

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

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

Plaintiff

CASE NO. 2:21-cv-3585

v.

BANK OF AMERICA, N.A.,

Defendant

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**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL  
OF CLASS SETTLEMENT AND FOR CERTIFICATION OF CLASS  
AND INCORPORATED MEMORANDUM OF LAW**

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**I. INTRODUCTION**

Plaintiff, Steven Checchia, respectfully moves for Preliminary Approval<sup>1</sup> of the Settlement Agreement and Release, attached as *Exhibit A*, which will resolve all claims against Defendant, Bank of America, N.A. Preliminary Approval should be granted because the Settlement provides substantial relief for the Settlement Class of current and former BANA checking and savings Accountholders who paid, but were not refunded, an NSF Fee and/or OD Fee on the same check when it was re-presented for payment after having been initially returned for non-sufficient funds and charged an NSF Fee. The Settlement terms are well within the range of reasonableness and granting Preliminary Approval will be consistent with applicable law.

The Settlement in this novel case—which follows and significantly adds to an earlier, similar case litigated by Class Counsel in *Morris et al. v. Bank of America, N.A.*, No. 3:18-CV-157-RJC-DSC (W.D.N.C.)—will provide substantial benefits to the Settlement Class. If approved, the Settlement will include BANA’s cash payment of \$8,000,000.00 into a common fund. Further, after the initiation of this Action, BANA ceased the practice at the heart of this Action – charging more than one fee on a check that is re-presented for payment – and, as a result of this Settlement, has committed to not re-establish the practice for at least five years. BANA is one of the first major U.S. banks to do so. BANA’s agreement in this regard to that Practice Change will no doubt result in a significant intangible value for the Settlement Class and future BANA Accountholders. Thus, the total value of the Settlement is outstanding when considering the common fund and the intangible benefit of BANA’s five-year cessation of the practice of charging the Class Fees. *See* Declaration of Jeff Ostrow (“Ostrow Decl.”), attached as *Exhibit B*, at ¶ 10.

One of the keystones of this Settlement is that Settlement Class Members will

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<sup>1</sup> All capitalized terms used herein shall have those same meanings as those defined in the Settlement Agreement.

automatically receive their *pro rata* share of the Net Settlement Fund without having to complete and submit claim forms, and Settlement Class Members will not be asked to prove they were damaged. Instead, the Parties and the Settlement Administrator will use available BANA data that confirms which BANA checking and savings Accountholders were affected by the challenged practice, and thereafter, apply a simple formula to calculate each Settlement Class Member's *pro rata* share of the Net Settlement Fund.

As detailed in this Motion below, the Settlement easily satisfies all Third Circuit criteria for Preliminary Approval. Accordingly, Plaintiff respectfully requests that this Court enter an Order: (1) granting Preliminary Approval to the Settlement; (2) certifying the proposed Settlement Class for settlement purposes pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3); (3) appointing Plaintiff as the Class Representative; (4) approving the Notice Plan and approving the form and content of the notices attached to the Settlement Agreement as Exhibits 1-3; (5) approving and ordering the opt-out and objection procedures; (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. A Proposed Preliminary Approval Order is attached to the Settlement Agreement as *Exhibit C*.

## **II. STATEMENT OF FACTS**

### **A. Factual Background and Procedural History**

#### **1. The Related *Morris* Litigation**

This case concerns BANA's practice of charging NSF Fees and/or OD Fees on checks processed for payment more than one time after having been initially returned for insufficient funds and assessed an NSF Fee. The instant Action, which concerns re-presented paper checks and paper checks processed electronically, follows *Morris*, which exclusively concerned the assessment of NSF Fees and OD Fees on electronic payments undertaken over the automated

clearing house (ACH) network. Ostrow Decl. ¶ 11. One of the primary questions raised in this Action and in *Morris* is whether BANA was authorized under its Account agreements to assess more than one NSF Fee and/or OD Fee on the same item when that item is re-presented for payment multiple times after having initially been returned for insufficient funds resulting in an NSF Fee. *Id.* Both the Action and *Morris* have the same or similar contract provisions and theories of liability that would hinge on interpreting those provisions but address different transaction types (paper checks versus ACH transactions). *Id.*

*Morris* was heavily litigated by Class Counsel, who invested thousands of hours of time on motions practice and discovery in that matter. For example, on August 27, 2018, BANA moved to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6), arguing that none of its actions violated its relevant contractual provisions or state consumer protection laws. *See* W.D.N.C. ECF Nos. 22-23. On January 8, 2019, United States Magistrate Judge David S. Cayer issued a memorandum opinion and recommendation (“M&R”) to grant in part and deny in part BANA’s motion to dismiss. Judge Cayer recommended denying dismissal of the breach of contract and consumer protection claims but dismissing with prejudice the conversion, unjust enrichment, and breach of the implied covenant of good faith and fair dealing claims. *See* W.D.N.C. ECF No. 38. *See also* Ostrow Decl. ¶ 12.

On March 29, 2019, Judge Robert J. Conrad adopted the M&R in part. The breach of contract, California Unfair Competition Law, and North Carolina Unfair and Deceptive Trade Practices Act claims survived the motion to dismiss, but the conversion, unjust enrichment, breach of the implied covenant of good faith and fair dealing, Oklahoma Consumer Protection Act, and Georgia Fair Business Practices Act claims were dismissed. W.D.N.C. ECF No. 42. *See also* Ostrow Decl. ¶ 13.

After an additional North Carolina plaintiff was added, BANA answered the third amended

complaint on January 28, 2020. *See* ECF No. 66. The parties then began an extensive discovery effort that lasted nearly two years. Plaintiffs served three sets of interrogatories and document requests, as well as multiple Fed. R. Civ. P. 30(b)(6) deposition notices and third-party subpoenas on five non-party banks and the National Automated Clearing House Association. BANA served written discovery requests on the *Morris* plaintiffs and non-party subpoenas on various third-party merchants. Ostrow Decl. ¶ 14.

The Parties exchanged tens of thousands of pages of documents and relevant information. BANA produced and plaintiffs' counsel and their experts reviewed internal documents related to BANA's NSF Fee and OD Fee practices including Account agreements, marketing and internal studies on NSF/OD Fees, customer complaints about the challenged fees, and transactional database excerpts showing how much money BANA made from the challenged fees. *Id.* ¶ 15. Several BANA corporate representatives were deposed, as were several plaintiffs. *Id.* ¶ 16. Plaintiffs engaged the services of a well-regarded expert in bank fee cases to evaluate BANA's data for purposes of ascertaining class members and estimating damages in *Morris*. *Id.* The expert analyzed millions of account transactions that occurred during the class period. *Id.* Further, in preparation for their motion for class certification, the *Morris* plaintiffs engaged a consumer perception expert to address BANA's challenged disclosures. *Id.*

Ultimately, a class settlement was reached in *Morris* pertaining to the multiple fees charged on ACH debits. *Id.* ¶ 17. Class Counsel here then undertook to pursue the instant putative class action to challenge multiple fees charged on check transactions benefiting from the extremely well-developed facts learned in *Morris*. *Id.* The Parties here had the benefit of the expertise, knowledge, and factual background developed in *Morris*, but they still had to explore issues related to the check transactions at issue here. *Id.*

## 2. The Instant Litigation

Plaintiff, a Pennsylvania citizen, filed this Action in the Court of Common Pleas of Philadelphia County on May 19, 2021, alleging BANA breached its Account agreements, violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75.1-1, *et seq.*, and violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, by charging NSF Fees and OD Fees on checks that were re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee. *See* ECF No. 1-1. *See also* Ostrow Decl. ¶ 18.

On August 11, 2021, BANA removed the Action to this Court. *See* ECF No. 1. With the benefit of the extensive litigation in *Morris*, which provided a unique and efficient insight to the legal risks and facts of this Action, the Parties extended the deadlines for BANA to respond to the Complaint and for Plaintiff to file a motion to remand the Action to participate in an early mediation. *See* ECF Nos. 2, 4-5, 7, 9. *See also* Ostrow Decl. ¶ 19.

To facilitate meaningful settlement discussions, the Parties engaged in an extensive informal discovery effort that included a data analysis that lasted months. Ostrow Decl. ¶ 20. The analysis was the subject of intensive discussion and negotiation between the Parties and numerous alterations and amendments to the analysis occurred during this process. *Id.* It was not until such analysis was completed that settlement discussions proceeded. *Id.*

Class Counsel prepared a detailed, confidential mediation statement. *Id.* ¶ 21. The Parties mediated the matter with Judge Diane M. Welsh (ret.) on February 18, 2022, which resulted in an agreement in principle to settle this Action. *Id.* The Parties filed a notice of settlement on March 11, 2022. *See* ECF No. 11. The Court then directed the Parties to file this Motion by June 9, 2022. *Id.* The Parties then proceeded with further confirmatory discovery related to damages, including scheduling a deposition of BANA's corporate representative. Ostrow Decl. ¶ 22. The Parties have

also worked extensively to draft the Settlement Agreement, identify and retain the Settlement Administrator, and build the Class List for the Notice Plan. *Id.*

**B. Summary of the Settlement Terms.**

**1. Settlement Consideration**

Under the Settlement Agreement, BANA has agreed to do the following: (1) make a cash payment into a Settlement Fund of \$8,000,000.00; and (2) continue its cessation of assessing the Class Fees for a period of at least five years. Settlement ¶¶ 1.36, 1.47, 2.1, 6.1. The \$8,000,000.00 Settlement Fund will be used to pay Settlement Class Member Payments, Settlement Administration Costs, any Attorneys' Fees and Costs the Court may award to Class Counsel, and any Service Award the Court may award to the Class Representative. *Id.* ¶ 6.3.

The Settlement Fund will be distributed to Settlement Class Members according to the distribution plan set out in the Settlement Agreement. *Id.* ¶ 6.6, 7. Importantly, Settlement Class Members do not need to submit a claim form to receive payment, as the Net Settlement Amount will be distributed *pro rata* using BANA's data to determine the Settlement Class Member Payment amount. Current Accountholders who are Settlement Class Members will receive credits to their Accounts. Past Accountholders will receive a check in the mail. The precise calculations to allocate the Net Settlement Amount will occur after Final Approval applying the distribution formula. *Id.*

After 240 calendar days from the Effective Date, any excess funds remaining from the Settlement Amount shall, if economically feasible, be distributed to the Settlement Class Members who successfully cashed checks or received a credit to their Accounts. *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.* ¶ 7.4.

## **2. The Settlement Class**

The proposed Settlement Class is defined as the following:

All Accountholders of BANA consumer checking and/or savings accounts (“Accounts”) in the United States who, during the Class Period, paid and were not refunded a NSF Fee and/or OD Fee in connection with (a) an ACH entry on their Account that was submitted by the merchant or the merchant’s bank with a “REDEP CHECK” indicator or (b) a physical check (not an ACH transaction) that was re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee within the preceding 28 calendar days.

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

*Id.* ¶ 3.1. The Class Period is May 19, 2017, through the Preliminary Approval date. *Id.* ¶ 1.13.

## **3. Settlement Administrator and Proposed Notice Plan**

The proposed Settlement Administrator is Epiq Class Action & Claims Solutions, Inc., a nationally recognized and experienced class action administrator. The Parties’ proposed Notice Plan is designed to reach as many Settlement Class members as possible at the lowest cost to the Settlement Class. In Class Counsel’s view, 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 notices from BANA by email; (2) Postcard Notice to Current Accountholders who have not agreed to receive notices from BANA by email, Past Accountholders, and Current Accountholders whom the Settlement Administrator is unable to send Email Notice using the email address provided by BANA; and (3) Long Form Notice, which will be available on the Settlement Website and mailed by the Settlement Administrator to Settlement Class Members who request it. *Id.* ¶¶ 5.2.1, 5.2.2. The Settlement Administrator will update addresses to improve the likelihood of the Class Notice being delivered. *Id.* ¶ 5.2.3.

Additionally, the Settlement Administrator will create and maintain a Settlement Website with important Settlement information and case-related documents. *Id.* ¶ 5.3.

The Class Notice will include the required description of the material Settlement terms; the Opt-Out Deadline for Settlement Class Members to opt-out of the Settlement Class; the Objection Deadline by which Settlement Class Members may object to the Settlement; the Final Approval Hearing date and time; and the Settlement Website address at which Settlement Class Members may access the Long Form Notice, Settlement Agreement, and other related documents and information. *Id.* ¶ 1.12 and Exhibits 1-3 thereto.

#### **4. Release**

The Release is narrowly tailored to claims regarding the Class Fees. As of the Effective Date of the Settlement, Plaintiff and each Settlement Class Member who does not opt-out agree to release the Released Claims. *Id.* ¶¶ 1.39, 13.

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

The Class Notice will inform the Settlement Class of the opt-out and objection rights and procedures, including the Opt-Out Deadline and Objection Deadline, both of which are 30 days before the Final Approval Hearing. *Id.*, ¶¶ 1.30, 9.1, 9.4. Settlement Class Members will be informed of their right to object to the Settlement, Class Counsel's application for Attorneys' Fees and Costs, and/or the Service Award to the Class Representative. *Id.*, ¶ 9.4. Objections must include information identified in the Settlement Agreement, including the grounds for the objection and information about the objector, any counsel for the objector, and previous objections made by the objector or the objector's counsel to ensure that any objections are made for a proper purpose. *Id.* ¶ 9.4.1. The additional requirements for objections and to notice the intent to appear at the Final Approval Hearing will also be included in the Class Notice. *Id.*, ¶¶ 9.4.2, 9.4.7.

## **6. Attorneys' Fees and Costs and Service Award**

To date, Class Counsel has not been paid for their efforts or reimbursed for litigation costs incurred, having taken on this Action on a contingent fee basis. The Settlement Agreement provides that Class Counsel will apply for an award of Attorneys' Fees and Costs of up to \$2,666,666.66, which represents 33.33% of the cash Settlement Amount. *Id.* ¶ 10.1; Ostrow Decl. ¶ 28. Moreover, this does not take into account the intangible value of BANA's agreement to continue for five years the cessation of the practice of charging Class Fees. BANA agrees Class Counsel are entitled to attorneys' fees to be determined by this Court. Settlement ¶ 10.1. The Fee and Cost Award will serve to compensate Class Counsel for the time, risk, and expenses incurred to pursue the class claims. If the Court does not award Attorneys' Fees and Costs, in whole or in part, however, that will not prevent the Settlement from becoming effective nor shall it be grounds for termination. *Id.* ¶ 8.1.

Class Counsel will also ask the Court to approve a Service Award for the Class Representative for serving in that capacity. *Id.*, 11.1. BANA will not oppose a request for a \$5,000.00 award. *Id.* If the Court does not award the Service Award, in whole or in part, however, that will not prevent the Settlement from becoming effective nor shall it be grounds for termination. *Id.* ¶ 8.1.

## **III. ARGUMENT**

### **A. The Legal Standard for Preliminary Approval.**

Whether to approve a proposed class settlement is left to this Court's sound discretion. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 299 (3d Cir. 1998).

Review of a proposed class action settlement proceeds in two steps: preliminary approval and a subsequent fairness hearing. *In re Nat'l Football League Players Concussion Injury Litig.*, 775 F.3d 570, 581 (3d Cir. 2014). During preliminary review, counsel submit the proposed terms to the court, and the court makes a preliminary fairness finding. *Id.* A court's decision to preliminarily approve a

proposed class action settlement “is a determination that there are no obvious deficiencies and the settlement falls within the range of reason.” *Gates v. Rohm and Haas Co.*, 248 F.R.D. 434, 438 (E.D. Pa. 2008) (citation omitted). The court’s approval should not be construed as a commitment to approve the final settlement. *Id.* Preliminary approval of a proposed class action settlement “establishes an initial presumption of fairness.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) (citation omitted).

If a court grants preliminary approval, the court directs that notice be provided to all of the potential class members who would be bound by the settlement agreement. See Fed. R. Civ. P. 23(c). Class members may object or opt out of the settlement agreement. See Fed. R. Civ. P. 23(c), 23(e). After notice is given to class members, the district court holds a fairness hearing. *In re Nat’l Football League*, 775 F.3d at 581. If the district court concludes after the fairness hearing that the settlement is fair, reasonable, and adequate, then final settlement approval is given. Fed. R. Civ. P. 23(e). Preliminary approval is less demanding than final approval of class action settlement agreements. *Gates*, 248 F.R.D. at 444 n.7. “Final approval requires a more rigorous, multifactor assessment of the fairness, adequacy, and reasonableness of a proposed class action settlement.” *Pfeifer v. WaWa, Inc.*, No. 16-497, 2018 WL 2057466, at \*2 (E.D. Pa. May 1, 2018) (citation omitted).

*Myers v. Jani-King of Philadelphia, Inc.*, No. 09-1738, 2019 WL 2077719, at \*2 (E.D. Pa. May 10, 2019 (Surrick, J)).

Fed. R. Civ. P. 23(e), as amended in 2018, sets forth the standards for this Court’s consideration of this Motion:

**(e) Settlement, Voluntary Dismissal, or Compromise.** The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court’s approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

**(1) Notice to the Class**

**(A) Information That Parties Must Provide to the Court.** The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

**(B) Grounds for a Decision to Give Notice.** The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court will likely be able to:

- (i) approve the proposal under Rule 23(e)(2); and
- (ii) certify the class for purposes of judgment on the proposal.

**(2) Approval of the Proposal.** If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair,

reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

These factors overlap with the Third Circuit's traditional nine-factor standard for reviewing a class settlement's fairness and reasonableness originally articulated in *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975):

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

*See generally Hall v. Accolade, Inc.*, No. 17-3423, 2019 WL 2996621, at \*2 n.1 (E.D. Pa. Aug. 23, 2019) (noting overlap between Rule 23(e) standards with *Girsh* factors).<sup>2</sup>

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<sup>2</sup> The Third Circuit expounded on the *Girsh* factors in *In re Prudential*, 148 F.3d 283m 323 (3d Cir. 1998), with:

the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

Granting Preliminary Approval will allow the Settlement Class to receive notice of the proposed Settlement's terms and the Final Approval Hearing date and time at which Settlement Class Members may be heard, and at which further evidence and argument concerning the fairness, adequacy, and reasonableness of the Settlement may be presented by the Parties following the filing of the Motion for Final Approval.

**B. This Settlement Satisfies the Criteria for Preliminary Approval.**

Each of the relevant factors quoted above weighs in favor of Preliminary Approval of this Settlement. Plaintiff structures the arguments below to track the elements specified in Rule 23(e)(2), and in doing so establishes that the overlapping considerations in *Girsh* and *Prudential* are also met. The Class Representative and Class Counsel adequately represent the Settlement Class. The Settlement was reached through well-informed, arm's length negotiations by competent and experienced counsel with an experienced mediator's assistance. Ostrow Decl. ¶ 38. A preliminary review of the factors related to the Settlement's fairness, adequacy, and reasonableness demonstrates the Settlement fits well within the range of reasonableness, such that Preliminary Approval is warranted. Finally, all Settlement Class Members are treated equitably relative to each other.

