jeff Ostrow, Sophia Gold and David Wilkerson ("Joint Decl.") ¶ 4, attached as ***Exhibit B***. 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).

On November 15, 2023, the Parties exchanged their initial disclosures. *Id.* ¶ 6. On November 8, 2023, Plaintiff served interrogatories and document requests on BANA. *Id.* After

the Parties agreed 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. *Id.* 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. *Id.* 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. *Id.*

The Parties agreed to mediate on February 29, 2023, in California before a JAMS neutral, the Honorable Jay C. Gandhi (Ret.). *Id.* ¶ 7. In advance of the mediation, the Parties exchanged detailed mediation briefs and BANA responded to formal and informal discovery requests necessary for Plaintiff's evaluation of size of the class, liability, and damages. *Id.* The Parties mediated; however, no agreement was reached after a full day of negotiating. *Id.* The Parties continued their discussion over the next five weeks, ultimately agreeing to the material terms of a settlement on April 5, 2024. *Id.* On April 11, 2024, the Parties filed a Notice of Settlement with the Court. (DE# 32). Thereafter, the Parties negotiated the Settlement Agreement, which was signed on May 17, 2024.

## **II. The Settlement**

### **A. Overview**

Under the Settlement, BANA has agreed to a non-reversionary common cash Settlement

Fund of \$21,000,000.00. Agreement ¶¶ 1.48, 2.1. The Settlement Fund will be used to pay Settlement Class Member Payments, Settlement Administration Costs, any Court approved Attorneys' Fees and Costs, and any Service Award to the Class Representative. *Id.* ¶ 1.48.

The Settlement Fund will be distributed to Settlement Class Members according to the distribution plan set out in the Agreement. *Id.* ¶ 6.6. Importantly, Settlement Class Members *do not* need to submit a claim form to receive payment. Current Accountholders will receive automatic *pro rata* distributions straight to their accounts. Past Accountholders will receive a check in the mail. Settlement Class Member Payments shall be distributed *pro rata* based on the number of Incoming Wire Transfer Fees that each Settlement Class Member paid that was not refunded. *Id.* ¶ 6.62.

Any funds remaining in the Net Settlement Fund as a result of uncashed checks 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. *Id.* ¶ 6.7. 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. *Id.* There will be no reversion to BANA. *Id.*

## **B. The Settlement Class**

The proposed Settlement Class is defined as the following:

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

*Id.* ¶ 1.45. The class period is March 8, 2019, through August 31, 2023. *Id.* ¶ 1.11. In exchange for the consideration stated above, the Settlement Class shall release BANA from any claims that were or could have been alleged in this Action related to Incoming Wire Transfer Fees. *Id.* ¶¶ 1.37, 11.1.



### **C. Settlement Administrator and Proposed Notice Program**

The proposed Settlement Administrator is Kroll, LLC, a nationally recognized and experienced class action administrator. The Parties' proposed Notice Program is designed to reach as many Settlement Class members as possible at a reasonable cost to the Settlement Class. In Class Counsel's view and experience, it is the best notice practicable under the circumstances. Notice shall be provided through the following means: (1) Email Notice to Current Accountholders who have agreed to receive account statements electronically; (2) Postcard Notice to Past Accountholders and those Current Accountholders who have not agreed to receive statements electronically, as well as those whose Email Notices are returned undeliverable; and (3) Long Form Notice, which will be available on the Settlement Website and the Settlement Administrator will mail to Settlement Class members who request it. *Id.* ¶¶ 5. In addition, the Settlement Administrator will create and maintain a Settlement Website containing important information about the Settlement, and case-related documents, and will establish and maintain a toll-free telephone line that the Settlement Class members can use to get answers to frequently asked questions about the Settlement and request the Long Form Notice. *Id.* ¶¶ 5.3.

The Notice will include, among other information, a description of the material terms of the Settlement; a date by which Settlement Class members may opt-out of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access the Settlement Agreement and other related documents and information. *Id.*, Exhibits. 1-3.