Any settlement requires the parties to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Plaintiff and Class Counsel believe that the claims asserted are meritorious and that Plaintiff would prevail if this Action proceeded to trial. BANA argues that Plaintiff's claims are unfounded, denies any potential liability, and up to the point of settlement has indicated a willingness to litigate those claims vigorously. The Parties concluded that the benefits of settlement in this case outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with contested class certification proceedings and possible interlocutory appellate review, completing merits discovery,

pretrial motion practice, trial, and final appellate review. *Id.* ¶ 37.

**1. Rule 23(e)(2)(A): The Class Representative and Class Counsel Adequately Represent the Settlement Class.**

Plaintiff's interests are coextensive with, and not antagonistic to, the interests of the Settlement Class Members, because Plaintiff and the absent members of the Settlement Class have the same interest in the relief afforded by the Settlement, and the absent members of the Settlement Class have no diverging interests. Further, Plaintiff is represented by qualified and competent counsel. Class Counsel have devoted substantial time and resources investigating and prosecuting this Action and will vigorously protect the interests of the Settlement Class.

Class Counsel possess extensive experience in prosecuting class actions, including cases involving bank NSF Fees and OD Fees, in courts throughout the United States, and have recovered hundreds of millions of dollars for the classes they have represented. *Id.* ¶ 57 and Exhibits 1-3 thereto. Class Counsel is qualified to represent the Settlement Class and will, along with the Class Representative, vigorously protect the interests of the Settlement Class Members. *Id.*

As a result of negotiations, the Parties have reached a Settlement that Class Counsel believe, based on extensive experience litigating class actions like this one, to be fair, reasonable, and in the Settlement Class Members' best interests. Class Counsel's assessment in this regard is entitled to considerable deference. *See Callahan v. Commonwealth Land Title Ins. Co.*, 1990 WL 168273, at \*16 (E.D. Pa. Oct. 29, 1990) ("a court should refrain from merely substituting its own judgment of the merits of a settlement for that of counsel intimately associated with the litigation and consequently far more able to weigh its relative strengths and weaknesses"); *Daniel B. v. O'Bannon*, 633 F. Supp. 919, 926 (E.D. Pa. 1986) ("the professional judgment of counsel involved in the litigation is entitled to significant weight"). Recommendations of experienced counsel are entitled to great weight in evaluating a proposed settlement in a class action. *In re Prudential Ins.*

*Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 543 (D.N.J. 1997), *aff'd*, 148 F.3d 283, 311 (3d Cir. 1998). “Significant weight” should be given “to the belief of experienced counsel that settlement is in the best interest of the class, so long as the Court is satisfied that the settlement is the product of good faith, arms-length negotiations.” *In re American Family Enterprises*, 256 B.R. 377, 421 (D.N.J. 2000); *see also Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 414 (E.D. Pa. 2010).

**2. Rule 23(e)(2)(B): This Settlement Is the Product of Arm’s Length Negotiations.**

The Settlement in this case is the result of intensive, arm’s length negotiations between experienced attorneys, aided by a well-respected mediator, who are familiar with class action litigation and with the legal and factual issues of this Action, including from litigation in the *Morris* matter. The existence of an independent neutral in a mediation negotiating a class action settlement is considered when evaluating arm’s length negotiations. *In re National Football League Players’ Concussion Injury Litigation*, No. 2:12-02323, 301 F.R.D. 191, 198-9 (E.D. Pa. 2014). The negotiations did not begin in earnest until an extensive data analysis was requested, completed, and evaluated by Class Counsel in this case. Ostrow Decl. ¶¶ 35, 38.

In negotiating this Settlement in particular, Class Counsel had the general benefit of years of experience in litigating bank fee class actions across the country involving similar claims, and a familiarity with BANA’s practices at issue in *Morris* and other cases against BANA. *Id.* ¶ 36. As detailed above, Class Counsel conducted a thorough investigation and analysis of Plaintiff’s claims and engaged in sufficient informal discovery. *Id.* Analysis of data provided concerning the challenged fees charged to members of the Settlement Class enabled an understanding of the evidence related to central questions in the Action, and prepared Class Counsel for well-informed settlement negotiations at mediation. *Id.* Class Counsel were also well-positioned to evaluate the



strengths and weaknesses of Plaintiff’s claims and BANA’s defenses because of their extensive experience in bank fee class action litigation, including *Morris. Id.* and Exhibits 1-3 thereto.

**3. Rule 23(e)(2)(C): The Relief Provided to the Class Is Adequate.**

A preliminary review of the Rule 23(e)(2)(C) factors<sup>3</sup> (and in conjunction *Girsh* factors 4-6 and 8-9) supports a determination that this Settlement falls within the “range of reason” such that notice to the Settlement Class and a Final Approval Hearing as to the fairness, adequacy, and reasonableness of the Settlement are warranted. There can be no doubt that this Settlement is a fair and reasonable recovery for the Settlement Class in light of BANA’s defenses, and the challenging and unpredictable path of litigation Plaintiff would have faced absent a settlement.

Plaintiff and Class Counsel are confident in the strength of their case, but they are also pragmatic in their awareness of the various defenses available to BANA, and the risks inherent to litigation. Ostrow Decl. ¶ 42. As another court examining an overdraft fee settlement noted: “The combined risks here were real and potentially catastrophic . . . [B]ut for the Settlement, Plaintiffs and the class faced a multitude of potentially serious, substantive defenses, any one of which could have precluded or drastically reduced the prospects of recovery.” *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1347-48 (S.D. Fla. 2011). The same is true here.

A major risk is that the Court or a jury might find that the language in BANA’s Account agreements permits defenses that the contract permitted BANA to charge the challenged Class Fees, and that BANA sufficiently disclosed its multiple fee practice for checks that were represented such that those practices were not deceptive or misleading. Ostrow Decl. ¶ 43. Indeed, a number of courts across the country have dismissed similar claims at the pleadings stage. *See, e.g., Lambert v. Navy Fed. Credit Union*, No. 1:19-cv-103-LO-MSN, 2019 WL 3843064 (E.D.

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<sup>3</sup> There is no agreement required to be disclosed by Rule 23(e)(2)(C)(iv) other than the Settlement Agreement.

Va. Aug. 14, 2019); *Page v. Alliant Credit Union*, No. 19-CV-5965, 2020 WL 5076690 (N.D. Ill. Aug. 26, 2020); *Toth v. Scott Credit Union*, No. 20-CV-00306-SPM, 2021 WL 535549 (S.D. Ill. Feb. 12, 2021), *reconsideration denied*, No. 19-CV-5965, 2021 WL 1546437 (N.D. Ill. Apr. 20, 2021); *Ross v. NavyArmy Cmty. Credit Union*, No. 2:21-cv-168, 2022 WL 100110 (S.D. Tex. Jan. 11, 2022) (same). Also, because BANA's practices regarding Class Fees had been in place for many years, the Settlement Class (and the Class Representative) faced potential statute of limitations, estoppel, and waiver defenses, among other affirmative defenses that would be pled. *Id.* In addition, BANA would have asserted numerous defenses to class certification that raise substantial litigation risks. *Id.* Each of these risks, by itself, could easily have impeded Plaintiff's and the Settlement Class's successful prosecution of these claims at trial and in an eventual appeal. Under the circumstances, Plaintiff and Class Counsel appropriately determined the Settlement reached with BANA outweighs the gamble of continued litigation. *Id.*

Moreover, even if Plaintiff prevailed at trial, any recovery could be delayed for years by an appeal. *See Rivera v. Lebanon School Dist.*, No. 1:11-00147, 2013 WL 4498817 (M.D. Pa. Aug. 20, 2013) (noting appeal "could have delayed reimbursement to class members, as well as jeopardized their eventual recovery"); *Lipuma v. American Express Company*, 406 F. Supp. 2d 1298, 1322 (S.D. Fla. 2005) (likelihood that appellate proceedings could delay class recovery "strongly favor[s]" settlement approval). This Settlement provides substantial relief to the Settlement Class without further delay.

The claims and defenses in this Action are complex, as is clear by Class Counsel's efforts in the sister *Morris* case, which was hard fought for years, with numerous depositions, third party discovery, and hundreds of thousands of pages of documents produced. Ostrow Decl. ¶ 45. There is no doubt that continued litigation here would be difficult, expensive, and time-consuming. *Id.* The risks and obstacles in this case are just as great as those in other bank fee cases and this case

would likely have taken years as well to successfully prosecute. *Id.* Recovery by any means other than settlement would require additional years of litigation in this Court and the Third Circuit. *See United States v. Glens Falls Newspapers, Inc.*, 160 F.3d 853, 856 (2d Cir. 1998) (noting that “a principal function of a trial judge is to foster an atmosphere of open discussion among the parties’ attorneys and representatives so that litigation may be settled promptly and fairly so as to avoid the uncertainty, expense and delay inherent in a trial”).

One of the most expensive aspects of ongoing litigation in this case involves the retention of experts to perform data analyses and to present those analyses in expert reports, at depositions, and at trial. Ostrow Decl. ¶ 45. As was the case in *Morris*, Plaintiff would likely have to rely on a damages expert and experts in the fields of marketing and banking had the case proceeded to trial. *Id.* These considerations, and the other considerations noted above, militate heavily in favor of the Settlement. *Id.* *See also Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) (noting likely “battle of experts” at trial regarding damages, which would pose “great difficulty” for plaintiffs).

Courts have determined that settlements may be reasonable even where class members recover only part of their actual losses. *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 144 (E.D. Pa. 2000) (“Even if the proposed settlement only amounts to ‘a fraction of the potential recovery,’ it does not necessarily follow that the settlement ‘is grossly inadequate and should be disapproved.’”). “The existence of strong defenses to the claims presented makes the possibility of a low recovery quite reasonable.” *Lipuma*, 406 F. Supp. 2d at 1323.

Here, Plaintiff’s \$8,000,000.00 cash recovery, plus the intangible value of the Practice Change, is outstanding, given the complexity of the litigation and the significant barriers that would loom in the absence of settlement: motions to dismiss, for class certification, and for summary judgment; trial; and potential appeals after class certification and a Plaintiff’s verdict.

Based on extensive analysis of BANA's data, Class Counsel estimate that the Settlement Class's most likely recoverable damages at trial would have been approximately \$20 million. Ostrow Decl. ¶ 31. Thus, the Settlement will result in the recovery of approximately 40% percent of the most probable damages, without further risks attendant to litigation. *Id.* That percentage recovery is on par with other bank fee settlements.

The Settlement provides for a highly effective means of directly distributing the Net Settlement Fund *pro rata* to the Settlement Class Members. The amount to which each Settlement Class Member is entitled shall be determined by the number of Class Fees that each Settlement Class Member paid and was not refunded, based on an analysis of reliable data provided from BANA's business records.

The Attorneys' Fees and Costs that Class Counsel will seek from the Settlement Fund will be consistent with awards entered in similar bank fee cases and will be paid following the Effective Date of the Settlement, near the time that Settlement Class Members will receive their payments.

**4. Rule 23(e)(2)(D): The Settlement Treats Settlement Class Members Equitably.**

The very simple *pro rata* formula for distributing the Net Settlement Fund assures that all Settlement Class Members will be treated equitably. The distribution formula reflects that there are no subclasses, and no relevant differences between Settlement Class Members.

**C. Certification of the Class Is Appropriate.**

For settlement purposes, Plaintiff respectfully requests that the Court certify the Settlement Class defined in paragraphs 3.1 of the Settlement Agreement. "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). For purposes of this Settlement, BANA does not oppose class certification. For the reasons set forth below, certification is appropriate under

Rule 23(a) and (b)(3).

Certification under Federal Rule of Civil Procedure 23(a) requires that: (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. Under Rule 23(b)(3), certification is appropriate if questions of law or fact common to the members of the class predominate over individual issues, and if a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Rule 23(a)(1) numerosity is satisfied because the Settlement Class consists of hundreds of thousands of current and former BANA Accountholders, and joinder of all such persons is impracticable. Ostrow Decl. ¶ 53. *See Steward v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001) (“No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceed 40, the first prong of Rule 23(a) has been met.”).

“Commonality requires the plaintiff to demonstrate that the class members ‘have suffered the same injury,’” and the plaintiff’s common contention “must be of such a nature that it is capable of class wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (citation omitted). The Third Circuit has held that “commonality” may be satisfied by one common issue. *In re Warfarin Sodium Antitrust Litig*, 391 F.3d 516, 527 (3d Cir. 2004). Here, Rule 23(a)(2) commonality is readily satisfied. There are multiple questions of law and fact – centering on BANA’s charging of Class Fees and whether such fees were authorized by binding contract documents – that are common to the Settlement Class, that are alleged to have injured all Settlement Class Members in the same way, and that

would generate common answers central to the viability of the claims were the Action to proceed to trial. Ostrow Decl. ¶ 54.

For similar reasons, Plaintiff's claims are reasonably coextensive with those of the absent members of the Settlement Class, such that Rule 23(a)(3) typicality is satisfied. Ostrow Decl. ¶ 55. The typicality inquiry, a low threshold, is "intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." *Baby Neal v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994). Typicality is satisfied where the class representative's claim arises from the same alleged wrongful conduct by the defendant. *In re Warfarin*, 391 F.3d at 532. Plaintiff and the Settlement Class Members were subjected to the same practices and claim to have suffered from the same injuries, and they will benefit equally from the Settlement relief. *Id.* at 531 ("The typicality requirement is 'designed to align the interests of the class and the class representatives so that the latter will work to the benefit of the entire class through the pursuit of their own goals.'").

Plaintiff and Class Counsel satisfy Rule 23(a)(4) adequacy of representation, which "serves to uncover conflicts of the interest between named parties and the class they seek to represent." *Amchem Products, Inc.*, 521 U.S. at 594. Adequacy is assessed by a two-prong test: (1) class counsel's qualifications and (2) whether there are conflicts of interest between the named plaintiff and the class. *In re Prudential*, 148 F.3d at 312. Both these components are satisfied, and Plaintiff should be appointed the Class Representative, and Jeff Ostrow and Jonathan M. Streisfeld of Kopelowitz Ostrow P.A., Jeffrey D. Kalief of KaliefGold PLLC, and Kenneth J. Grunfeld of Golomb Spirt Grunfeld, P.C. should be appointed Class Counsel. Class Counsel have worked to identify and investigate the claims, have the requisite experience in bank fee class actions, know the applicable law, and have the resources committed to represent the Settlement Class. Fed. R.

Civ. P. 23(g). *See also* Ostrow Decl. ¶¶ 35, 57.

Rule 23(b)(3) certification of the Settlement Class is further proper because the predominance and superiority elements are met. The predominance inquiry “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 266 (3d Cir. 2009) (quoting *Amchem*, 521 U.S. at 623-24). Further, it assesses whether a class action “would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated.” Fed. R. Civ. P. 23(b)(3), Advisory Committee’s Note to 1966 Amendment. Rule 23(b)(3) predominance is readily satisfied because liability questions common to all Settlement Class Members substantially outweigh any possible individual issues affecting a Settlement Class Member. Ostrow Decl. ¶ 54. All of their relationships with BANA arise from materially identical Account agreements, and all Class Fees were for the same amount and were levied in the same circumstances. *See Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1171 (11th Cir. 2010) (“It is the form contract, executed under like conditions by all class members, that best facilitates class treatment.”).

Superiority “asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication.” *In re Warfarin*, 391 F.3d at 533-34 (internal quotation marks omitted). Rule 23(b)(3) identifies four superiority factors, the last of which is manageability, a matter of no concern with a settlement because there will be no trial. *Amchem Products, Inc.*, 51 U.S. at 620. There is no concern for superiority because Accountholders have not shown an interest in controlling the prosecution of their claims, this being the only case to address the challenged Class Fees, and it is desirable to concentrate the litigation of these relatively small value individual claims into a single proceeding. Ostrow Decl. ¶ 58.

Finally, the Third Circuit’s ascertainability requirement, which requires a showing that the

class is defined based on objective criteria, and that there is a reliable and administratively feasible mechanism to confirm that class members fall within the class definition, is definitely met in this Action. *Byrd v. Aaron's Inc.*, 784 F.3d 154, 163 (3d Cir. 2015). The Settlement Class Members will be identified because they were assessed Class Fees during the Class Period. Readily available BANA business records allow for the identification of the Settlement Class Members and direct distribution of Settlement Class Member Payments. As noted above, Settlement Class Members need not prove their inclusion in the Settlement Class by submitting a claim form.

For these reasons, the Court should conditionally certify the Settlement Class for settlement purposes only. Further evaluation of certification can be completed at the Final Approval stage.

**D. The Court Should Approve the Notice Plan Because It Is Constitutionally Sound.**

“Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise . . . .” *Manual for Compl. Lit.* § 21.312. The best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). “To meet this standard, the notice must inform class members of (1) the nature of the litigation; (2) the settlement’s general terms; (3) where complete information can be located; and (4) the time and place of the fairness hearing and that objectors may be heard.” *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467 (E.D. Pa. 2007) (citations omitted).

The proposed Notice Plan satisfies all of these criteria. As recited in the Settlement Agreement, the Class Notice will properly inform members of the Settlement Class of the Settlement’s substantive terms; advise the Settlement Class of the options for opting-out of or



objecting to the Settlement; and advise how to obtain additional information about the Settlement. Ostrow Decl. ¶ 52. Since BANA has names and mailing and/or email address records of all Settlement Class members, the Notice Plan will reach a high percentage of the Settlement Class and exceeds the requirements of constitutional due process. *Id.* Therefore, the Court should approve the Notice Plan and the form and content of the Class Notice.

**E. The Court Should Schedule a Final Approval Hearing.**

The last step in the class settlement approval process is a Final Approval Hearing, at which the Court will make its final evaluation of the Settlement. The Court will determine at or after the Final Approval Hearing whether the Settlement should be approved and the Settlement Class finally certified; whether to enter a Final Approval Order and Final Judgment and Order of Dismissal under Rule 23(e); whether to approve Class Counsel's application for Attorneys' Fees and Costs; and whether to approve the request for a Service Award to the Plaintiff. Plaintiff requests that the Court schedule the Final Approval Hearing Date no sooner than 150 days following Preliminary Approval to allow adequate time for the Parties to retrieve all data necessary for implementing the Notice Plan. The Opt-Out Deadline and Objection Deadline shall both be 30 days before the Final Approval Hearing. Plaintiff and Class Counsel will file the Motion for Final Approval seeking Final Approval, the Fee and Cost Award, and the Service Award no later than 45 days prior to the Final Approval Hearing.

**IV. CONCLUSION**

Plaintiff respectfully requests that the Court: (1) grant Preliminary Approval of the Settlement; (2) certify for settlement purposes the Settlement Class; (3) appoint Plaintiff Steven Checchia as Class Representative; (4) appoint Epiq Class Action & Claims Solutions, Inc. as Settlement Administrator; (5) approve and order the disclosure of BANA data concerning the Settlement Class to the Settlement Administrator for purposes of implementing the Notice Plan;

(6) approve the Notice Plan and the form and content of the Class Notice; (7) approve and order the opt-out and objection procedures set forth in the Settlement Agreement; (8) stay the Action pending Final Approval of the Settlement; (9) appoint as Class Counsel Jeff Ostrow and Jonathan M. Streisfeld of Kopelowitz Ostrow P.A.; Jeffrey D. Kaliel of KalielGold PLLC; and Kenneth J. Grunfeld of Golomb Spirt Grunfeld, P.C.; and (10) schedule a Final Approval Hearing no sooner than 150 days after Preliminary Approval.

DATED: June 9, 2022

Respectfully submitted,

/s/ Jeff Ostrow

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*Attorneys for Plaintiff and Proposed  
Settlement Class*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 9, 2022, the foregoing document was filed electronically on the CM/ECF system, which caused all CM/ECF participants to be served by electronic means.

/s/ Jeff Ostrow  
Jeff Ostrow

# EXHIBIT A

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

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 2:21-cv-3585

**SETTLEMENT AGREEMENT AND RELEASE**

Subject to approval by the Court, this Settlement Agreement and Release (“Settlement Agreement”) is made and entered into by (1) Plaintiff, Steven Checchia (“Plaintiff” or “Class Representative”), individually and as a representative of the Settlement Class (defined below) and (2) Bank of America, N.A. (“BANA”). The Class Representative and BANA are collectively referred to herein as “the Parties.” The Parties intend for this Settlement Agreement to fully and finally resolve and settle all released rights and claims to the extent set forth below and subject to the terms and conditions set forth below.

**RECITALS**

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

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

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

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

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

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

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

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

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

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

10. Without any admission or concession whatsoever by the Parties as to the strength or weakness of the merits of the claims and defenses asserted in the Action, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiff, the Settlement Class, and BANA that all Released Claims against BANA be fully and forever settled, compromised, released, and dismissed on the merits with prejudice on the following terms and conditions, subject to the Court's approval:

### **AGREEMENT**

#### **1. DEFINITIONS**

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

**1.1.** “Account” means any consumer checking or savings account maintained by BANA at some point during the class period.

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

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

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

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

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

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

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

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

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

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

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



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

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

**1.14.** “Class Representative” means Steven Checchia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1.37.** “Preliminary Approval” means preliminary approval of the Settlement Agreement by the Court, conditional certification of the Settlement Class, and approval of the method and content of the Class Notice to the Settlement Class Members.

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

**1.39.** “Released Claims” means any individual, class, representative, group or collective claim, liability, right, demand, suit, matter, obligation, damage, loss, action or cause of action, of every kind and description, that a Releasing Party has or may have, including assigned claims, whether known or Unknown Claims, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, accrued or un-accrued, latent or patent, contingent or non-contingent, liquidated or un-liquidated, at law or in equity, matured or un-matured, apparent or unapparent, that the Class Representative or Settlement Class Members raised or could have raised in the Action, or which they could raise in the future, in any court, tribunal, forum, or proceeding, arising out of or relating in any way to the allegations made in the Action. The Released Claims described herein include claims or defenses concerning Class Fees, and any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions.

**1.40.** “Released Parties” refers to BANA and each of its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys,

vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each Person or entity acting or purporting to act for them or on their behalf, including, but not limited to, Bank of America Corporation and all of its subsidiaries and affiliates.

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

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

**1.43.** “Settlement” means the Agreement between the Class Representative, on behalf of himself and as the proposed representative of the Settlement Class, and BANA to settle and compromise the Class Representative’s and the Settlement Class Members’ claims in the Action, as memorialized in this Settlement Agreement and accompanying documents attached hereto.

**1.44.** “Settlement Administrator” means the qualified third-party administrator and agent agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval Order to administer the Settlement, including administering the Notice Plan. The Parties agree to recommend that the Court appoint Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator.

**1.45.** “Settlement Administration Costs” means the costs and expenses reasonably and actually incurred in obtaining the services of the Settlement Administrator to facilitate the Settlement, including but not limited to, costs of identifying Settlement Class Members, printing

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

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

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

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

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

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

**1.51.** “Settlement Website” means the website to be created, launched, and maintained by the Settlement Administrator which shall provide access to relevant case documents including the Notice, the operative complaint, and other relevant documents.

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

**1.53.** “Unknown Claims” means any claim arising out of or related to Class Fees, that a Releasing Party does not know or suspect exists in his, her or its favor at the time of the release of

the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Settlement. The Settlement is intended to extinguish all Released Claims arising out of the Class Fees, and, consistent with such intentions, the Releasing Parties shall waive their rights to the extent permitted by state law, federal law, foreign law, or principle of common law, which may have the effect of limiting the release set forth above. The Class Representative, on behalf of himself and the Releasing Parties, expressly waives and releases any and all provisions, rights, and benefits conferred by California Civil Code Section 1542, and by any law of any other jurisdiction, or principle of common law, that is similar, comparable, or equivalent in effect to California Civil Code Section 1542 with respect to the release of claims. California Civil Code Section 1542 provides:

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

In making this waiver of rights, the Class Representative, on behalf of himself and the Releasing Parties, acknowledges that he and Settlement Class Members may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is his intention, as a Class Representative and on behalf of the Settlement Class Members, to fully, finally and forever settle and release any and all claims released hereby known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such

additional or different facts for any potential claims arising out of or related to Class Fees. The Class Representative, and the Settlement Class Members by operation of the judgment, shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims was separately bargained for, constitutes separate consideration for, and was a key element of the Settlement and was relied upon by the BANA in entering into the Settlement.

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

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

## **2. SETTLEMENT CONSIDERATION**

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

## **3. SETTLEMENT CLASS**

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

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



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

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

**3.2. Certification for Settlement Purposes.** The Parties' agreement as to certification of the Settlement Class is solely for purposes of effectuating a settlement and for no other purpose. BANA retains all of its objections, arguments, and defenses with respect to class certification, and reserves all rights to contest class certification, if the Settlement set forth in this Settlement Agreement does not receive the Court's Final Approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any class or certification of any class for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement does not receive the Court's Final Approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void ab initio, and this Settlement Agreement or any other Settlement-related statement may not be cited regarding certification of the Settlement Class, or in support of an argument for certifying a class for any purpose related to this or any other proceeding.

#### 4. MOTION FOR PRELIMINARY APPROVAL

**4.1. Filing of Motion for Preliminary Approval.** As soon as reasonably practicable, Class Counsel shall file this Settlement Agreement with the Court together with a Motion for Preliminary Approval, which will seek to: (i) certify the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3); (ii) preliminarily approve the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23; (iii) appoint the Plaintiff as Class Representative of the Settlement Class; (iv) appoint Plaintiff's counsel as Class Counsel; (v) approve the proposed Notice Plan and authorize the dissemination of Notice as set forth in Section 5; and (vi) approve of and appoint the Settlement Administrator.

**4.2. Preliminary Approval Order.** Class Counsel agrees that the proposed Preliminary Approval Order to be filed together with the Motion for Preliminary Approval will be in substantially the same form as *Exhibit 4*. The Preliminary Approval Order shall (i) preliminarily approve the Settlement memorialized in this Settlement Agreement as fair, reasonable, and adequate, including the material terms of this Settlement Agreement; (ii) set a date for a Final Fairness Hearing; (iii) state that if Final Approval of the Settlement is not obtained, the Settlement is null and void, and the Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses; (iv) approve the proposed Class Notice in the forms attached hereto as *Exhibits 1, 2 and 3*, and authorize their dissemination to the Settlement Class; (v) set deadlines consistent with this Settlement Agreement for emailing and mailing of the Class Notice, the filing of objections, the filing of motions, and the filing of papers in connection with the Final Fairness Hearing; (vi) appoint and approve the Class Representative, Class Counsel, and the Settlement Administrator; (vii) set deadlines by which Plaintiff and Class Counsel shall file their Motion for

Final Approval, which shall be at least forty-five (45) days prior to the Final Fairness Hearing; (viii) state that any appeal of the Court's order on the motion for the Fee and Cost Award or the motion for a Service Award shall have no effect on the Court's Final Approval of the Settlement; and (ix) prohibit and preliminarily enjoin the Class Representative, all Settlement Class Members (excepting those who are Successful Opt-Outs), and Class Counsel from commencing, prosecuting, or assisting in any lawsuit against the Released Parties that asserts or purports to assert matters within the scope of the Release during the time between entry of the Preliminary Approval Order and final determination by the Court regarding whether to grant Final Approval of the Settlement. BANA agrees that it will not oppose the entry of the Preliminary Approval Order, provided it is substantially in the form of *Exhibit 4* hereto and consistent with the material terms of the Settlement. Without implication of limitation, BANA's agreement that it will not oppose the entry of the Preliminary Approval Order shall not be an admission or concession by it that a class was appropriate in the Action (other than for purposes of this Settlement) or would be appropriate in any other matter, and/or that any relief was appropriate in the Action, for litigation purposes, or would be appropriate in any other matter.

**4.3. Filing of Motion for Final Approval.** If Preliminary Approval of the Settlement is entered by the Court, the Class Representative shall seek, and BANA shall support, entry of a Final Approval Order and Final Judgment and Order of Dismissal that: (i) certifies the Settlement Class pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purpose of the Settlement; (ii) approves finally the Settlement set forth in this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to Settlement Class Members within the meaning of Fed. R. Civ. P. 23 and directing its consummation according to its terms; (iii) finds that the Notice Plan constitute due, adequate, and sufficient notice of the Settlement set forth in

this Settlement Agreement and the Final Fairness Hearing and meets the requirements of Due Process and the Federal Rules of Civil Procedure; (iv) directs that, as to the Released Parties, the Action shall be dismissed with prejudice and, except as provided for in this Settlement Agreement, without award of costs; (v) orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims against any Released Party; (vi) retains with the Court exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of the Settlement; and (vii) determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to BANA shall be final and entered forthwith.

## **5. NOTICE PLAN**

**5.1. Preparation and Production of Settlement Class List.** BANA or its agent shall compile the Class List, which shall consist of a list of all Settlement Class Members and provide such information to the Settlement Administrator within twenty-one (21) days after the Preliminary Approval Order. The Class List shall include the total number of Class Fees for each Settlement Class Member, whether the Settlement Class Member is a Current Accountholder with BANA as of the date of the Preliminary Approval Order, as well as all known physical addresses and email addresses in BANA's possession, custody, or control, for the Settlement Class Members. The Settlement Administrator shall use this information for the sole purpose of identifying the current postal addresses and/or email addresses for the Settlement Class Members. Within twenty-one (21) days after the Preliminary Approval Order, BANA will also provide an anonymized version of the Class List to Class Counsel for Class Counsel's validation purposes, which will not include any personal identifying information related to Settlement Class Members.

**5.2. Dissemination of Class Notice.** For purposes of providing Court-approved class

notices and establishing that the best practicable notice has been given, Class Notice will be provided as follows:

**5.2.1.** For those Settlement Class Members who are Current Accountholders of BANA and have agreed to receive electronic account statements from BANA, the Settlement Administrator shall send the Email Notice to each such Settlement Class Member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Settlement Administrator shall send a Postcard Notice in the manner described below. The Email Notice shall inform Settlement Class Members how they may request a copy of the Long Form Notice.

**5.2.2.** For those Settlement Class Members who are Current Accountholders of BANA who have not agreed to receive account statements electronically, or who are Past Accountholders, the Postcard Notice shall be mailed by first class United States mail to the last known or best available mailing address. The Postcard Notice shall inform Settlement Class Members how they may request a copy of the Long Form Notice.

**5.2.3.** The Settlement Administrator shall obtain updates, if any, to the addresses contained therein to any of the following using (i) information reasonably available from a Lexis-Nexis or alternative persons search performed as to each Settlement Class Member, (ii) information reasonably available from the National Change of Address ("NCOA") database maintained by the United States Postal Service ("Postal Service"), or (iii) such additional efforts as the Settlement Administrator reasonably believes are appropriate to identify updated addresses, if any, for each Settlement Class Member and/or as the Court may direct. The resulting list shall be the Class List.

**5.2.4.** Within ten (10) business days after the Class List is finalized as set forth in Paragraph 5.1, the Settlement Administrator shall begin the process of mailing the Class Notice(s) to each Settlement Class Member using the Class List by first-class U.S. mail, postage prepaid, and shall complete that process as soon as is practicable. The Settlement Administrator shall format the Class Notice(s) and otherwise administer the Notice Plan in a reasonable manner to minimize costs.

**5.2.5.** For up to forty-five (45) days following the last date on which the Settlement Administrator mailed Class Notice under this Section 5, if a Class Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Class Notice immediately to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. For any Class Notice that is returned as undeliverable without a forwarding address, the Settlement Administrator will use commercially reasonable efforts to obtain updated addresses during the forty-five (45) days following the date the last Class Notice was mailed. Other than as set forth above, BANA and the Settlement Administrator shall have no other obligation to re-mail Class Notice.

**5.2.6.** In support of the Motion for Final Approval, the Settlement Administrator shall prepare a declaration describing what it did to comply with the Notice Plan, as well as providing its opinion that the Notice Plan satisfied the requirements of Due Process.

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

**5.3. Settlement Website.**

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

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

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

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

**5.4. CAFA Notice.** BANA shall send CAFA Notice to the United States Attorney General and appropriate state Attorneys General in accordance with 28 U.S.C. § 1715(a) no later than ten (10) business days after this Settlement Agreement is filed with the Court. BANA shall file with the Court certification of the date on which the CAFA Notice was served.

## **6. PAYMENT OF THE SETTLEMENT AMOUNT**

**6.1. Payments to Settlement Administrator.** Within five (5) business days following BANA advising the Settlement Administrator of the number of Current Accountholders, Past

Accountholders, and the breakdown of those Settlement Class Members that shall receive Email Notice and Postcard Notice, the Settlement Administrator shall provide an estimate of the Settlement Administration Costs to BANA and Class Counsel. BANA will pay all such Settlement Administration Costs within thirty (30) days following its receipt of an invoice from the Settlement Administrator, but not until BANA has received a properly completed W-9 Form from the Settlement Administrator. All Settlement Administration Costs shall be payable out of the Settlement Amount. The Settlement Amount represents the total extent of BANA's monetary obligations under this Settlement Agreement and includes all sums to be paid under this Settlement as the consideration to eligible Settlement Class Members, including a Service Award, if any, the Fee and Cost Award, if any, and all Settlement Administration Costs.

**6.2. Escrow Account.** Within twenty (20) business days after the date of entry of the Final Approval Order, the Settlement Administrator shall establish and BANA shall fund an escrow account with funds sufficient for the payment of the remainder with the Settlement Amount, less any funds previously provided to the Settlement Administrator for the Settlement Administration Costs, as set forth in Paragraph 6.1 BANA (a) shall have the right to impose any reasonable terms and conditions on the operation and maintenance of the fund, and of any funds that it pays in connection with the Settlement, that it deems appropriate to take advantage of the Qualified Settlement Fund ("QSF") provisions of the tax code or to protect the moneys from intentional or unintentional diversion, expenditure, forfeiture, escheat, or other dispersion that is inconsistent with the express terms of the Settlement, and (b) shall inform Class Counsel of any such terms and conditions. In the event that BANA desires to have the Settlement Administrator enter into an agreement or undertaking to take advantage of the QSF provisions of the tax code or to protect the moneys in accordance with this paragraph, or to obtain any order from the Court in connection



with this paragraph, the Class Representative agrees not to object to such requested agreement or order other than on the grounds that the terms or relief sought, in whole or in part, is inconsistent with the express terms of the Settlement. BANA shall pay no portion of the Settlement Amount until it has received a properly completed W-9 Form from the Settlement Administrator.

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

**6.4. No Other Payments from BANA.** As set forth above, BANA shall be responsible for paying the total Settlement Amount. BANA shall have no responsibility for any other costs, including, as further detailed in this Settlement Agreement, any Attorneys' Fees and Costs, including any taxes or tax-related costs relating to the Settlement Amount but all such fees, expenses, and costs shall be paid out of the Settlement Amount as approved by the Court.

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

**6.6. Use and Disbursal of Settlement Amount**

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

**6.6.2. Settlement Class Member Payments.**

**6.6.2.1.** Within seven (7) days after the Effective Date, BANA shall determine whether the Class List needs to be updated with respect to which Settlement Class Members are Current Accountholders with BANA as of the Effective Date, and if necessary, will provide an updated Class List to the Settlement Administrator. The Settlement Administrator will use the Class List to determine which Settlement Class Members are to receive their Settlement Class Member Payment via a credit to their BANA Account.

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

**6.6.2.3.** Within forty-five (45) days after the Effective Date, BANA shall directly deposit the Settlement Class Member Payments to those Settlement Class Members who are Current Accountholders with BANA as of the Effective Date into the Settlement Class Member's primary consumer deposit Account.

**6.6.2.4.** Within thirty (30) days after the Effective Date, the Settlement

Administrator shall mail payment notices and Settlement Class Member Payments, in the form of checks, as determined in the payment allocation for Settlement Class Members described herein who are Past Accountholders as of the Effective Date. Within sixty (60) days of the Effective Date, checks and payment notices shall also be issued to Settlement Class Members whom BANA was unable to complete an Account credit. The Settlement checks and payment notices shall include the appropriate release text.

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

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

**6.6.2.7.** The Settlement Administrator will make reasonable efforts to locate the proper address for any check returned undeliverable and will re-mail it once to the updated address or, in the case of a jointly held Account, and in the Settlement Administrator's discretion, to an Accountholder other than the one listed first.

**6.7. Remaining Funds.** After two hundred and forty (240) days from the Effective Date, any excess funds remaining from the Settlement Amount that have not been distributed in accordance with other provisions of this Settlement Agreement shall, if economically feasible, be distributed to the Settlement Class Members who successfully cashed checks or received their Settlement Class Member Payment as a credit. The payment notices accompanying the Settlement checks for a second distribution shall notify the recipients that the checks must be cashed within ninety (90) days from the date on the payment notice and that the enclosed check shall not be valid after that date. If a second distribution of remaining funds costs more than the amount to be distributed or is

otherwise economically unfeasible, or if additional funds remain after a second distribution, Class Counsel shall petition the Court to distribute any remaining funds to a consumer protection or financial services organization as a *cy pres* recipient.