### **D. Release**

The Release is narrowly tailored to the claims made in the Action. As of the Effective Date

of the Settlement, Plaintiffs and each Settlement Class Member agrees to release any claims arising out of or relating in any way to the allegations made in the Action. *Id.* ¶¶ 1.37.

#### **E. Opt-Outs and Objections**

The Notice will inform Settlement Class Members of their right to opt out or object. *Id.*, Exhibits 1-3. Settlement Class Members may opt-out of the Settlement Class at any time during the opt-out period. *Id.* ¶ 8.1. The Opt-Out Deadline ends 30 days prior to the Final Approval Hearing and will be specified in each of the Notices. *Id.* ¶¶ 1.295. The Notices will also inform Settlement Class Members of their right to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs, and Service Award. *Id.*, Exhibits. 1-3. The Objection Deadline is 30 days prior to the original date set for the Final Approval Hearing. ¶¶ 1.30, 8.2.2. Objections must include information identified in the Agreement including information about the objector, their counsel, and previous objections they or counsel have made to ensure that any objections are made for a proper purpose. *Id.* ¶ 8.2.

#### **F. Attorneys' Fees and Costs, and Service Award**

To date, Class Counsel has not been paid for their diligent efforts or reimbursed for litigation costs incurred. The Settlement Agreement provides that Class Counsel will apply for an award of Attorneys' Fees and Costs. *Id.* ¶ 9.2. BANA has agreed not to oppose a request for fees up to \$7,000,000.00, which represents 33.33% of the cash Settlement Fund. *Id.* ¶ 9.3. Such award will serve to compensate Class Counsel for the time, risk and expense they incurred pursuing claims on behalf of the Settlement Class.

Class Counsel will also ask the Court to approve a Service Award for the Class Representative. BANA will not oppose a request of \$5,000.00. *Id.* ¶ 10.1.

## **LEGAL STANDARD**

Federal Rule of Civil Procedure 23 requires court approval of class action settlements. Fed. R. Civ. P. 23(e). “The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations.” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). Accordingly, the Court may approve a settlement only upon a finding that the settlement is fair and adequate. *See id.* The relevant factors in determining “fairness” are “that the settlement was reached as a result of good-faith bargaining at arm’s length, without collusion, on the basis of (1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel.” *Id.* at 159. Adequacy is assessed through “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *Id.* at 159.

## **ARGUMENT**

### **I. The Court Should Approve the Settlement.**

The Parties reached a settlement in a novel case that provides substantial cash compensation to Settlement Class Members. The Settlement was the result of arm’s-length negotiations by experienced counsel for both Plaintiffs and BANA, and is an outstanding result for the Settlement Class.

Under Rule 23, a settlement must be “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The Fourth Circuit has bifurcated the preliminary approval analysis into “consideration

of the fairness of settlement negotiations and the adequacy of the consideration to the class.” *Gaston v. LexisNexis Risk Sols. Inc.*, No. 5:16-cv-00009, 2021 WL 244807, at \*5 (W.D.N.C. Jan. 25, 2021) (citing *In re Jiffy Lube Secs. Litig.*, 927 F.2d at 158–59). The 2018 amendments to Rule 23(e) also formalize a list of core considerations for settlement approval such as: (1) whether class representatives and class counsel have adequately represented the class, (2) whether the proposal was negotiated at arm’s length, (3) whether the relief provided for the class is adequate, and (4) whether the proposal treats Settlement Class Members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). The Fourth Circuit has held that the *Jiffy Lube* standards “almost completely overlap with the new Rule 23(e)(2) factors, rendering the analysis the same.” *See Herrera v. Charlotte School of Law, LLC*, 818 F. App’x 165, 176 n.4 (4th Cir. 2020) (citing *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, 952 F.3d 471, 474 n.8 (4th Cir. 2020)). At the preliminary approval stage, “the Court need only find that the settlement is within ‘the range of possible approval.’” *Gaston*, 2021 WL 244807, at \*5 (quoting *Scott v. Family Dollar Stores, Inc.*, No. 3:08-cv-00540, 2018 WL 1321048, at \*3 (W.D.N.C. Mar. 14, 2018)). The Settlement here, reached after surviving a motion to dismiss on a novel issue, by sophisticated counsel provides significant monetary relief to the Settlement Class and fits comfortably within the range of approval.

**A. The Settlement Is Fair.**

Each of the Fourth Circuit’s relevant fairness factors weighs in favor of preliminarily approving the Settlement here. *See In re Jiffy Lube Secs. Litig.*, 927 F.2d at 158–59.

*First*, the proposed settlement was reached after BANA tested the sufficiency of the allegations by a motion to dismiss.

*Second*, the Settlement followed the exchange of critical documents and data from BANA.

No settlement discussions took place until after Plaintiff's counsel obtained and analyzed classwide damages to determine a reasonable settlement value. During the settlement discussions, BANA's representative was deposed regarding the damages data that BANA produced to allow the Parties to calculate damages. The discovery gave both sides "additional insight to evaluate the merits" of the case and has "laid the groundwork for the arm's-length negotiations that resulted in the settlement." *Gaston*, 2021 WL 244807, at \*6.

*Third*, the circumstances of the settlement negotiations demonstrate the Settlement was the result of a fair, arm's length process that was often contentious. The Parties engaged in a formal mediation with Judge Jay Gandhi (Ret.) followed by many weeks of additional negotiations during which additional discovery took place.

*Finally*, counsel for both sides have significant experience in consumer class action litigation involving bank-fee practices. Class Counsel is highly experienced in consumer class action litigation, as demonstrated by their firm resumes, and they have brought that significant experience to bear in litigating and settling this case. *See* Joint Decl. ¶¶ 9 - 21, Exhibits 1-3; *see also* Fed. R. Civ. P. 23(e)(2)(A). Class Counsel collectively have decades of experience litigating consumer class actions against financial institutions and have litigated and settled dozens of class actions involving various types of improper fees, including against Bank of America. *Id.* Counsel "may be evaluated by their affiliation with well-regarded law firms with strong experience in the relative field," and by any measure, Class Counsel satisfies this prong. *See In re Neustar, Inc. Securities Litig.*, No. 1:14cv885, 2015 WL 5674798, at \*11 (E.D. Va. Sept. 23, 2015) (quoting *In re Am. Capital S'holder Derivative Litig.*, No. 11-2424-PJM, 2013 WL 3322294, at \*4 (D. Md. June 28, 2013)). Based on their experience, Class Counsel endorse the Settlement as fair and adequate. Joint Decl. ¶ 24. Counsel's "endorse[ment of] the settlement as fair and adequate under

the circumstances . . . should be afforded due consideration in determining whether a class settlement is fair and adequate.” *Gaston*, 2021 WL 244807, at \*6.

**B. The Settlement Provides Substantial Relief to Settlement Class Members.**

23. The substantial relief provided by the Settlement also favors approval. Under the Settlement, BANA will provide a \$21,000,000.00 Settlement Fund, which alone represents a significant portion of the estimated classwide damages should Plaintiffs have prevailed on every issue at class certification, trial, and on appeal. Joint Decl. ¶ 23. Under Plaintiffs’ damages model, the Settlement represents approximately 23.5% of the total damages available at trial, assuming Plaintiffs prevailed on liability. Under Defendant’s damages model, however, the Settlement represent approximately 78% of the total damages available at trial. *Id.* In short, the Settlement is more than reasonable when evaluating the benefits.

Courts assess the adequacy of relief provided under a settlement based on four factors: (1) the costs, risks, and delay of trial and appeal, (2) the effectiveness of the proposed method of distributing relief to the class, (3) the terms of the proposed award of attorney’s fees, and (4) the existence of other agreements reached by the Parties outside the settlement. Fed. R. Civ. P. 23(e)(2)(C); *see also Jiffy Lube*, 927 F.2d at 159. Each factor is met here.