## **7. SETTLEMENT BENEFITS**

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

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

Multiplied by;

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

**7.2. All Settlement Class Member Payments Come From Settlement Amount.** All payments to Settlement Class Members shall be funded by the Settlement Amount only after the Effective Date. All proceedings with respect to the notice, administration, and processing of payments to Settlement Class Members and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court. The Class Representative and Settlement Class Members shall look solely to the Settlement Amount as full, final, and complete satisfaction of all Released Claims. Except as set forth herein, BANA shall have no obligation under this Settlement Agreement or the Settlement to pay or cause to be paid any amount of money, and BANA shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, taxes, or damages whatsoever alleged or incurred by the Class Representative, by any Settlement Class Member, or

by any Releasing Parties, including but not limited to their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. The Class Representative and Settlement Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

**7.3. Settlement Check Language.** Each Settlement check and payment notice shall state: “This payment is tendered to you as a class member in *Checchia, et al. v. Bank of America, N.A.*, 2:21-cv-3585 (E.D.P.A.) in consideration for your release from liability of Defendant Bank of America, N.A. and other Released Parties as set forth in the Settlement Agreement and Release.” Each Settlement check will disclose that it is invalid if it is not cashed within one hundred and eighty (180) days. Payment pursuant to this Settlement Agreement shall be deemed final and conclusive as against all Settlement Class Members. If any Settlement check is returned as undeliverable, the Settlement Administrator will attempt to notify the Settlement Class Member, including by attempting to obtain a new mailing address as practical in the same manner as set forth in Paragraph 5.2.3 (with any costs incurred treated as Settlement Administration Costs). If, after a second attempt, such Settlement check is again returned as undeliverable, no further effort needs to be taken by the Settlement Administrator. All Settlement Class Members who do not cash their Settlement checks within one hundred and eighty (180) days otherwise shall be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.

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

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

## **8. TERMINATION OF THE SETTLEMENT**

**8.1.** This Settlement is contingent upon Court approval. If the Court fails to grant Final Approval the Settlement in any material respect, the Settlement will be subject to termination by the Party adversely affected by such failure. Notwithstanding this paragraph, the Court's determination as to the motion of Fee and Cost Award and Service Award and/or any plan of distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Settlement Agreement or Settlement.

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

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

**8.4.** Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of February 18, 2022. BANA retains all rights regarding any defenses on the statute of limitations that it had as of February 18, 2022. In such circumstances, the Parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming the Action.

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

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

## **9. PROCEDURES FOR OPT-OUTS AND OBJECTIONS**

### **9.1. Out-Out Procedures.**

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

**9.1.2.** A proposed Settlement Class member may request to opt-out from the Settlement Class by sending a written, printed request for exclusion, addressed to “Opt-Out Requests: Bank of America Check Fee Class Action” at the Settlement Administrator’s address as shown in the Class Notice. The proposed Settlement Class Member’s opt-out request must contain his or her original signature, current postal address, and a specific affirmative statement that the proposed Settlement Class Member wishes to be excluded from the Settlement Class. If an Account has

more than one Accountholder, and if one Accountholder excludes himself or herself from the Settlement Class, then all Accountholders on that Account shall be deemed to have opted-out of the Settlement with respect to that Account, and no Accountholder shall be entitled to a payment under the Settlement. Opt-Out requests must be postmarked no later than the Opt-Out Deadline.

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

**9.2. List of Successful Opt-Outs.** Not later than five (5) business days following the Opt-Out Deadline, the Settlement Administrator shall provide Class Counsel and BANA's Counsel a complete list of the Successful Opt-Outs, together with all opt-out requests.

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

**9.4. Objections from Settlement Class Members.**

**9.4.1.** Any Settlement Class Member who does not opt-out but instead wishes to object to the Settlement or any matters described in the Class Notice may do so by filing with the Court a timely notice of his or her intention to object. Such notice shall state: (i) the objector's full name,



address, telephone number, and email address (if any); (ii) information identifying the objector as a Settlement Class Member, including evidence that the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing or assisting the objector, if any; (v) the identity of all counsel representing the objector who will appear at the Final Fairness Hearing, if any; (vi) a list of all Persons who will be called to testify at the Final Fairness Hearing in support of the objection, if any; (vii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation), if any; (ix) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action settlement within the last 3 years; (x) a list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any Person) has filed an objection to any proposed class action settlement within the last 3 years; (xi) a list, by case name, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative; and (xii) the objector's signature (an attorney's signature is not sufficient). To be timely, written notice of an objection in the appropriate form must be filed with the Settlement Administrator and/or Court by the Objection Deadline as ordered by the Court in the Preliminary Approval Order and served concurrently therewith upon Class Counsel and BANA's Counsel.

**9.4.2.** If the objection is made by or through an attorney, the written objection must also include: (a) the identity and number of the Settlement Class Members represented by objector's

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

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

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

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

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

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

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

## **10. ATTORNEYS' FEES AND COSTS**

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

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

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

## **11. SERVICE AWARD TO CLASS REPRESENTATIVE**

**11.1. Application for Service Award.** As part of the Motion for Final Approval, Class Counsel shall apply to the Court for a Service Award to be paid from the Settlement Amount to the Class Representative for serving as class representative in support of the Settlement. BANA will not oppose such a request of \$5,000.00 for the Class Representative.

**11.2. No Additional Obligation by BANA.** BANA shall have no other responsibility for or liability with respect to the payment of a Service Award to the Class Representative beyond the amount stated above for resolution of the Released Claims herein.

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

## **12. FINAL FAIRNESS HEARING AND FINAL APPROVAL**

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

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

### **13. RELEASE OF CLAIMS**

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

**13.2. Covenant Not To Sue.** The Class Representative, on behalf of himself and the Settlement Class Members, covenants and agrees: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any

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

#### **14. DISPUTES RELATING TO THE SETTLEMENT**

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

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

#### **15. MISCELLANEOUS PROVISIONS**

**15.1. Non-Disparagement:** Class Representative, Class Counsel, BANA, and BANA's Counsel shall not issue, or otherwise cause to be issued, any press release, advertisement, or Internet posting which (i) disparages the Class Representative, Class Counsel, BANA, or BANA's

Counsel with respect to any matters or issues alleged or asserted in the Action or relating to this Settlement; or (ii) includes evidence or information protected from disclosure by the agreement of the Parties in the Action.

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

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

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

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

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

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

<p><b>If to Class Representative:</b></p> <p>Jeff Ostrow (<i>pro hac vice</i>) Jonathan Streisfeld (<i>pro hac vice</i>) KOPELOWITZ OSTROW P.A. One West Las Olas Blvd., Suite 500</p>	<p><b>If to BANA:</b></p> <p>Brian A. Kahn (<i>pro hac vice</i>) MCGUIREWOODS LLP 201 N. Tryon Street, Suite 3000 Charlotte, NC 28202</p>
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Fort Lauderdale, Florida 33301 (954) 525-4100 ostrow@kolawyers.com streisfeld@kolawyers.com  Jeffrey Kaliel (pro hac vice) KALIELGOLD PLLC 1100 15 <sup>th</sup> Street N.W., 4th Floor Washington, D.C. 20005 (202) 350-4783 jkaliel@kaliellpc.com  Kenneth J. Grunfeld (PA 84121) Golomb Spirt Grunfeld 1835 Market Street, Suite 2900 Philadelphia, PA 19104 (215) 985-9177 kgrunfeld@golomblegal.com	Telephone: (704) 343-2000 Fax: (704) 343-2300 bkahn@mcguirewoods.com
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**15.8. Entire and Voluntary Agreement.**

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

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

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

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

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

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

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

**15.13. Computation of Time.** Except as expressly set forth herein, in computing any period of time prescribed or allowed by this Settlement Agreement, the provisions of Fed. R. Civ. P. 6 and the Civil Rules of Practice and Procedure for the Eastern District of Pennsylvania shall govern.

**15.14. Continuing Jurisdiction and Exclusive Venue.** Each of the Parties, each Settlement Class Member, and each of the Releasing Parties that are otherwise subject to the

jurisdiction of a United States court hereby irrevocably submits to the exclusive jurisdiction and venue of the United States District Court for the Eastern District of Pennsylvania for any suit, action, proceeding, case, controversy, or dispute arising from or related to this Settlement Agreement and/or Exhibits hereto and the negotiation, performance, or breach of same.

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

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

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

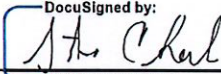
**15.18. Applicable Law.** This Settlement Agreement shall be interpreted under and governed by federal law. To the extent state law applies, the laws of the State of Pennsylvania shall apply, without regard to choice of law principles. All judicial proceedings regarding this Settlement shall be brought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

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

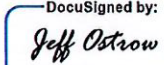
counterparts and by facsimile or email of PDF, both of which shall be deemed an original. Original signatures are not required. All executed counterparts shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts. A complete set of executed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

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

APPROVED BY PLAINTIFF AND CLASS COUNSEL

DocuSigned by:  
  
E82F9A8A57141C2...  
Steven Chiechina

Date: 6/4/2022


DocuSigned by:  
  
D8A1A5039BD0430...  
Jeff Ostrow  
Jonathan Streisfeld  
KOPELOWITZ OSTROW P.A.

Date: 6/4/2022

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

Date: Jun 5, 2022

APPROVED BY BANA AND COUNSEL FOR BANA

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

Date: 6/6/2022

  
Brian A. Kahn  
McGuireWoods LLP

Date: June 6, 2022

# EXHIBIT 1

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 OVERDRAFT FEES OR NSF FEES BETWEEN MAY 19, 2017, AND \_\_\_\_\_, 2022, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

**The District Court for the Eastern District of Pennsylvania 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.NSFODFeeCheckSettlement.com](http://www.NSFODFeeCheckSettlement.com)*

A Settlement has been reached with Bank of America, N.A (“BANA”) in a class action lawsuit about NSF Fees and Overdraft Fees (“OD Fees”) related to certain check transactions that were charged on accounts from **May 19, 2017, through \_\_\_\_\_, 2022.**

**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 Accountholders of BANA consumer checking and/or savings accounts who, during the Class Period, paid and were not refunded a NSF Fee and/or OD Fee in connection with (a) an ACH entry on their Account that was submitted by the merchant or the merchant’s bank with a “REDEP CHECK” indicator; or (b) a physical check (not an ACH transaction) that was re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee within the preceding 28 calendar days.

**What does the Settlement provide?** BANA will create a \$8,000,000 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 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 exclude yourself from it by \_\_\_\_\_, 2022. Unless you exclude yourself, 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 exclude yourself), you may object to it by \_\_\_\_\_, 2022.

**The Court’s Final Fairness Hearing.** The Court will hold a Final Fairness Hearing on \_\_\_\_\_, 2022. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel’s request for attorneys’ fees (up to 33.33% of the Settlement Fund) and expenses; and (3) a Service Award of \$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.NSFODFeeCheckSettlement.com](http://www.NSFODFeeCheckSettlement.com) or call 1-\_\_\_\_\_.*

# **EXHIBIT 2**

Checkin V. Bank of America, N.A. Settlement  
P.O. Box 5645  
Portland, OR 97228-5645

BARCODE  
NO-PRINT  
ZONE

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 certain Overdraft Fees or NSF Fees between May 19, 2017, and \_\_\_\_\_, 2022, you may be entitled to a payment from a class action settlement.**

1- \_\_\_\_\_

[www.NSFODFeeCheckSettlement.com](http://www.NSFODFeeCheckSettlement.com)

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<<COUNTRY>>



A Settlement has been reached with Bank of America, N.A. (“BANA”) in a class action lawsuit about NSF Fees and Overdraft Fees (“OD Fees”) related to certain check transactions that were charged on accounts from **May 19, 2017, through \_\_\_\_\_, 2022.**

**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 Accountholders of BANA consumer checking and/or savings accounts who, during the Class Period, paid and were not refunded a NSF Fee and/or OD Fee in connection with (a) an ACH entry on their Account that was submitted by the merchant or the merchant’s bank with a “REDEP CHECK” indicator; or (b) a physical check (not an ACH transaction) that was re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee within the preceding 28 calendar days.

**What does the Settlement provide?** BANA will create a \$8,000,000 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 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 exclude yourself from it by \_\_\_\_\_, 2022. Unless you exclude yourself, 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 exclude yourself), you may object to it by \_\_\_\_\_, 2022.

**The Court’s Final Fairness Hearing.** The Court will hold a Final Fairness Hearing on \_\_\_\_\_, 2022. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel’s request for attorneys’ fees (up to 33.33% of the Settlement Fund) and costs; and (3) a Service Award of \$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.NSFODFeeCheckSettlement.com](http://www.NSFODFeeCheckSettlement.com) or by calling 1-\_\_\_\_\_.**

# **EXHIBIT 3**

Steven Checchia v. Bank of America, N.A.

**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. (“BANA”), AND PAID CERTAIN OVERDRAFT FEE OR NSF FEES BETWEEN MAY 19, 2017, AND \_\_\_\_\_, 2022, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

The Court for the Eastern District of Pennsylvania has authorized this Notice; it is not a solicitation from a lawyer.

<b>SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION</b>	
<b>DO NOTHING.</b>	If you were assessed, paid, and were not refunded the types of fees that are being challenged in this case, then you will receive a 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 BANA, but you will not receive a payment. The deadline to opt-out of the Settlement is _____, 2022. 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 Class Notice, you may do so by filing with the Court a notice of your intention to object. The deadline to object to the Settlement is _____, 2022.

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

## BASIC INFORMATION

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

The lawsuit that is being settled is entitled *Steven Checchia v. Bank of America, N.A.*, Civil Action No. 2:21-cv-3585 (the “Action”). The person who sued is called the “Class Representative” or “Plaintiff.” The Defendant is “BANA.” The case is a “class action.” That means that the Class Representative is acting on behalf of the Settlement Class. The transactions at issue occurred **between May 19, 2017, and \_\_\_\_\_**.

The Settlement Class consists of all Accountholders of a BANA consumer checking and/or savings accounts who, during the Class Period, paid and were not refunded a NSF Fee and/or OD Fee in connection with (a) an ACH entry on their Account that was submitted by the merchant or the merchant’s bank with a “REDEP CHECK” indicator; or (b) a physical check (not an ACH transaction) that was re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee within the preceding 28 calendar days.

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 Class Notice because BANA’s records indicate that you are in the Settlement Class that was alleged to have been charged one or more of the fees at issue. The Court directed that the Class 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 OD Fees and NSF 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 current Settlement Amount, and it may take years of litigation before any payments would be made. By settling, the Settlement Class Members 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.

## WHO IS IN THE SETTLEMENT

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

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

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

### **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 exclude yourself from, or opt out of, the Settlement is \_\_\_\_\_, 2022.

The deadline to file an objection with the Court is \_\_\_\_\_, 2022.

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

If you do not like the Settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that 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.

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

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 will 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 that the Settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide Preliminary Approval of the Settlement, which is why you received this Class Notice. The Court will make a final decision regarding the Settlement at a Final Fairness Hearing, which is currently scheduled for \_\_\_\_\_, 2022.

### **THE SETTLEMENT PAYMENT**

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

BANA has agreed to create a Settlement Fund of \$8,000,000.00. As discussed separately below, Attorneys' Fees and Costs, a Service Award to the Class Representative, and Settlement Administration Costs will be paid out of this amount. Subject to Court approval, the Net Settlement Fund 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 attorney fees and costs?**

Class Counsel will request that the Court award up to 33.33% of the Settlement Amount as attorneys' fees plus reimbursement of litigation costs incurred in prosecuting the Action. The Court will decide the amount of the attorneys' fees based on a number of factors, including the risk associated with bringing the case, the amount of time spent on the case, the amount of costs incurred to prosecute the case, the quality of the work, and the outcome of the case.

## **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 \$5,000.00 for the Class Representative. The Service Award must be approved by the Court.

Subject to Court approval, the balance of the Settlement Amount after attorneys' fees and costs, the Service Award, and the Settlement Administrator's fees, also known as the Net Settlement Fund, will be divided among all Settlement Class Members entitled to Settlement Class Member Payments in accordance with the formula outlined in the Settlement Agreement found at [www.NSFODFeeCheckSettlement.com](http://www.NSFODFeeCheckSettlement.com). Current Accountholders of BANA as of the Effective Date of the Settlement Agreement will receive a credit to their BANA accounts for the amount they are entitled to receive. 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 Fairness Hearing on \_\_\_\_\_, 2022, 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 30 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 Agreement. If there are objections, then the Effective Date shall mean the next business day following the last date on which a notice of appeal directed to the entry of the Final Approval Order and Final Judgment and Order of Dismissal could have been timely filed but with no notice of appeal having been filed; or, should a notice of appeal be filed, it shall mean the next business day after the Final Approval Order and Final Judgment and Order of Dismissal is affirmed, all appeals are dismissed, and no further appeal is permitted.

## **OPTING-OUT OF THE SETTLEMENT**

### **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 be excluded from the Settlement in the *Steven Checchia v. Bank of America, N.A.* class action." Be sure to include your name, your address, and your signature. Your exclusion or opt-out request must be **postmarked by** \_\_\_\_\_, 2022, and sent to the following address:

Checchia v. Bank of America, N.A. Settlement  
Opt-Out Requests: Bank of America Check Fee Class Action  
P.O. Box 5645  
Portland, OR 97228-5645

### **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 obtain a Settlement Class Member Payment?**

No. If you exclude yourself, you will not be entitled to a payment.

## **OBJECTING TO THE SETTLEMENT**

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

You can object to the Settlement or any part of it that you do not like **IF** you do not opt-out, from the Settlement. (Settlement Class members who opt-out from the Settlement have no right to object to how other 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 that 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 Fairness 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) has filed an objection to any proposed class action settlement within the last 3 years; and
- 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;
- 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 Fairness 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 expenses 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 15 days before the Final Fairness Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney’s hourly rate.

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 \_\_\_\_\_, 2022, and served at the same time to Class Counsel and Defendant’s counsel to the following addresses:

<b>SETTLEMENT ADMINISTRATOR</b>	<b>CLERK OF COURT</b>	<b>CLASS COUNSEL</b>	<b>BANA’S COUNSEL</b>
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Checchia v. Bank of America Settlement P.O. Box _____ Portland, OR 97228-5645	United States Courthouse Eastern District of Pennsylvania 601 Market Street Philadelphia, PA 19106	Jeff Ostrow Jonathan Streisfeld KOPELOWITZ OSTROW P.A. 1 West Las Olas Blvd. Suite 500 Fort Lauderdale, FL 33301  Jeffrey Kaliel KALIELGOLD PLLC 1100 15th Street N.W. 4th Floor Washington, D.C. 20005  Kenneth J. Grunfeld GOLOMB SPIRT GRUNFELD 1835 Market Street Suite 2900 Philadelphia, PA 19104	Brian A. Kahn MCGUIREWOODS LLP 201 North Tryon Street Suite 3000 Charlotte, NC 28202
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### 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.