***1. Costs, risks, and delay of trial and appeal***

Plaintiff’s claims are strong, but maintaining these claims through trial and appeal would entail significant risk, uncertainty, and costs for both sides. BANA would have undoubtedly challenged class certification and moved for summary judgment. Where, as here, the Court determined Plaintiff offered a reasonable interpretation of the contract that favors his claims at the motion to dismiss stage, his ultimate success would be to prove those claims are worthy of class certification and a judgment on the merits. Appeals of class certification, summary judgment, and

trial rulings would prompt delay, and the resolution of potential appeals by both sides “would require protracted adversarial litigation and appeals at substantial risk and expense to both Parties.” *Gaston*, 2021 WL 244807, at \*6. This strong likelihood of “substantial future costs favors approving the proposed settlement.” *Id.*

**2. *Effectiveness of the proposed method of distributing relief to the class***

The Settlement Fund will be automatically distributed to Settlement Class Members, without any need for a claim form, either by check or direct deposit. Under the terms of the Settlement, BANA will directly deposit payments under the Settlement into the accounts of Settlement Class Members who are current accountholders as of the date of Final Approval of the Settlement. Settlement ¶ 6.6.3.3. For those Settlement Class Members that are not Current Accountholders at the time of Final Approval, the Settlement Administrator will mail them a check. *Id.* ¶ 6.6.3.4. Any remaining funds after the initial disbursement will be distributed to the Settlement Class Members that successfully cashed check or received direct deposits, to the extent economically feasible. *Id.* ¶ 6.7. If there are funds remaining after this second distribution or the distribution is not economically feasible, Class Counsel will petition the Court to distribute the remaining funds to an appropriate *cy pres* recipient, either a consumer protection or financial services charity. *Id.*

**3. *Terms of the proposed award of attorney’s fees***

Under the terms of the Settlement, Class Counsel may move for an award of attorneys’ fees. Settlement ¶ 9.3. Plaintiffs intend to seek up to 33.33% of the Settlement Fund, or \$7,000,000.00, in attorneys’ fees and will move for approval of an attorneys’ fee award at least 45 before the original date set for the Final Approval Hearing. Although the motion for an award of attorneys’ fees is not yet before this Court, a fee award of 33.33% of the common cash fund is

consistent with fee awards in this Circuit and in similar cases. “Within the Fourth Circuit, contingent fees of roughly 33% are common.” *Earls v. Forga Contracting, Inc.*, No. 1:19-CV-00190-MR-WCM, 2020 WL 3063921, at \*4 (W.D.N.C. June 9, 2020); *see also Kelly v. The Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 WL 434473, at \*3 (D. Md. January 28, 2020) (“Contingent fees of up to one-third are common in [the 4th] circuit.”).

**4. *Existence of other agreements reached by the parties outside the settlement***

Courts also consider whether there are additional agreements between the Parties outside of the settlement agreement that could cast doubt on the fairness or adequacy of the settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). The Settlement here “contains the Parties’ entire agreement on and understanding of the subject-matter at issue in the Action,” and “supersedes all prior negotiations and proposals, whether written or oral.” Settlement ¶ 13.9.2.

**C. The Settlement Treats Settlement Class Members Equitably.**

The Settlement provides relief to Settlement Class Members on a *pro rata* basis depending on the total amount of Incoming Wire Transfer Fees that the Settlement Class Member paid and not refunded during the Class Period. This method for calculating each Settlement Class Member’s recovery treats each member equitably based on the extent to which they were impacted by BANA’s conduct.

**II. The Court Should Certify the Settlement Class.**

**A. The Proposed Class Is Ascertainable.**

Under Rule 23, a class definition must be sufficiently definite, so that “a court can readily identify the class members in reference to objective criteria.” *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014). This ascertainability requirement is easily satisfied in this case, as the members of the Class are identifiable based on objective criteria applied to BANA’s well-



maintained records covering every Incoming Wire Transfer Fee and Settlement Class member during the Class Period.