### THE COURT'S FAIRNESS HEARING

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

The Court will hold a Final Fairness Hearing on \_\_\_\_\_, 2022. 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 separately file a "Notice of Intent to Appear" with the Court no later than \_\_\_\_\_, 2022, 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.

### **IF YOU DO NOTHING**

#### **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 Settlement Fund net of attorneys' fees, Settlement Administration Costs, and the Class Representative Service Award. 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.

### **THE LAWYERS REPRESENTING YOU**

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

The Court ordered that the lawyers and their law firms referred to in this 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 Fairness Hearing. Class Counsel will file an application for Attorneys' Fees and Costs and will specify the amount being sought as discussed above. You may review a physical copy of the fee and cost application at the website established by the Settlement Administrator, [www.NSFODFeeCheckSettlement.com](http://www.NSFODFeeCheckSettlement.com).

### **GETTING MORE INFORMATION**

This Class Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at [www.NSFODFeeCheckSettlement.com](http://www.NSFODFeeCheckSettlement.com) (or at the Office of the Clerk of the Eastern District of Pennsylvania, which is located at 601 Market Street Philadelphia, PA 19106), by asking for the court file containing the Motion for Preliminary Approval of Class Settlement (the Settlement Agreement is attached to the motion).

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:

Checchia v. Bank of America Settlement  
P.O. Box \_\_\_\_\_ Portland, OR 97228-5645  
(XXX) XXX-XXXX  
[www.NSFODClassFeeSettlement.com](http://www.NSFODClassFeeSettlement.com)

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

# EXHIBIT 4

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

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 2:21-cv-3585

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**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT  
AND CONDITIONALLY CERTIFYING CLASS FOR SETTLEMENT PURPOSES**

The Parties to the above-captioned action 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<sup>1</sup> through arm's-length negotiations, after conducting appropriate discovery into the damages at issue. Under the Settlement Agreement, 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 claims in exchange for Defendant Bank of America, N.A.'s ("BANA") total payment of \$8,000,000.00, inclusive of all attorneys' fees and costs and Service Award to Plaintiff Steven Checchia, to create a Settlement Fund to benefit the Settlement Class, and non-monetary consideration in the form of an agreement to continue the cessation of the fee assessment practice at issue in this lawsuit for at least the next five years.

The Settlement has been filed with the Court, and Plaintiff has filed an Unopposed Motion for Preliminary Approval of the Settlement and for Certification of Class ("Motion").

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<sup>1</sup> First-letter capitalized terms in this Order shall, unless otherwise defined herein, have the same meaning and definition as in the Settlement Agreement.

Upon considering the Motion and exhibits thereto, the Settlement, the record in these proceedings, the representations and recommendations of Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to these proceedings; (2) the Parties have provided the Court with information sufficient to enable it to determine that Class 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 Plan; (8) the proposed Notice Plan 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 Fee and Cost Award ("Fee Application") and application for Service Award for Plaintiff, their rights to opt-out of the Settlement or object to the Settlement, Attorneys' Fees and Costs for Class Counsel, and/or Service Award for Plaintiff; (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 Fee Application and request for a Service Award for Plaintiff; 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 Order as if fully set forth herein. First-letter capitalized terms in this Order shall, unless otherwise defined herein, have the same meaning and definition as in the Agreement.

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 of BANA consumer checking and/or savings accounts (“Accounts”) in the United States who, during the Class Period, paid and were not refunded a NSF Fee and/or OD Fee in connection with: (a) an ACH entry on their Account that was submitted by the merchant or the merchant’s bank with a “REDEP CHECK” indicator; or (b) a physical check (not an ACH transaction) that was re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee within the preceding 28 calendar days.

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

The Class Period is May 19, 2017, through the date of this Order.

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

a. Numerosity: In the Action, hundreds of thousands of individuals are members of the proposed Settlement Class. Their joinder is impracticable. Thus, the Rule 23(a)(1) numerosity

requirement is met.

b. 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.

c. 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.

d. 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.

e. 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, Steven Checchia, is designated as Class Representative.

7. The following attorneys and firms are appointed as Class Counsel: Jeff Ostrow and Jonathan M. Streisfeld of Kopelowitz Ostrow P.A.; Jeffrey D. Kaliel of KalielGold PLLC; and Kenneth J. Grunfeld of Golomb Spirt Grunfeld, P.C.

#### **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, as fair, reasonable and adequate. The Court finds that it has information sufficient to determine that notice should be given to the Settlement Class. The information provided indicates that 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 the exhibits appended to the Motion, is within the range of reasonableness and likely 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 to schedule a 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 the Class Notice required by this 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 Plan and Direction to Effectuate Notice**

11. The Court approves the form and content of the Class Notice to be provided to the Settlement Class, substantially in the forms attached to the Agreement. The Court further finds that the Notice Plan is the best practicable under the circumstances and reasonably calculated to apprise the Settlement Class members 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/or Service Award for Plaintiff. The Notice Plan will provide sufficient notice to all persons entitled to notice. The Notice Plan 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 Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator.

13. The Settlement Administrator shall implement the Notice Plan, as set forth in the Agreement, including using the forms of Email Notice, Postcard Notice, and Long Form Notice attached to the Agreement and approved by this Order. Class Counsel and BANA's Counsel will implement immaterial changes to those notices as necessary to effectuate the Notice Plan.

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

14. A Final Approval Hearing shall be held before the Court on \_\_\_\_\_, 2022 at \_\_\_:\_\_\_ a.m./p.m. in Courtroom # \_\_\_\_\_ of the United States District Court for the Eastern District of Pennsylvania, to determine, among other things: (a) whether the Settlement should be granted Final Approval as fair, reasonable, and adequate; (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 Plaintiff, 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 be excluded from the Class may exercise their right to opt-out of the Class by completing and mailing a request to the address set forth in the Class Notice. Such request must be postmarked no later than the Opt-Out Deadline, as specified in the Class 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 be excluded from 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 Class 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 exclude 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 Order, 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 Fee and Cost Award, and Service Award no later than 45 days prior to the Final Approval Hearing.

21. The Parties shall file their responses to timely filed objections no later than 10 days prior to the Final Approval Hearing.

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

22. As detailed more fully in Section 8 of the Agreement, in the event of a termination

as provided in the Settlement Agreement, 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 enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of 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 \_\_\_\_\_, 2022:

- a. The Settlement Administrator shall complete the Mailed 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 Fee and Cost Award, and/or the Service Award no later than 30 days before the Final Approval Hearing;

- d. Settlement Class members must file 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 10 days before the Final Approval Hearing.

DONE AND ORDERED in \_\_\_\_\_, Pennsylvania, this \_\_\_ day of \_\_\_\_\_, 2022.

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Honorable R. BARCLAY SURRICK  
United States District Judge

# EXHIBIT B



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

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

Plaintiff

CASE NO. 2:21-cv-3585

v.

BANK OF AMERICA, N.A.,

Defendant

\_\_\_\_\_ /

**DECLARATION OF JEFF OSTROW IN SUPPORT OF PLAINTIFF'S  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT AND FOR CERTIFICATION OF CLASS**

Jeff Ostrow declares as follows:

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

2. After arm's-length negotiation and settlement discussions, including a mediation with mediator Judge Diane M. Welsh (ret.) of JAMS, Plaintiff, proposed Class Counsel, and BANA entered into the Settlement Agreement.

3. The firm resume of Kopelowitz Ostrow P.A. is attached as *Exhibit 1* to this declaration.

\_\_\_\_\_  
<sup>1</sup>The capitalized terms used herein shall have the same meanings as those defined in the Settlement Agreement and Release attached to the Motion for Preliminary Approval as *Exhibit A*.

4. The firm resume of KalielGold PLLC is attached as *Exhibit 2* to this declaration.

5. The firm resume of Golomb Spirt Grunfeld, P.C. is attached as *Exhibit 3* to this declaration.

### **Class Counsel's Investigation**

6. Before filing the Action, Class Counsel spent many hours investigating the claims of several potential plaintiffs against BANA. Class Counsel interviewed Plaintiff and gathered documents and information about BANA's alleged conduct and its impact on Accountholders, essential to Class Counsel's ability to understand BANA's alleged conduct, the material Account agreement language, and potential remedies.

7. Class Counsel also expended significant resources researching and developing the legal claims at issue. Class Counsel are familiar with the claims as they have litigated and resolved several similar cases with the same factual and legal issues. Class Counsel has experience in understanding the damages at issue, what information is critical in determining class membership, and what data is necessary to calculate each Settlement Class Member's respective damages. Once the Action was filed, Class Counsel spent a significant amount of time analyzing data regarding BANA's NSF Fee and OD Fee revenue to analyze the damages.

8. Class Counsel, fully informed of the claims' merits, negotiated the Settlement with the assistance of Judge Welsh, while zealously advancing the position of Plaintiff and the members of the Settlement Class and being fully prepared to continue to litigate rather than accept any settlement that was not in the best interest of Plaintiff and the Settlement Class.

9. In summary, prior to negotiating the Settlement, Class Counsel spent significant time conferring with Plaintiff, investigating facts, researching the law, preparing a well-pleaded complaint, and engaging in sufficient discovery.

### **Background and Procedural History**

10. The Settlement in this novel case—which follows and significantly adds to an earlier, similar case litigated by Class Counsel in *Morris et al. v. Bank of America, N.A.*, No. 3:18-CV-157-RJC-DSC (W.D.N.C.)—will provide substantial benefits to the Settlement Class. If approved, the Settlement will include BANA’s cash payment of \$8,000,000.00 into a common fund. Further, after the initiation of this Action, BANA ceased the practice at the heart of this Action – charging more than one fee on a check that is re-presented for payment – and as a result of this Settlement, has committed to not re-establish the practice for at least five years. BANA is one of the first major U.S. banks to do so. BANA’s agreement in this regard to that Practice Change will no doubt result in a significant intangible value for the Settlement Class and future BANA Accountholders. Thus, the total value of the Settlement is outstanding when considering the common fund and the intangible benefit of BANA’s five-year cessation of the practice of charging the Class Fees.

#### **1. The Related *Morris* Litigation**

11. This case concerns BANA’s practice of charging NSF Fees and/or OD Fees on checks processed for payment more than one time after having been initially returned for insufficient funds and charged an NSF Fee. The instant Action, which concerns re-presented paper checks and paper checks processed electronically, follows *Morris et al. v. Bank of America, N.A.*, No. 3:18-CV-157-RJC-DSC (W.D.N.C.), which exclusively concerned the assessment of NSF Fees and OD Fees on electronic payments undertaken over the automated clearing house (ACH) network. One of the primary questions raised in this Action and in *Morris* is whether BANA was authorized under its Account agreements to assess more than one NSF Fee and/or OD Fee on the same item when that item is re-presented for payment multiple times after having initially been

returned for insufficient funds and charged an NSF Fee. Both the Action and *Morris* have the same or similar contract provisions and theories of liability that would hinge on interpreting those provisions but address different transaction types (paper checks versus ACH debits).

12. *Morris* was heavily litigated by Class Counsel, who invested thousands of hours of time on motions practice and discovery in that matter. For example, on August 27, 2018, BANA moved to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6), arguing that none of its actions violated its relevant contractual provisions or state consumer protection laws. *See* W.D.N.C. ECF Nos. 22-23. On January 8, 2019, United States Magistrate Judge David S. Cayer issued a memorandum opinion and recommendation (“M&R”) to grant in part and deny in part BANA’s motion to dismiss. Judge Cayer recommended denying dismissal of the breach of contract and consumer protection claims but dismissing with prejudice the conversion, unjust enrichment, and breach of the implied covenant of good faith and fair dealing claims. *See* W.D.N.C. ECF No. 38.

13. On March 29, 2019, Judge Robert J. Conrad adopted the M&R in part. The breach of contract, California Unfair Competition Law, and North Carolina Unfair and Deceptive Trade Practices Act claims survived the motion to dismiss, but the conversion, unjust enrichment, breach of the implied covenant of good faith and fair dealing, Oklahoma Consumer Protection Act, and Georgia Fair Business Practices Act claims were dismissed. W.D.N.C. ECF No. 42.

14. After an additional North Carolina plaintiff was added, BANA answered the third amended complaint on January 28, 2020. *See* ECF No. 66. The parties then began an extensive discovery effort that lasted nearly two years. Plaintiffs served three sets of interrogatories and document requests, as well as multiple Fed. R. Civ. P. 30(b)(6) deposition notices and third-party subpoenas on five non-party banks and the National Automated Clearing House Association. BANA served written discovery requests on the *Morris* plaintiffs and non-party subpoenas on

various third-party merchants.

15. The Parties exchanged tens of thousands of pages of documents and relevant information. BANA produced and plaintiffs' counsel and their experts reviewed internal documents related to BANA's NSF Fee and OD Fee practices including Account agreements, marketing and internal studies on NSF/OD Fees, customer complaints about the challenged fees, and transactional database excerpts showing how much money BANA made from the challenged fees.

16. Several BANA corporate representatives were deposed, as were several plaintiffs. *Id.* Plaintiffs engaged the services of a well-regarded expert in bank fee cases to evaluate BANA's data for purposes of ascertaining class members and estimating damages in *Morris*. The expert analyzed millions of account transactions that occurred during the class period. Further, in preparation for their motion for class certification, the *Morris* plaintiffs engaged a consumer perception expert to address BANA's challenged disclosures.

17. Ultimately, a class settlement was reached in *Morris* pertaining to the multiple fees charged on ACH debits. Class Counsel here then undertook to pursue the instant putative class action to challenge multiple fees charged on check transactions benefiting from the extremely well-developed facts learned in *Morris*. The Parties here had the benefit of the expertise, knowledge, and factual background developed in *Morris*, but they still had to explore issues related to the check transactions at issue here.

## **2. The Instant Litigation**

18. Plaintiff, a Pennsylvania citizen, filed this Action in the Court of Common Pleas of Philadelphia County on May 19, 2021, alleging BANA breached its Account agreements, violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75.1-1, *et seq.*, and

violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*, by charging NSF Fees and OD Fees on checks that were re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee. *See* ECF No. 1-1.

19. On August 11, 2021, BANA removed the Action to this Court. *See* ECF No. 1. With the benefit of the extensive litigation in *Morris*, which provided a unique and efficient insight to the legal risks and facts of this Action, the Parties extended the deadlines for BANA to respond to the Complaint and for Plaintiff to file a motion to remand the Action to participate in an early mediation. *See* ECF Nos. 2, 4-5, 7, 9.

20. To facilitate meaningful settlement discussions, the Parties engaged in an extensive informal discovery effort that included a data analysis that lasted months. The analysis was the subject of intensive discussion and negotiation between the Parties and numerous alterations and amendments to the analysis occurred during this process. It was not until such analysis was completed that settlement discussions proceeded.

21. Class Counsel prepared a detailed, confidential mediation statement. The Parties mediated the matter with Judge Welsh on February 18, 2022, which resulted in an agreement in principle to settle this Action.

22. The Parties filed a notice of settlement on March 11, 2022. *See* ECF No. 11. The Court then directed the Parties to file this Motion by June 9, 2022. *Id.* The Parties then proceeded with further confirmatory discovery related to damages, including scheduling a deposition of BANA's corporate representative. The Parties have also worked extensively to draft the Settlement Agreement, identify and retain the Settlement Administrator, and build the Class List for the Notice Plan.

**Terms of the Settlement**

23. BANA will pay \$8,000,000.00 into a Settlement Fund that will be used to pay Settlement Class Member Payments, Settlement Administration Costs, any Attorneys' Fees and Costs the Court may award to Class Counsel, and any Service Award the Court may award to the Class Representative.

24. Further, after the initiation of this Action, BANA ceased the practice at the heart of this litigation – charging more than one fee on a check that is re-presented for payment – and as part of this Settlement, has committed to not re-establish the practice and assess the challenged fees for at least five years.

25. Settlement Class Members do not have to submit claims or take any other affirmative step to receive Settlement benefits. Instead, BANA and the Settlement Administrator will automatically distribute the Net Settlement Fund pro rata via either Account credits or checks. Each Settlement Class Member Payment is ultimately dependent on his or her specific Account activity and Class Fees charged and the number of Settlement Class Members, along with the Court's determination of Attorneys' Fees and Costs and Service Award.

26. After 240 calendar days from the Effective Date, any excess funds remaining from the Settlement Amount shall, if economically feasible, be distributed to the Settlement Class Members who successfully cashed checks or received a credit to their Accounts. 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. There will be no reversion to BANA.

27. In exchange for the Settlement benefits, all Settlement Class Members will be

deemed to have released BANA from the Released Claims.

28. To date, Class Counsel has not been paid for their efforts or reimbursed for litigation costs incurred, having taken on this Action on a contingent fee basis. The Settlement Agreement provides that Class Counsel will apply for an award of Attorneys' Fees and Costs of up to \$2,666,666.66, which represents 33.33% of the cash Settlement Amount. Moreover, this does not take into account the intangible value of BANA's agreement to continue for five years the cessation of the practice of charging Class Fees. BANA agrees Class Counsel are entitled to attorneys' fees to be determined by this Court. The Fee and Cost Award will serve to compensate Class Counsel for the time, risk, and expenses incurred to pursue the class claims.

29. The Settlement Agreement also provides that a \$5,000.00 Service Award may be requested for Plaintiff serving as the Class Representative. BANA does not oppose such request.

30. The Parties did not discuss Attorneys' Fees and costs or a Service Award until they agreed on the material terms of the Settlement, Notice Plan, and scope of the Released Claims.

#### **Risks of Continued Litigation**

31. Here, Plaintiff's \$8,000,000.00 cash recovery, plus the intangible value of the Practice Change, is outstanding, given the complexity of the litigation and the significant barriers that would loom in the absence of settlement: motions to dismiss, for class certification, and for summary judgment; trial; and potential appeals after class certification and a Plaintiff's verdict. Based on extensive analysis of BANA's data, Class Counsel estimate that the Settlement Class's most likely recoverable damages at trial would have been approximately \$20 million. Thus, the Settlement will result in the recovery of approximately 40% percent of the most probable damages, without further risks attendant to litigation.

32. In light of the inherent litigation risks, Plaintiffs and proposed Class Counsel submit



that it is a very fair and reasonable recovery, and there are no grounds to doubt the Agreement's fairness. The Settlement benefits fairly and adequately compensate Settlement Class Members for the harm they suffered, and considering the risks of litigation, represents an excellent result for the Settlement Class.

33. Class Counsel weighed a number of factors before deciding to settle. First, Class Counsel considered that BANA contends that the Account agreements authorize the assessment of the challenged fees. It was a distinct possibility that a jury could find in BANA's favor on this issue. Next, Class Counsel considered the possibility that this Court would deny class certification. Class Counsel also considered the amount of the Settlement in comparison to a number of other similar bank fee settlements around the country and found it to be in line with those settlements. Finally, obtaining BANA's agreement to the Practice Change by which it agrees to cease charging the challenged Class Fees for at least five years improved the value of the Settlement. The Settlement Class will receive real value from the Settlement Fund and the Practice Change without having to take the step of submitting a claim or having to wait years for a trial and potential appeal.

34. The Parties' negotiations were principled, with each side basing their offers and counteroffers on an analysis of the evidence bearing on BANA's potential liability and the damages data BANA provided. In addition, the negotiations were based on the Parties' respective assessments of the strengths and weaknesses of their positions, and interpretations of the law relative to those positions.

35. Class Counsel are particularly experienced in the litigation, certification, trial, and settlement of class action cases. They zealously represented Plaintiff throughout this Action and the plaintiffs in *Morris*. The negotiations benefited from their years of experience and familiarity with the pertinent legal and factual issues, as well as other cases involving similar claims and

defenses. Class Counsel thoroughly investigated and analyzed Plaintiff's claims, enabling them to gain an understanding of the evidence related to central questions in the Action and prepared them for well-informed settlement negotiations.

36. Class Counsel had the general benefit of years of experience in litigating bank fee class actions across the country involving similar claims, and a familiarity with BANA's practices at issue in *Morris* and other cases against BANA. As detailed above, Class Counsel conducted a thorough investigation and analysis of Plaintiff's claims and engaged in sufficient discovery. Analysis of data provided concerning the challenged fees charged to members of the Settlement Class enabled an understanding of the evidence related to central questions in the Action, and prepared Class Counsel for well-informed settlement negotiations at mediation. Based on their experience with the issues presented in this Action, Class Counsel were extremely well-positioned to confidently evaluate the strengths and weaknesses of Plaintiffs' claims and prospects for success at the pleadings stage, class certification, at summary judgment, at trial, and in a post-judgment appeal.

37. The Parties concluded the benefits of settlement in this case outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with contested class certification proceedings and possible interlocutory appellate review if granted, completing the classwide merits discovery if the class was certified, pretrial motion practice, trial, and finally appellate review.

38. The Settlement in this case is the result of intensive, arm's-length negotiations, free of collusion between experienced attorneys, aided by a well-respected mediator, who are familiar with class action litigation and with the legal and factual issues of this Action, including from litigation in the *Morris* matter. The negotiations did not begin in earnest until an extensive data

analysis was requested, completed, and evaluated by Class Counsel in this case.

39. Plaintiff maintains that his claims are meritorious; that he would establish liability and recover substantial damages if the case proceeded to trial; and that the final judgment recovered in favor of Plaintiff and the certified class would be affirmed on appeal. But Plaintiff's ultimate success would require him to prevail, in whole or in part, at all of these junctures. Conversely, BANA's success at any of these junctures could or would have spelled defeat for Plaintiff and the Settlement Class. Thus, continued litigation posed significant risks and numerous uncertainties, as well as the time, expense, and delay associated with trial and appellate proceedings.

40. On the basis of Class Counsel's investigation into this case and experience with and knowledge of the law and procedure governing the claims of Plaintiff and the Settlement Class, it is Class Counsel's belief that it is in the best interests of the Settlement Class to enter into this Settlement. Indeed, in light of the risks, uncertainties, and delays associated with continued litigation, the Settlement represents a significant achievement by providing guaranteed benefits to Settlement Class Members in the form of direct cash compensation.

41. With this Settlement, Plaintiff achieved the desired goal in this litigation—i.e., obtaining repayment of the complained-about Class Fees for Settlement Class Members.

42. Plaintiffs and Class Counsel are confident in the strength of their case, but they are also pragmatic in their awareness of the various defenses available to BANA, both on the merits and as to certification of a litigation class, and the risks inherent to litigation of this magnitude. Plaintiff and the Settlement Class faced significant legal risks in this case, including BANA's challenge to the viability of Plaintiff's claim. Though plaintiffs around the country have frequently survived motions to dismiss the theory of liability being pursued in this Action, that has not been

true in all cases, and to date Class Counsel, who regularly litigate these cases around the country, are unaware of any case that has proceeded to trial on this theory. Therefore, even with pretrial success in showing that contracts similar to those at issue in this case could reasonably be construed in favor of the Accountholders, genuine risks exist that Plaintiff might not prevail at class certification, or would lose at summary judgment, at trial, or on appeal.

43. A major risk is that the Court or a jury might find that the language in BANA's Account agreements permits defenses that the contract permitted BANA to charge the challenged Class Fees, and that BANA sufficiently disclosed its multiple fee practice for checks that were represented such that those practices were not deceptive or misleading. Indeed, a number of courts across the country have dismissed similar claims at the pleadings stage. *See, e.g., Lambert v. Navy Fed. Credit Union*, No. 1:19-cv-103-LO-MSN, 2019 WL 3843064 (E.D. Va. Aug. 14, 2019); *Page v. Alliant Credit Union*, No. 19-CV-5965, 2020 WL 5076690 (N.D. Ill. Aug. 26, 2020); *Toth v. Scott Credit Union*, No. 20-CV-00306-SPM, 2021 WL 535549 (S.D. Ill. Feb. 12, 2021), *reconsideration denied*, No. 19-CV-5965, 2021 WL 1546437 (N.D. Ill. Apr. 20, 2021); *Ross v. NavyArmy Cmty. Credit Union*, No. 2:21-cv-168, 2022 WL 100110 (S.D. Tex. Jan. 11, 2022) (same). Also, because BANA's practices regarding Class Fees had been in place for many years, the Settlement Class (and the Class Representative) faced potential statute of limitations, estoppel, and waiver defenses, among other affirmative defenses that would be pled. In addition, BANA would have asserted numerous defenses to class certification that raise substantial litigation risks. Each of these risks, by itself, could easily have impeded Plaintiff's and the Settlement Class's successful prosecution of these claims at trial and in an eventual appeal. Under the circumstances, Plaintiff and Class Counsel appropriately determined the Settlement reached with BANA outweighs the gamble of continued litigation.

44. Given these risks, a settlement that provides members of the Settlement Class with a substantial percentage of the most likely recoverable damages falls within the range of possible approval.

45. The claims and defenses in this Action are complex, as is clear by Class Counsel's efforts in the sister *Morris* case, which was hard fought for years, with numerous depositions, third party discovery, and hundreds of thousands of pages of documents produced. There is no doubt that continued litigation here would be difficult, expensive, and time-consuming. The risks and obstacles in this case are just as great as those in other bank fee cases. This case would likely take many more years as well litigating in this Court and the appellate courts to successfully prosecute.

46. One of the most expensive aspects of ongoing litigation in this case involves the retention of experts to perform data analyses and to present those analyses in expert reports, at depositions, and at trial. As was the case in *Morris*, Plaintiff would likely have to rely on a damages expert and experts in the fields of marketing and banking had the case proceeded to trial. These considerations, and the other considerations noted above, militate heavily in favor of the Settlement.

47. The proposed Settlement is the best vehicle for the Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

48. The total value of the Settlement, including the significant intangible value of the Practice Change, is fair and reasonable in light of BANA's defenses and the challenging and unpredictable path of litigation Plaintiff would have faced absent a settlement.

#### **Class Treatment Is Appropriate**

49. As stated previously, Class Counsel has significant experience in the litigation, certification, trial, and settlement of national class actions, including numerous claims against

banks and credit unions, through their active roles similar class actions throughout the country, many of which have settled and received final approval. *See Exhibits 1-3.*

50. Class Counsel has, collectively, decades of experience in class action litigation and has successfully handled national, regional, and statewide class actions in both state and federal courts. Class Counsel has successfully litigated and resolved many other consumer class actions including dozens against financial institutions related to improper fee assessments, recovering hundreds of millions of dollars for those classes. The experience, resources, and knowledge Class Counsel bring to the Actions is extensive and formidable.

51. The Parties recommend Epiq Class Action & Claims Solutions, Inc., as the Settlement Administrator, one of the leading notice administration firms in the United States. The Settlement Administrator will oversee the Notice Plan, which is designed to provide the best notice practicable and is tailored to take advantage of the information BANA has available about the Settlement Class.

52. The Class Notice and Notice Plan constitute sufficient notice to all persons entitled to notice, satisfying all applicable requirements of law, including Fed. R. Civ. P. 23 and constitutional due process. The Notice Plan is reasonably calculated to apprise Settlement Class Members of the material Settlement terms; a date by which they may opt-out from the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the Final Approval Hearing date; and the Settlement Website address where the Settlement Class may access the Agreement and other related documents. The Notice Plan is designed to reach a high percentage of the Settlement Class and exceeds the requirements of constitutional due process.

53. The numerosity requirement is satisfied because the Settlement Class consists of hundreds of thousands of current and former Accountholders, all of whom are readily ascertainable

and precisely identifiable from BANA's electronic records, and joinder of all such persons in each class is impracticable.

54. The Settlement Class Members' claims arise from a common nucleus of facts because all Settlement Class Members maintained Accounts and were assessed and paid Class Fees. Common legal issues also unite the Settlement Class. They include: (1) the elements of Plaintiff's claims and BANA's defenses; (2) whether BANA breached its contracts with Plaintiff and Settlement Class Members and violated consumer protection laws when BANA assessed Class Fees; (3) whether Plaintiff and the Settlement Class Members have sustained damages as a result of BANA's business practices; and (4) the measure of damages owed to Plaintiff and Settlement Class Members. There are no issues of law that affect only individual Settlement Class Members. Thus, commonality and predominance are met.

55. Typicality is also met here. Here, Plaintiff's claims are based on the same facts and underlying legal theories as those of the Settlement Class. Plaintiff's claim is typical of the Settlement Class. Like other Settlement Class Members, Plaintiff was subjected to the same fee practice, claims the same injuries, and will benefit from the Settlement relief.

56. Plaintiff's interests are coextensive with, and not antagonistic to or in conflict with, the interests of the Settlement Class Members because Plaintiff and the absent members of the Settlement Class have the same interest in the relief afforded by the Settlement, and the absent members of the Settlement Class have no diverging interests. As discussed above, Plaintiff is pursuing the same legal theory as the rest of the Settlement Class Members relating to the same course of BANA's conduct. Plaintiff and other Settlement Class Members' claims turn on the same claims alleged in the Complaint, that BANA improperly assesses and collects Class Fees. In addition, Plaintiff seek remedies equally applicable and beneficial to himself and all other

members of the Settlement Class.

57. Plaintiff is represented by qualified and competent counsel who have extensive experience and expertise prosecuting complex litigation and consumer class actions, including consumer actions similar to the instant case, and have been appointed class counsel in prior and similar cases, and have the resources necessary to prosecute the Actions to their conclusion. They have recovered hundreds of millions of dollars for classes they represented in similar cases. Class Counsel are qualified to represent the Settlement Class and will, along with Plaintiff, vigorously protect the interests of the Settlement Class. *See Exhibits 1-3.*

58. There is no concern for superiority because Accountholders have not shown an interest in controlling the prosecution of their claims, this being the only case to address the challenged Class Fees, and it is desirable to concentrate the litigation of these relatively small value individual claims into a single proceeding.

59. Finally, the Third Circuit's ascertainability requirement is definitely met. Settlement Class Members will be identified because they were assessed Class Fees during the Class Period. Readily available BANA business records allow for the identification of the Settlement Class Members and direct distribution of Settlement Class Member Payments. Settlement Class Members need not prove their inclusion in the Settlement Class by submitting a claim form.

I declare under penalty of perjury that the foregoing is true of my own personal knowledge.  
Executed in Fort Lauderdale, Florida this 9th day of June, 2022.

/s/ Jeff Ostrow  
JEFF OSTROW



# EXHIBIT 1



## FIRM RESUME

One West Las Olas Boulevard, Suite 500  
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**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 26 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: being listed among the "Legal Elite Attorneys" and as "Florida Super Lawyers"; achieving an AV® Preeminent™ rating by the Martindale-Hubbell peer review process; being Board Certified in their specialty; serving as in-house counsel for major corporations, as a city attorney handling government affairs, as a public defender, and as a prosecutor; 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 co-lead counsel and liaison counsel in many high-profile class actions. Currently, the firm serves as well as co-lead counsel in a multidistrict class products liability action in the Southern District of Florida, *In re Zantac (Ranitidine) Prods. Liab. Litig.*, MDL 2924, and liaison counsel in a multidistrict class action antitrust case against four of the largest contact lens manufacturers in the Middle District of Florida, *In Re: Disposable Contact Lens Antitrust Litigation*, MDL 2626.

Further, the firm has served or is currently serving as lead or co-lead counsel in dozens of certified and/or proposed class actions against national and regional banks involving the unlawful re-sequencing of debit and ATM transactions resulting in manufactured overdraft fees, and other legal theories pertaining to overdraft fees and insufficient funds (NSF) fees. The cases are pending, or were pending, in various federal and state jurisdictions throughout the country, including some in multidistrict litigation pending in the Southern District of Florida and others in federal and state courts dispersed throughout the country. KO's substantial knowledge and experience litigating overdraft class actions and analyzing overdraft damage data has enabled the firm to obtain about a dozen multi-million dollar settlements (in excess of \$500 million) for the classes KO represents.

Additionally, other current cases are being litigated against automobile insurers for failing to pay benefits owed to insureds with total loss vehicle claims; data breaches; false advertising; defective consumer products and vehicles; antitrust violations; illegal online gambling applications; 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, an aircraft maker 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 the handling of cases against Bausch & Lomb in connection with its Renu with MoistureLoc product, Wyeth Pharmaceuticals related to Prempro, Bayer Corporation related to its birth control pill YAZ, Howmedica Osteonics Corporation related to the Stryker Rejuvenate and AGB II hip implants, 3M Corporation related to the Combat Arms Earplugs, and the manufacturers of Zantac/Ranitidine. In connection with the foregoing, some of which has been litigated within the multidistrict arena, the firm has obtained 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**

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*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

*Perri v. Notre Dame Federal Credit Union*, 71C01-1909-PL-000332 (Cir. Ct. St. Joseph 2021) - \$800,000

*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 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**

*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

**CONSUMER  
PROTECTION**

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*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

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

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

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**MASS  
TORT**

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

*In re Disposable Contact Lens Antitrust Litig.*, MDL 2626 (M.D. Fla.) - Liaison 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 Liability Litigation*, MDL Docket No. 1507, No. 03-cv-1507 (E.D. Ark.)

# JEFF OSTROW

Managing Partner

## ***Bar Admissions***

The Florida Bar

## ***Court Admissions***

Supreme Court of the United States

U.S. Court of Appeals for the Eleventh 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

## **Education**

Nova Southeastern University, J.D. - 1997

University of Florida, B.S. – 1994

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



Jeff Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice immediately upon graduation from law school in 1997, co-founded the current firm in 2001, and has since grown it to nearly 50 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.

Mr. Ostrow is an accomplished trial attorney who represents both Plaintiffs and Defendants, successfully trying many cases to verdict involving multi-million dollar damage claims in state and federal courts. Currently, he serves as lead counsel in nationwide and statewide class action lawsuits against many of the world'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 customers, as well as monumental changes in the way banks assess fees. In addition, Mr. Ostrow has litigated consumer class actions against some of the world's largest clothing retailers, health 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.



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, FoxNews, 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, the NFL, NBA and MLB.

In addition to the law practice, he is the President of ProPlayer Sports LLC, a full-service sports agency and marketing firm. He represents both Olympic swimmers and select NFL athletes and is licensed by both the NFL Players Association and the NBA Players Association as a certified Contract Advisor. Mr. Ostrow handles all player-team negotiations of contracts, represents his clients in legal proceedings, negotiates all marketing 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 United States Anti-Doping Agency.

He is the founder and President of Class Action Lawyers of American, a member of the Public Justice Foundation, and 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 won multi-million dollar verdicts. Additionally, he has been named as one of the top lawyers in Florida by Super Lawyers® for several years running, honored as one of Florida's Legal Elite Attorneys, recognized as a Leader in Law by the Lifestyle Media Group®, and nominated by the South Florida Business Journal® as a finalist for its Key Partners Award. Mr. Ostrow is a recipient of the 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. 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. He has previously sat on the boards of a national banking institution and a national healthcare marketing company.



# 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 Beach 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 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, and data breach. In addition, Mr. Streisfeld has 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. Mr. Streisfeld also provides 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 served for many years on 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.



# DANIEL TROPIN

Partner

## ***Bar Admissions***

The Florida Bar

## ***Court Admissions***

U.S. District Court, Southern District of Florida

U.S. District Court, Middle District of Florida

## ***Education***

University of Virginia, J.D. - 2012

Emory University, B.A. - 2008

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

Daniel Tropin is a litigator who specializes in complex commercial cases and class action litigation. Mr. Tropin joined the law firm as a partner in 2018, and has a wealth of experience across the spectrum of litigation, including class actions, derivative actions, trade secrets, arbitrations, and product liability cases. Mr. Tropin is appointed to the Leadership Development Committee in *In re Zantac (Ranitidine) Prods. Liab. Litig.*, MDL 2924.

Mr. Tropin graduated from the University of Virginia law school in 2012, and prior to joining this firm, was an associate at a major Miami law firm and helped launch a new law firm in Wynwood. He was given the Daily Business Review's Most Effective Lawyers, Corporate Securities award in 2014. His previous representative matters include:

- Represented bank and credit union accountholders in dozens of class actions challenging overdraft and insufficient funds fees.
- Represented a major homebuilder in an action against a former business partner, who engaged in a fraud and defamation scheme to extort money. Following a jury trial, the homebuilder was awarded \$1.02 billion in damages. The award was affirmed on appeal.
- Represented the former president and CEO of a cruise line against a major international venture capital conglomerate, travel and entertainment company, based on allegations of misappropriation of trade secrets, breach of a non-disclosure agreement, and breach of a partnership agreement.
- Represented the CEO of a rapid finance company in an action seeking injunctive relief to protect his interest in the company.
- Represented a medical supply distribution company an action that involved allegations of misappropriation and breach of a non-circumvention agreement.
- Represented a mobile phone manufacturer and distributor in a multi-million-dollar dispute regarding membership interests in a Limited Liability Company, with claims alleging misappropriation of trade secrets and breach of fiduciary duty.
- Represented a major liquor manufacturer in a products liability lawsuit arising out of an incident involving flaming alcohol.



# JOSH LEVINE

Partner

***Bar Admissions***

The Florida Bar

***Court Admissions***

U.S. Court of Appeals for the Fifth Circuit  
U.S. Court of Appeals for the Sixth Circuit  
U.S. Court of Appeals for the Eleventh Circuit  
U.S. District Court, Southern District of Florida  
U.S. District Court, Middle District of Florida  
U.S. District Court, Northern District of Illinois

***Education***

University of Miami School of Law, J.D. - 2011  
University of Central Florida, B.A. - 2006

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

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Josh Levine is a litigation attorney, and his practice takes him all over the State of Florida and the United States. Mr. Levine focuses on civil litigation and appellate practice, primarily in the areas of class actions and commercial litigation.