**B. The Proposed Class Satisfies the Requirements of Rule 23(a).**

Under Federal Rule of Civil Procedure 23(a), a class may be certified when “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative Parties are typical of the claims or defenses of the class; and (4) the representative Parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). The Settlement Class here satisfies each of these requirements.

**1. Numerosity**

Class certification is appropriate when class members are “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). While “[n]o specified number is needed to maintain a class action,” *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984), courts within the Fourth Circuit generally “find classes of at least 40 members sufficiently large to satisfy the impracticability requirement,” *In re Titanium Dioxide Antitrust Litig.*, 284 F.R.D. 328, 337 (D. Md. 2012), *amended*, 962 F. Supp. 2d 840 (D. Md. 2013) (citation omitted). Here, the Settlement Class contains over a million Settlement Class members, satisfying numerosity.

**2. Commonality**

Rule 23(a)(2)’s requirement that there are “questions of law or fact common to the class,” is also satisfied. A common question is “one that can be resolved for each class member in a single hearing,” and does not turn on the “individual circumstances of each class member.” *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006) (quotation omitted). A common question must be “capable of classwide resolution” such that “determination of its truth or falsity

will resolve an issue that is central” to each class member’s claims “in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Rule 23(a) does not require commonality of all issues; rather, “even a single common question will do.” *Id.* at 359 (quotation omitted),

Here, there are several common legal and factual questions that are common to all members and satisfy Rule 23(a)(2). Common questions include: (1) whether BANA breached its contract and/or violated the consumer protection laws of North Carolina and California through its Incoming Wire Transfer Fee policies and practices; and (2) the proper method or methods by which to measure damages.

### **3.      *Typicality***

Under Rule 23(a)(3)’s typicality requirement, class representatives are “typical” if they are “part of the class and possess the same interest and suffer the same injury as the class members.” *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 338 (4th Cir. 1998). “The essence of the typicality requirement is captured by the notion that ‘as goes the claim of the named plaintiff, so goes the claims of the class.’” *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006) (citing *Broussard*, 155 F.3d at 340).

Typicality is satisfied because the proposed Class Representative asserts the same claims stemming from the same conduct by BANA as to the absent Settlement Class members. His Incoming Wire Transfer Fee claims arise from the same factual circumstances, are based on the same legal theories, are subject to the same defenses, and rise or fall with the claims of the absent Settlement Class members.

### **4.      *Adequacy of Representation***

The Rule 23(a)(4) adequacy inquiry “serves to uncover conflicts of interest between named Parties and the class they seek to represent.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625

(1997). For a conflict of interest to defeat class certification, that conflict “must be fundamental,” “must go to the heart of the litigation,” and “must be more than merely speculative or hypothetical.” *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 430-31 (4th Cir. 2003) (quoting 6 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 18:14 (4th ed. 2002)).

There is no such conflict here. As discussed above, the proposed Class Representative asserts the same claims based on the same alleged conduct as the absent Settlement Class members. There is likewise no conflict between the Settlement Class members, as they will all be compensated under the Settlement on a *pro rata* basis.

Class Counsel also satisfies the adequacy requirement. Class Counsel has effectively handled numerous consumer protection and complex class actions, including in the area of financial services, and bank fees specifically. *See* Joint Decl. ¶¶ 9-22, Exhibits. 1-3. Class Counsel are qualified, experienced, and able to conduct this litigation and will fully and adequately represent the Settlement Class.

**C. The Proposed Class Satisfies the Requirements of Rule 23(b).**

**1. Predominance**

The first requirement under Rule 23(b)(3) is that questions of law or fact common to Settlement Class members predominate over questions affecting only individual members. Fed. R. Civ. P. 23(b)(3). This inquiry tests whether the proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623; *see also Gunnells*, 348 F.3d at 428.

Here, Plaintiff seeks to remedy common legal grievances based on BANA’s assessment of certain fees, allegedly in violation of BANA’s account agreements. The common questions of the legality of this practice and BANA’s policies associated with the practice predominate over questions—if any—affecting only individual Settlement Class members, providing a common link

between all the Settlement Class members and BANA. *See Jeffreys v. Comm'ns Workers of Am., AFL-CIO*, 212 F.R.D. 320, 323 (E.D. Va. 2003) (finding predominance satisfied where [t]he question in each individual controversy” would be resolved according to the same legal inquiry); *Talbott v. GC Servs. Ltd. P'Ship*, 191 F.R.D. 99, 105-06 (W.D. Va. 2000) (finding predominance satisfied based on the “standardized nature” of the defendant’s conduct). “The fact that damages will differ from class member to class member does not defeat the finding of predominance because liability is common to the class.” *Jeffreys*, 212 F.R.D. at 323.

## **2. Superiority**

Finally, the Court must determine whether a class action is superior to other methods of adjudication for the fair and efficient adjudication of the controversy. *See Fed. R. Civ. P. 23(b)(3)*. The factors to be considered are: (1) individual class members’ interest in controlling individual cases; (2) the existence of related litigation; (3) the desirability of concentrating the litigation in one forum; and (4) manageability. *Droste v. Vert Capital Corp.*, No. 3:14-cv-467, 2015 WL 1526432, at \*8 (E.D. Va. April 2, 2015). In settlement cases, courts need not consider the last factor. *Amchem Prods.*, 521 U.S. at 593. Here, a class action is superior to individual suits.

First, individual suits are unlikely here because the probable recovery (even of full damages) is relatively small per Settlement Class Member (each fee is either \$15 or \$16), particularly compared to the expense of litigation. *See In re NeuStar, Inc.*, 2015 WL 5674798, at \*8 (finding superiority satisfied where individual actions were “unlikely due to the size of probable recovery and expense of individual litigation). Where the “policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights,” *Amchem*, 521 U.S. at 617, a suit like this is well-suited for class action litigation. Second, Class Counsel is not aware of other

pending individual litigation against BANA regarding the practices at issue in this Action. Joint Decl. ¶ 25. Another action that was pending in California was recently dismissed. *Id.* And third, it would promote judicial economy to resolve this case as a class before this Court rather than requiring individual plaintiffs to file separate lawsuits. *In re NeuStar, Inc.*, 2015 WL 5674798, at \*9. Accordingly, a class action is a superior method of adjudication.

### **III. The Court Should Appoint Class Counsel.**

Fed. R. Civ. P. 23(g) requires a Court to appoint class counsel. In appointing class counsel, the Court “must” consider: (a) the work counsel has done in identifying or investigating potential claims in the action; (b) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (c) counsel’s knowledge of the applicable law; and (d) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). *See also In re Neustar*, 2015 WL 5674798, at \*13. The court “may” also consider “any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B).

Proposed Class Counsel have expended a great deal of time, effort, and expense investigating, litigating, and resolving this Action. Further, as set forth in the firm resumes, each attorney from each firm is highly experienced in complex consumer class action litigation. *See* Joint Decl. Exhibits. 1-3. It is clear from their track-record of success that Class Counsel are skilled and knowledgeable concerning class action practice. Class Counsel have the experience to properly represent the Settlement Class. Accordingly, Plaintiffs request that the Court appoint Jeff Ostrow and Jonathan Streisfeld of Kopelowitz Ostrow P.A., Sophia Gold of KalieGold PLLC, and David M. Wilkerson of The Van Winkle Law Firm as Class Counsel.

#### **IV. The Court Should Approve the Class Notice Program and Appoint the Settlement Administrator.**

The Parties' proposed Notice Program is formulated to conform with the procedural and substantive requirements of Rule 23. Due process and Rule 23 require that Settlement Class members receive notice of the settlement and an opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B). The mechanics of the notice process are left to the discretion of the Court, subject only to the broad reasonableness standards imposed by due process.