Mr. Levine has handled over 175 appeals in all five of Florida's District Courts of Appeal and the Florida Supreme Court, as well as multiple federal appellate courts. Mr. Levine has represented both businesses and individuals in litigation matters, including contractual claims, fraud, breach of fiduciary duty, negligence, professional liability, enforcement of non-compete agreements, trade secret infringement, real estate and title claims, other business torts, insurance coverage disputes, as well as consumer protection statutes.

Mr. Levine is a member of the Florida Bar Appellate Court Rules Committee, currently serving as the vice-chair of the Civil Practice Subcommittee and is an active member of the Appellate Practice Section of the Florida Bar and the Broward County Bar Association. Mr. Levine recently completed a four-year term as a member of the Board of Directors of the Broward County Bar Association Young Lawyers Section.

Mr. Levine received a Juris Doctor degree, Magna Cum Laude, from the University of Miami School of Law. While attending law school, he served as an Articles and Comments Editor on the University of Miami Inter-American Law Review and was on the Dean's List, and a Merit Scholarship recipient. Mr. Levine also was awarded the Dean's Certificate of Achievement in Legal Research and Writing, Trusts & Estates, & Professional Responsibility classes.

Before joining KO, Mr. Levine worked at an Am Law 100 firm where he also focused on civil litigation and appellate practice, primarily representing banks, lenders, and loan servicers in consumer finance related litigation matters.

# 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 Michigan

## ***Education***

Nova Southeastern University, J.D., 2007

University of Florida, B.A., 2004

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



Kristen Lake Cardoso is a litigation attorney focusing on complex commercial cases and consumer class actions. 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, fraud, breach of fiduciary duty, negligence, professional liability, real estate claims, enforcement of non-compete agreements, trade secret infringement, shareholder disputes, deceptive trade practices, other business torts, as well as consumer protection statutes.

Mrs. Cardoso's class action cases have involved, amongst other things, data breaches, violations of state consumer protection statutes, and breaches of contract. Mrs. Cardoso has 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. Ms. Cardoso also represents consumers seeking recovery of gambling losses from tech companies that profit from illegal gambling games offered, sold, and distributed on their platforms. In this litigation she is appointed Interim Executive Committee Member in *In re: Apple Inc. App Store Simulated Casino-Style Games Litigation* (N.D. Cal.). Mrs. Cardoso is also actively litigating cases against major U.S. airlines for their failure to refund fares following flight cancellations and schedule changes.

Mrs. Cardoso is admitted to practice law throughout the State of Florida, as well as in the United States District Courts for the Southern District of Florida and the Northern District of Florida. Mrs. Cardoso attended the University of Florida, where she received her Bachelor's degree in Political Science, cum laude. She received her law degree from Nova Southeastern University, magna cum laude. While in law school, Mrs. 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, Mrs. Cardoso serves as a volunteer at Saint David Catholic School. 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.

# **EXHIBIT 2**





**KALIEL GOLD PLLC**

Kaliel Gold 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<sup>o</sup>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, Kaliel Gold PLLC is well versed in class action litigation and zealously advocates for its clients. To learn more about Kaliel Gold 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 Kaliel Gold 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 Kaliel Gold 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 3**

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**GOLOMB · SPIRT · GRUNFELD**

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW

## **ABOUT OUR FIRM**

Golomb Spirt Grunfeld, P.C. is a boutique firm located in the heart of Center City, Philadelphia.

## **PRACTICE AREAS**

Our law firm is nationally recognized as having the intellect, persistence, experience and resources to succeed in the most challenging cases.

We serve clients nationwide in various practice areas that include:

- Class Action
- Commercial/Consumer Litigation
- Toxic, Environmental and Pharmaceutical Litigation
- Mass Tort Litigation
- Personal Injury
- Medical Malpractice

## **SUCCESS IN THE MOST DIFFICULT CASES**

**For Over 25 years**, Golomb Spirt Grunfeld has established an unmatched reputation for successfully representing those victimized by chemical and other environmental exposures, insurance or corporate wrongdoing, complex consumer class actions and commercial transactions, medical malpractice and significant highway and construction accidents. Many of our greatest successes have come from cases that other firms declined to handle because of the complexity or expense. With experience ranging from challenging environmental cases involving chemicals and other toxins, to the most difficult class action and medical cases, our team has the intellect, persistence, experience, and resources to produce unmatched results.

Other lawyers turn to Golomb Spirt Grunfeld with their most important cases. Referrals are a pillar of our practice. Leading attorneys across the nation refer their complex class actions and toxic exposure cases to us – and governmental agencies hire us to represent them against corporate wrongdoers in consumer and environmental matters.

### **A FOCUSED TEAM**

At Golomb Spirt Grunfeld we take a hands-on approach. Every representation undertaken by the firm receives the highest degree of attention, resources, and skill. Our boutique size means that we are selective in what we accept and that every client receives the personalized attention of a senior partner.

The lawyers at Golomb Spirt Grunfeld are very active in professional and charitable organizations; our partners have earned leadership positions in regional and national trial bars and professional associations. We regularly instruct other professionals through continuing legal education and undertake pro bono work ranging from the representation of 9/11 victims to assisting local underprivileged clients through Volunteers for the Indigent Program.



## **PARTNER PROFILES**

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### **RICHARD M. GOLOMB**

Mr. Golomb is managing shareholder and a founding partner of Golomb Spirt Grunfeld, P.C. He has more than thirty-five years of experience representing those who have been catastrophically injured as a result of medical negligence, defective products, dangerous drugs, construction accidents and other personal injury claims. He also represents victims of consumer, banking and mortgage fraud in class actions. For the past fifteen years he has represented victims of environmental exposures and wronged consumers in class action litigation.

Early in his career, Mr. Golomb was an associate, and then shareholder, with a Philadelphia catastrophic injury firm for eleven years before striking out on his own in 1996. Mr. Golomb has served as lead or co-counsel in more than 100 cases which resulted in million and multi-million dollar verdicts and settlements for clients in individual and class action claims.

Mr. Golomb has served in leadership in more than a dozen multi-district litigations in pharmaceutical, consumer class actions and anti-trust matters. As examples, Mr. Golomb has served on the Bank Overdraft MDL executive committee which, to date, has recovered more than \$1.3 billion dollars for consumers charged excessive overdraft fees through the re-sequencing of their transactions and as liaison counsel in the Benicar MDL which settled for \$358. He has also served as co-lead in a number of class actions against most of the major national banks for the deceptive sales and marketing of their payment protection products. To date, through these class actions and representation of various states through their Attorneys General, banks and credit card companies have been made to pay over \$200 million. Additionally, Mr. Golomb currently serves in leadership positions in a number of MDL's and coordinated matters representing individuals in pharmaceutical mass tort cases, and represents more than 300 women who have been diagnosed with ovarian cancer as a result of their perineal use of talcum powder.

An active member of the bar, Mr. Golomb has served as president of the Philadelphia Trial Lawyers Association and as an elected member of the executive board of the Philadelphia Bar Association. He also served as an officer of the American Association for Justice for three years. As a governor for the American Association for Justice, Mr. Golomb was twice recognized with the Distinguished Service Award and is a three-time recipient of the Weidemann-Wysocki Association's Medal of Honor. He was also awarded the Citation of Excellence by the American Association for Justice for his pro bono service in representing families victimized by the events of Sept. 11, 2001 and was a finalist in AAJ's Trial Lawyer of the Year.

Mr. Golomb was honored by the Pennsylvania Association for Justice with the Distinguished Service Award in 2010 for a career advocating for the rights of innocent victims and the lawyers who represent them. He has also served as a trustee of the Civil Justice Foundation, a fellow of the Roscoe Pound institute, as the American Association for Justice's delegate to the Civil Justice Roundtable.

Additionally, Mr. Golomb served as an elected member of the Board of Governors of the Philadelphia Bar Association and as the chairman of that body's state Civil Committee. He served two terms as a hearing officer for the Pennsylvania Supreme Court Disciplinary Board and was a member of the Judicial Selection and Retention Committee for five years.

Mr. Golomb is a frequent lecturer and author who addresses trial advocacy subjects for the plaintiffs' and defense bar in areas such as expert witness preparation, evidence, cross-examination and ethics.

### **KENNETH J. GRUNFELD**

Ken joined the firm in January 2010 after many years defending pharmaceutical manufacturers, national railroads, asbestos companies and corporate clients in consumer protection, products liability, insurance coverage and other complex commercial disputes while working at one of Philadelphia's largest and most prestigious defense firms. As a result he brings with him a unique perspective and a wealth of trial and appellate work experience in both state and federal courts. In January 2012, Mr. Grunfeld became a partner.

Today his practice focuses on representing consumers and payors in class actions against pharmaceutical manufacturers, financial institutions like banks, credits card companies and insurers, consumer electronics companies and other national corporate defendants. He also represents injured people, shareholders, State Attorneys General and the U.S. Attorney General's Office. He has been named by Super Lawyers as a Pennsylvania Rising Star and as a Super Lawyer numerous times throughout his career and was a named as a Finalist for American Association for Justice's prestigious Trial Lawyer of the Year Award in 2012. He is a Board Member of the Class Action Law Group of AAJ and serves as a hearing officer for the Pennsylvania Supreme Court Disciplinary Board.

Mr. Grunfeld graduated from The University of Michigan and received his law degree with honors from the Villanova University Law School Order of the Coif and as a member of the Villanova Law Review. He is licensed to practice in Pennsylvania, New Jersey and Michigan and has been admitted to practice *pro hac vice* in dozens of other jurisdictions.

### **ANDREW R. SPIRT**

Andrew R. Spirt joined the firm in 2005 and has handled a wide variety of personal injury and civil matters during his tenure. In January 2013, Mr. Spirt became a partner of the firm.

Through more than 20 years of practice, Mr. Spirt has successfully secured substantial settlements and jury verdicts in Pennsylvania and New Jersey in cases involving medical negligence, motor vehicle accidents and premises liability. Prior to joining the firm, he practiced for many years in the Philadelphia area where he handled catastrophic personal injury litigation, as well as a wide variety of complex commercial litigation cases.

Mr. Spirt graduated from American University in 1990 and Texas Wesleyan School of Law in 1994. He is licensed to practice in PA and NJ and, is a member of the Philadelphia Trial Lawyers Association.

## ASSOCIATE PROFILES

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### KEVIN FAY

Kevin Fay is an attorney with Golomb Spirt Grunfeld. Mr. Fay returned to the firm in October 2021 after several years defending insurance companies and other corporate clients as a partner handling complex litigation matters for one of Philadelphia's leading defense firms. Prior to beginning his litigation career, Mr. Fay practiced corporate transaction law as well as business and family immigration law. He represented a range of foreign and domestic clients that did business in a wide variety of industries. Mr. Fay's career trajectory thus gives him a broad perspective when he investigates cases on behalf of victims who have been injured by corporate negligence and wrongdoing.

Mr. Fay has extensive experience in pre-trial, trial, and appellate work in both state and federal courts involving a wide variety of subject areas, including class actions, catastrophic injuries, breach of contract, consumer protection, and medical malpractice matters. He has represented clients in a diversity of cases involving defective products, dangerous drugs, food poisoning, car accidents, banking fraud, credit card fraud, racketeering, trademark infringement and medical monitoring, to name a few. Mr. Fay is a born problem-solver who carefully analyzes the specific issues while also mastering the whole problem, so that his work is firmly grounded in context and precedent. A former valedictorian, Mr. Fay graduated summa cum laude from New England Law – Boston in 2007 and he received his undergraduate degree from Boston College in 2000. He is admitted to practice in Pennsylvania, New Jersey, and Massachusetts and has been admitted *pro hac vice* in numerous other jurisdictions.

### DAVID ROSENFELD

David Rosenfeld is an associate with Golomb Spirt Grunfeld, P.C. Prior to joining the firm as an associate, Mr. Rosenfeld served as a law clerk at the firm, working extensively on mass tort litigation, medical malpractice claims, and personal injury claims.

Mr. Rosenfeld earned his undergraduate degree from Franklin & Marshall College and his law degree from Temple University's Beasley School of Law, where he was selected as a Law Faculty Scholar. While at Temple's Beasley School of Law, Mr. Rosenfeld was chosen to be a member of the ABA's Third Circuit Media Alert Project. As a member, he crafted detailed summaries of precedential cases decided by the Third Circuit Court of Appeals to be published by the American Bar Association informing regional attorneys of the ramifications of recent decisions. Mr. Rosenfeld also captained and competed with Temple University's Phillip C. Jessup International Moot Court Team. During his time at Temple's Beasley School of Law, Mr. Rosenfeld twice received the Outstanding Oral Advocate distinction.

## **SUPPORT STAFF**

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While our clients always get hands-on attention from our attorneys. At Golomb Spirt Grunfeld, we understand that it takes a motivated and cohesive team to manage complex cases. Our support staff is comprised of law clerks, paralegals and secretaries that have more than 20 years of legal experience specializing in the areas of class action, mass tort, personal injury and medical malpractice litigation.

## CASE HIGHLIGHTS

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*Golomb Spirt Grunfeld has a well-earned reputation for litigating some of the most complex mass tort, class action and individual cases in the United States.*

### CLASS ACTION & ATTORNEY GENERAL EXPERIENCE

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#### **CREDIT CARD PAYMENT PROTECTION**

Golomb Spirt Grunfeld led a collaboration of firms bringing dozens of class action complaints filed in federal courts across the country against credit card companies regarding “Payment Protection Plans”, an add-on product of virtually no value wrongfully marketed and sold to unsuspecting credit card holders. Golomb Spirt Grunfeld also served as Deputy Attorney General to a number of state’s Attorneys General bringing actions on behalf of their citizens against credit card companies regarding Payment Protection and other protection-type products. Nationwide settlements have been reached in actions arising out of their deceptive conduct in the marketing and sales practices, which have resulted in over \$200 million in settlements for class members and States combined.

#### **REWARD POINTS CLASS ACTION**

Golomb Spirt Grunfeld has successfully settled a nationwide class action against a major credit card issuing bank regarding its wrongful practice of closing customers’ accounts and taking their earned rewards points without providing any compensation for those points. Credit card companies that advertise reward points as assets having real value that do not expire cannot claim that those reward points have been “forfeited” after the company decides to terminate a customers’ account for any reason, or for no reason at all. Lawyers at Golomb Spirt Grunfeld were able to negotiate a class-wide settlement such that these customers would be compensated for the reward points taken from them.

#### **INMATE DEBIT CARD CLASS ACTION**

Golomb Spirt Grunfeld represents multiple classes of federal inmate releasees against leading banks that issue debit cards on which the releasees were forced to receive their funds upon release. The debit cards were subject to a variety of inadequately disclosed or excessive fees, which cost releasees hundreds of thousands of dollars simply to access their own money. Golomb Spirt Grunfeld successfully negotiated class-wide settlements on behalf of all releasees that resulted in complete refunds of all fees that had been unfairly levied from releasees’ debit card accounts in the United States.

#### **ANGIE’S LIST CLASS ACTION**

Golomb Spirt Grunfeld successfully settled a nationwide class action on behalf of consumers who were paying members of Angie’s List, a company that permits members to read and publish online reviews and ratings of local businesses and contractors. Angie’s List claimed that “businesses don’t pay” to be on Angie’s List, without adequately disclosing that businesses pay substantial sums which could affect search results. Golomb Spirt Grunfeld negotiated a nationwide settlement that resulted in monetary relief, free membership benefits, and disclosure changes.

### **DISABILITY INSURANCE CLASS ACTION**

Golomb Spirt Grunfeld brought a number of class action complaints filed in over a dozen federal courts across the country against a collection of insurers, brokers and underwriters that offered a group disability accident insurance product that virtually never paid benefits. Plaintiffs' alleged that the product was "jackpot" insurance framed as legitimate disability insurance that never was, and never could have been, approved by various states' Departments of Insurance, because the defendants were selling the product to an illegally formed group that they themselves created. After years of hard fought litigation, Golomb Spirt Grunfeld, the Defendants agreed to pay \$15 Million to settle the matter.

### **BANK OVERDRAFT LITIGATION**

Golomb Spirt Grunfeld has brought a number of class action complaints filed in state and federal courts against state and national banks that have wrongfully employed unfair and illegal business practices in charging overdraft fees to dramatically increase the likelihood customers using debit, ATM, or check cards will overdraw their accounts and be assessed fees. We are also proud to serve on the Plaintiffs' Executive Committee in *In Re: Checking Account Overdraft Litigation, MDL No. 2036*, a coordinated, nationwide effort to bring to these banks to justice on behalf of millions of Americans that have paid billions of dollars in overdraft fees to banks. In the first overdraft case litigated, a judge ordered Wells Fargo to pay over \$200 million to a class of injured California bank customers. Bank of America alone has agreed to settle with a nationwide class of plaintiffs for \$410 million, and the total recovery for consumers in the MDL is now over \$1 billion.

### **FEDERAL EXPRESS CLASS ACTION**

Golomb Spirt Grunfeld sued Federal Express in the United States District Court for the Middle District of Florida on behalf of over 200 truckers over wrongfully-terminated hauling contracts. Despite an express clause in the contracts, Federal Express failed to provide the truckers with proper notice of termination.

### **TAX PREPARATION LITIGATION**

Golomb Spirt Grunfeld has brought multiple class action cases against national tax preparation companies regarding their marketing and selling of various illegal products. Often these products are sold in direct violation of a number of states' laws specifically enacted to regulate this type of practice and to protect the rights of taxpayers. These cases resulted in a favorable nationwide settlement on behalf of the Class.

### **TAKATA AIRBAG RECALL**

Golomb Spirt Grunfeld is part of a nationwide team that has successfully settled cases involving the largest automotive recall in history in class actions involving defective Takata airbags found in millions of vehicles manufactured by Honda, BMW, Chrysler, Daimler Trucks, Ford, General Motors, Mazda, Mitsubishi, Nissan, Subaru, and Toyota. Lawyers at Golomb Spirt Grunfeld represented car owners that have been compensated as a result of the defective Takata airbags found in their vehicles.

### **PROPERTY AND LIFE INSURANCE FRAUD**

Golomb Spirt Grunfeld have brought class actions against property and life insurance companies nationwide regarding premium increases and failure to provide coverage under clear policy terms. As a result of our efforts, tens of thousands of insureds have recovered money for damages they have suffered at the hands of their own insurance carriers.

## **EMPLOYMENT LAW**

We handle employment cases on a class-wide basis. Situations that may be addressed in this area include minimum wage and overtime pay, unfair labor practices, all types of discrimination, employee benefits, and whistleblower claims. We also handle cases involving the violation of the Fair Labor Standards Act (FLSA). FLSA cases are brought on behalf of clients whose job title is misclassified by their employers so that employees are not compensated for overtime worked.