Here, the Notice Program contemplates notice via direct mail and email. A Long Form Notice is also available for Settlement Class members who request it, and it will be posted on the Settlement Website and available on request from the Settlement Administrator. To ensure that notice reaches as many Settlement Class members as possible, the Settlement Administrator will perform reasonable address traces for the initial Postcard Notice and Email Notice.

The Notice will include important information about the Settlement, including how to opt-out or object, and where to find more information about the case or contact Class Counsel. The substance of the Notice will fully apprise Settlement Class members of their rights. Additionally, the Notices are designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Settlement Class members. The design of the Notice follows principles embodied in the Federal Judicial Center’s illustrative “model” notices posted at [www.fjc.gov](http://www.fjc.gov). The Notice contains plain-language summaries of key information about Settlement Class members’ rights and options. Under Rule 23(e), the notice must generally describe the settlement in sufficient detail to alert those with adverse viewpoints to investigate and come forward to be heard. The proposed Notice contains critical information required to apprise Settlement Class members of their rights. This approach to notice is adequate and provides sufficient detail to allow Settlement Class members with adverse viewpoints to come forward and be heard.

This robust Notice Program is informative, practical, and reasonably designed to reach the vast majority of Settlement Class members. There is no claim form, and the Notice Program will be overseen by Kroll, LLC, a reputable settlement administrator with deep experience in the field. The Notice Program proposed here is the best notice that is practicable and is equivalent or superior to notice campaigns approved in similar class action settlements.

**V. Proposed Schedule of Events and Conclusion.**

In connection with Preliminary Approval, the Court should also set the Final Approval Hearing date and time. Other deadlines in the approval process, including the deadlines for opting out from or objecting to the Settlement, will be determined based on the original Final Approval Hearing date. Class Counsel propose the following schedule:

<b>Notice Program Begins (Email Notice and Postcard Notice Goes Out)</b>	45 days after Preliminary Approval Order
<b>Notice Program Complete</b>	60 days prior to original Final Approval Hearing date
<b>Deadline to file Motion for Final Approval and Application for Attorneys' Fees, Costs, and Service Award</b>	45 days prior to original Final Approval Hearing date
<b>Opt-Out Deadline</b>	30 days prior to original Final Approval Hearing date
<b>Objection Deadline</b>	30 days prior to original Final Approval Hearing date
<b>Deadline to Respond to Objections</b>	5 days prior to original Final Approval Hearing date
<b>Final Approval Hearing</b>	_____, 2024, at ____ am/pm. (Preferably the week of October 21, 2024, or after)

For the foregoing reasons, Plaintiffs respectfully request the Court: (1) conditionally certify the Settlement Class, (2) appoint Aaron Aseltine as Class Representatives, (3) appoint Class Counsel, (4) preliminarily approve the Settlement, (5) approve the Notice Program and direct that Notice be provided to the Settlement Class, (6) approve and order the opt-out and objection procedures set forth in the Settlement, (7) stay all deadlines in the Action pending Final Approval of the Settlement, and (8) set a date for a Final Approval Hearing. A Proposed Preliminary Order is attached hereto as ***Exhibit C***.

Dated: May 24, 2024.

Respectfully submitted,

s/ Jonathan M. Streisfeld  
Jeff Ostrow (pro hac vice)  
Jonathan M. Streisfeld (pro hac vice)  
**KOPELOWITZ OSTROW P.A.**  
1 West Las Olas Blvd., Ste. 500  
Fort Lauderdale, FL 33301  
(954) 332-4200  
ostrow@kolawyers.com  
streisfeld@kolawyers.com

Sophia Gold (pro hac vice)  
**KALIELGOLD PLLC**  
950 Gilman Street, Suite 200  
Berkeley, CA 94710  
(202) 350-4783  
sgold@kalielgold.com

David Wilkerson  
N.C. State Bar No. 35742  
**THE VAN WINKLE LAW FIRM**  
11 North Market Street  
Asheville, NC 28801  
(828) 258-2991  
dwilkerson@vwlawfirm.com

*Counsel for Plaintiff and the Settlement Class*