## **SALES TAX OVERCHARGE**

Merchants are under strict duties to correctly charge sales tax to their customers. Golomb Spirt Grunfeld has successfully litigated class actions against retail merchants for charging too much sales tax on coupon or discounted items. These cases are evident on the customers' receipts. Merchants may be liable to customers for hundreds of thousands of dollars of overcharged sales tax regardless of whether the money is remitted to appropriate taxing authorities.

## **DATA BREACH AND PRIVACY CASES**

Data breach lawsuits are highly public and result in significant losses to individuals. Lawyers at Golomb Spirt Grunfeld have extensive experience working on privacy and data breach cases on behalf of various plaintiff classes. The firm has served as lead class counsel on behalf of customers whose personally identifiable information has been stolen as well as on behalf of financial institutions that suffered losses as a result of merchants' failures to adequately safeguard customers' information. The firm has also brought actions against technology companies for violating federal and state laws prohibiting wiretapping.

## **TCPA JUNK FAX CASES**

Our firm has experience helping clients defend themselves against junk faxers. In seeking to put an end to spammers disrupting the lives of individuals and small businesses, we aggressively litigate in the field of Telephone Consumer Protection Act (TCPA) law. We also bring cases involving robocalls and spam texts.

## **MERCHANT PAYMENT PROCESSING**

Golomb Spirt Grunfeld have brought class actions against companies that offer payment processing services to small and mid-sized businesses. These companies provide hardware and software that allows small and mid-sized businesses to accept payment cards from customers. Payment processors, equipment leasers and independent sales organizations (ISOs) employ aggressive, misleading and often illegal sales techniques to convince businesses to process payment card transactions on their network.

## **PREDATORY OR ILLEGAL LENDING PRACTICES**

Predatory lending is the practice of convincing borrowers to agree to unfair and abusive loan terms. These can include arranging for loans with very high interest rates or other loan costs, inflated appraisal values and loan amounts, hidden charges and fees, and other unfair or deceptive terms or conditions that result in the consumer paying too much for a loan, losing equity in the property, or losing the property itself. Golomb Spirt Grunfeld have successfully litigated class actions against lenders that engage in various illegal schemes.

### ***ANTITRUST / UNFAIR COMPETITION***

We handle claims involving violations of federal and state antitrust/competition laws. We are currently involved in cases alleging a wide array of anticompetitive conduct, including illegal tying, exclusive dealing, monopolization, and price fixing.

### ***PRESQUE ISLE COLON AND RECTAL SURGERY V. HIGHMARK HEALTH***

Golomb Spirt Grunfeld served as lead counsel for a class of independent healthcare providers and practices who were unfairly subjected to predatory, anticompetitive reimbursements from and other conduct by Highmark Health, the largest health insurer in Western Pennsylvania. After two years of extensive briefing and litigation, Golomb Spirt Grunfeld successfully negotiated a class-wide settlement for monetary and non-monetary relief.

### ***MISLABELING / FALSE ADVERTISING***

The Lanham Act permits businesses to sue other businesses that engage in false advertising and other forms of unfair competition. Golomb Spirt Grunfeld represented a spring water extractor in a federal lawsuit against his direct and indirect competitors who are alleged to mislabel and pass-off well water as true spring water.

### ***RETAIL ADVERTISING/PRICING***

Brick-and-mortar as well as internet retailers sometimes entice consumers with advertisements or pricing offers, but then do not honor those ads or offers later. Golomb Spirt Grunfeld has successfully represented many individual consumers in class action lawsuits against large, national retailers for unfair and deceptive advertising and pricing.

### ***1-800 CONTACTS***

A government investigation revealed that 1-800 Contacts, the nation's leading supplier of contact lenses, wrongfully suppressed competition by forcing competitors to restrict their online advertising so that consumers were more likely to go on to 1-800 Contacts' webpage to buy contact lenses than competitors' webpages. A series of nationwide class actions challenge this conduct under the federal antitrust laws, and analogous state laws. Golomb Spirt Grunfeld serves on the Plaintiffs' Steering Committee in this multi-lawsuit action consolidated in the United States District Court for the District of Utah.

### ***ENERGY SUPPLY LITIGATION***

Golomb Spirt Grunfeld has successfully brought multiple class action cases against electricity or natural gas suppliers who engage in fraudulent advertising, pricing, and other practices that unfairly increase customers' energy bills or fees.



**STERLING FINANCIAL CORPORATION SECURITIES  
CLASS ACTION**

Golomb Spirt Grunfeld facilitated settlement of a multimillion dollar matter on behalf of thousands of investors who were injured as a result of alleged violations of federal law. The United States District Court for the Eastern District of Pennsylvania created a \$10.25 million settlement fund for the benefit of those investors who acquired stock at allegedly inflated prices. It was estimated that \$13.5 million shares were damaged as a result of fraud.

**RICO CLASS ACTIONS – NATIONAL VOCATIONAL TRAINING SCHOOL**

Golomb Spirt Grunfeld represented current and former students who sued a national vocational school, alleging that they had been fraudulently misled as to the education they would receive. Golomb Spirt Grunfeld served as co-lead counsel in this groundbreaking consumer class action in which plaintiffs and absent national class members sought education from a publicly traded corporation in the field of diagnostic medical sonography. Golomb Spirt Grunfeld succeeded in demonstrating the chain of schools fraudulently misrepresented the nature of the ultrasound program and otherwise failed to provide the education represented. Students received federally guaranteed student loans but were largely unable to obtain promised jobs in their area of study. The school had no meaningful admissions criteria and often hired unqualified administrative and educational personnel. Field placements did not materialize, and students were unprepared to take qualifying exams. Students were stuck with loan repayments for which they received little or nothing in return. In approving certification of the class, and later the class settlement, the United States District Court said of counsel representing plaintiffs that “[t]he skill of each of these attorneys is reflected both in settlement and in the aggressive manner in which they pursued this litigation from start to finish.” *Cullen*, 197 F.R.D. at 149. The Court noted in conclusion, “the highly skilled class counsel provided excellent representation both for named plaintiffs and absent class members.” *Id.* The class settlement of \$7.3 million was the largest common fund of its kind.

## **PHARMACEUTICAL EXPERIENCE**

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*Golomb Spirt Grunfeld serves in leadership positions in several Multidistrict Litigation (MDL) cases and is instrumental in coordinating matters while representing individuals in pharmaceutical cases. Our*

*Pharmaceutical Litigation experience includes:*

### **TALCUM-BASED PRODUCTS MASS TORT LITIGATION**

Golomb Spirt Grunfeld represents women across the country who have been diagnosed with ovarian cancer caused by their long-term use of talcum powder for feminine hygiene. Since the 1980's, studies have showed a positive relationship between talcum powder and ovarian cancer. Evidence presented in court has shown that the maker of popular talc-based powders knew of the risk of ovarian cancer, but failed to warn women using these products. Golomb Spirt Grunfeld is at the forefront of this important litigation and has been appointed to the Plaintiffs' Executive Committee in this multidistrict litigation pending the United States District Court of New Jersey and serves as co-lead counsel in the State Court litigation pending in New Jersey.

### **BENICAR LITIGATION**

Golomb Spirt Grunfeld currently represents individuals who suffered severe gastrointestinal problems, including chronic diarrhea, nausea, significant weight loss and a rare condition called Sprue-Like Enteropathy, from their use of Benicar, a blood pressure medication. Plaintiffs have alleged that the manufacturer knew or should have known of the risk of gastrointestinal problems, but the company failed to warn patients of the risks. In this multidistrict litigation, which is currently pending in the United States District Court for the District of New Jersey, Mr. Golomb was appointed by the Court as Liaison Counsel and is an Executive Committee member for the Plaintiffs.

### **MENINGITIS MASS TORT LITIGATION**

In October 2012, a wide-spread outbreak of fungal meningitis made national headlines. The meningitis outbreak was traced to several lots of contaminated steroid injections produced at an unsterile compounding pharmacy in Framingham, Massachusetts. As a result, more than 70 people died and more than 700 individuals were diagnosed with fungal meningitis. Golomb Spirt Grunfeld took an active role in the litigation against the New England Compounding Center and other related entities. Mr. Golomb was appointed as Chair of the New Jersey Litigation by the Plaintiffs' Executive Committee. In addition, the firm served as co-chair of the American Association of Justice's Fungal Meningitis Litigation Group, which coordinates the efforts of lawyers handling these complex cases. In May 2015, a \$200 million settlement plan was approved that set aside funds for victims of the outbreak and their families.

### **TESTOSTERONE REPLACEMENT THERAPY (LOW T) LITIGATION**

Golomb Spirt Grunfeld represents men from over a dozen different states who suffered a cardiac event while taking a testosterone replacement drug. These drugs were falsely billed as a panacea for "Low T," a fictitious disease state concocted by the drug manufacturers. Each defendant manufacturer in this multidistrict litigation in the United States District Court for the Northern District of Illinois recently settled on a nationwide basis.

### **GRANUFLO MASS TORT LITIGATION**

Golomb Spirt Grunfeld represented families throughout the United States whose loved ones suffered catastrophic heart injuries during or soon after receiving dialysis. Dialysis patients who were administered Granuflo and/or NaturaLyte (dialysate solution used to filter toxins from the blood), manufactured by Fresenius Medical Care, faced a serious risk of sudden cardiac arrest due to Fresenius' failure to provide adequate warnings with their products. Golomb Spirt Grunfeld served on the Plaintiffs' Steering Committee in the MDL. Recently, Fresenius entered into a \$250 million settlement to resolve the litigation.

### **ADDERALL CLASS ACTION**

Golomb Spirt Grunfeld served as co-lead counsel on behalf of classes of indirect-purchaser consumers who were overcharged for Adderall XR®, a prescription ADHD medication. The manufacturer of Adderall XR® entered into multiple anticompetitive agreements to delay entry of generic versions of its drug, which resulted in consumers paying higher prices for the branded medication than they would have paid had a generic version been available in the market. Multiple cases were filed across the country, and after years of hard-fought litigation, the matter was settled on a global, nationwide basis for \$14.75 million.

### **BUDEPRION XL MARKETING & SALES PRACTICE LITIGATION**

Golomb Spirt Grunfeld brought a number of class action complaints filed in federal courts against the manufacturer and distributor of a generic version of a popular antidepressant medication under the Consumer Protection Laws of California and other states. We also serve as liaison counsel in an MDL proceeding in the United States District Court for the Eastern District of Pennsylvania. After United States District Judge Berle Schiller denied defendants' Motion to Dismiss based on the preemption defense and after plaintiffs fully briefed class certification, the parties reached a favorable settlement on behalf of the proposed class.

### **VALSARTAN LITIGATION**

In the summer of 2018, the FDA announced the first of a series of recalls for valsartan, a common generic drug used to treat high blood pressure. The FDA's investigation has revealed valsartan manufactured by multiple companies was contaminated with one or more nitrosamines, which are established carcinogens. Evidence suggests this nitrosamine contamination may be linked to liver, stomach, colon, and other cancers. Our firm has been appointed by the Court to leadership positions in this multidistrict litigation pending in the United States District Court of New Jersey.

### **INTUNIV ANTITRUST LITIGATION**

Our firm serves as co-counsel on behalf of consumers nationwide who were overcharged for Intuniv®, a medication prescribed to minors to treat attention deficit hyperactivity disorder (ADHD). The manufacturer of Intuniv® unfairly delayed entry of cheaper generic versions of the drug by entering into an anticompetitive agreement with the lead generic manufacturer. As a result, consumers paid far more for Intuniv® than they would have had a generic version been available earlier.

## **ENVIRONMENTAL & TOXIC EXPOSURE LITIGATION**

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*From its inception, Golomb Spirt Grunfeld has represented a broad range of individuals, and classes of individuals and communities, in environmental and toxic exposure cases:*

### **BERYLLIUM**

Golomb Spirt Grunfeld has been a national leader in representing hundreds of individuals and communities exposed environmentally and occupationally to the toxin beryllium. Respiratory exposure causes an incurable granulomatous disease of the lung and produces disability and death. From out plant environmental exposures, to individual machinists grinding metallic and ceramic forms of the toxin, Golomb Spirt Grunfeld has successfully represented victims in Pennsylvania, New Jersey, Maryland, Georgia, Florida and Mississippi.

### **SULFUR DIOXIDE/TRIOXIDE**

Individual and class action litigation in the state courts of Pennsylvania, as well as Federal Bankruptcy Court, on behalf of oil refinery workers exposed to SO<sub>2</sub>/3 with chronic Reactive Airways Disease.

### **DRINKING WATER**

MTBE/Storage Tank & Spill Prevention Act litigation in the United States District Court for the Eastern District of Pennsylvania on behalf of a community of landowners suffering well water contamination.

### **LEAD PAINT**

Golomb Spirt Grunfeld has represented dozens of lead poisoned children in Philadelphia as the result of lead-based paint in substandard housing. In addition, Golomb Spirt Grunfeld served on the Plaintiffs' Executive Committee of the Mattel Lead Paint Class Action which resulted in an approved class settlement exceeding 50 million dollars.

**ADDITIONALLY, GOLOMB SPIRT GRUNFELD HAS RECEIVED MORE THAN 100 VERDICTS OR SETTLEMENTS IN EXCESS OF \$1 MILLION FOR OUR CLIENTS IN INDIVIDUAL CASES**

# EXHIBIT C

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

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 2:21-cv-3585

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**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT  
AND CONDITIONALLY CERTIFYING CLASS FOR SETTLEMENT PURPOSES**

The Parties to the above-captioned action 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<sup>1</sup> through arm's-length negotiations, after conducting appropriate discovery into the damages at issue. Under the Settlement Agreement, 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 claims in exchange for Defendant Bank of America, N.A.'s ("BANA") total payment of \$8,000,000.00, inclusive of all attorneys' fees and costs and Service Award to Plaintiff Steven Checchia, to create a Settlement Fund to benefit the Settlement Class, and non-monetary consideration in the form of an agreement to continue the cessation of the fee assessment practice at issue in this lawsuit for at least the next five years.

The Settlement has been filed with the Court, and Plaintiff has filed an Unopposed Motion for Preliminary Approval of the Settlement and for Certification of Class ("Motion").

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<sup>1</sup> First-letter capitalized terms in this Order shall, unless otherwise defined herein, have the same meaning and definition as in the Settlement Agreement.

Upon considering the Motion and exhibits thereto, the Settlement, the record in these proceedings, the representations and recommendations of Class Counsel, and the requirements of law, the Court finds that: (1) this Court has jurisdiction over the subject matter and the Parties to these proceedings; (2) the Parties have provided the Court with information sufficient to enable it to determine that Class 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 Plan; (8) the proposed Notice Plan 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 Fee and Cost Award ("Fee Application") and application for Service Award for Plaintiff, their rights to opt-out of the Settlement or object to the Settlement, Attorneys' Fees and Costs for Class Counsel, and/or Service Award for Plaintiff; (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 Fee Application and request for a Service Award for Plaintiff; 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 Order as if fully set forth herein. First-letter capitalized terms in this Order shall, unless otherwise defined herein, have the same meaning and definition as in the Agreement.

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 of BANA consumer checking and/or savings accounts (“Accounts”) in the United States who, during the Class Period, paid and were not refunded a NSF Fee and/or OD Fee in connection with: (a) an ACH entry on their Account that was submitted by the merchant or the merchant’s bank with a “REDEP CHECK” indicator; or (b) a physical check (not an ACH transaction) that was re-presented for payment after having initially been returned for non-sufficient funds and charged an NSF Fee within the preceding 28 calendar days.

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

The Class Period is May 19, 2017, through the date of this Order.

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

a. Numerosity: In the Action, hundreds of thousands of individuals are members of the proposed Settlement Class. Their joinder is impracticable. Thus, the Rule 23(a)(1) numerosity



requirement is met.

b. 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.

c. 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.

d. 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.

e. 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, Steven Checchia, is designated as Class Representative.

7. The following attorneys and firms are appointed as Class Counsel: Jeff Ostrow and Jonathan M. Streisfeld of Kopelowitz Ostrow P.A.; Jeffrey D. Kaliel of KalielGold PLLC; and Kenneth J. Grunfeld of Golomb Spirt Grunfeld, P.C.

#### **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, as fair, reasonable and adequate. The Court finds that it has information sufficient to determine that notice should be given to the Settlement Class. The information provided indicates that 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 the exhibits appended to the Motion, is within the range of reasonableness and likely 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 to schedule a 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 the Class Notice required by this 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 Plan and Direction to Effectuate Notice**

11. The Court approves the form and content of the Class Notice to be provided to the Settlement Class, substantially in the forms attached to the Agreement. The Court further finds that the Notice Plan is the best practicable under the circumstances and reasonably calculated to apprise the Settlement Class members 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/or Service Award for Plaintiff. The Notice Plan will provide sufficient notice to all persons entitled to notice. The Notice Plan 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 Epiq Class Action & Claims Solutions, Inc. as the Settlement Administrator.

13. The Settlement Administrator shall implement the Notice Plan, as set forth in the Agreement, including using the forms of Email Notice, Postcard Notice, and Long Form Notice attached to the Agreement and approved by this Order. Class Counsel and BANA's Counsel will implement immaterial changes to those notices as necessary to effectuate the Notice Plan.

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

14. A Final Approval Hearing shall be held before the Court on \_\_\_\_\_, 2022 at \_\_\_:\_\_\_ a.m./p.m. in Courtroom # \_\_\_\_\_ of the United States District Court for the Eastern District of Pennsylvania, to determine, among other things: (a) whether the Settlement should be granted Final Approval as fair, reasonable, and adequate; (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 Plaintiff, 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 be excluded from the Class may exercise their right to opt-out of the Class by completing and mailing a request to the address set forth in the Class Notice. Such request must be postmarked no later than the Opt-Out Deadline, as specified in the Class 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 be excluded from 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 Class 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 exclude 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 Order, 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 Fee and Cost Award, and Service Award no later than 45 days prior to the Final Approval Hearing.

21. The Parties shall file their responses to timely filed objections no later than 10 days prior to the Final Approval Hearing.

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

22. As detailed more fully in Section 8 of the Agreement, in the event of a termination

as provided in the Settlement Agreement, 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 enjoined from commencing or prosecuting (either directly, representatively, or in any other capacity) against any of the Released Parties any action or proceeding in any court, arbitration forum or tribunal asserting any of 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 \_\_\_\_\_, 2022:

- a. The Settlement Administrator shall complete the Mailed 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 Fee and Cost Award, and/or the Service Award no later than 30 days before the Final Approval Hearing;



- d. Settlement Class members must file 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 10 days before the Final Approval Hearing.

DONE AND ORDERED in \_\_\_\_\_, Pennsylvania, this \_\_\_ day of \_\_\_\_\_, 2022.

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Honorable R. BARCLAY SURRICK  
United States District Judge