

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

TAMI BRUIN, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 3:22-cv-140-MOC-WCM

UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT

Plaintiffs Tami Bruin and Eline Barokas (“Class Representatives”), on behalf of themselves and a proposed class of current and former Bank of America, N.A. (“BANA”) accountholders, move for entry of an Order granting Final Approval of the Settlement Agreement. The grounds for this Motion are set forth in a Memorandum filed contemporaneously herewith.

The Court’s final approval of the Settlement is warranted for the reasons fully stated in said Memorandum.

The Class Representatives respectfully request that said Order include the following: (1) grant Final Approval to the Settlement; (2) certify the proposed Settlement Class for settlement purposes, pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (3) grant Plaintiffs’ pending Motion for Attorneys’ Fees, Costs, and Class Representative Service Awards (Dkt. No. 47); and (4) enter Final Judgment.

Dated: April 1, 2024

Respectfully submitted,

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

Jeffrey D. Kaliel (pro hac vice)
Sophia Gold (pro hac vice)
KALIELGOLD PLLC
1875 Connecticut Ave., NW, 10th Floor
Washington, D.C. 20009
(202) 350-4783
jkaliel@kalielpllc.com
sgold@kalielpllc.com

Andrew J. Shamis (pro hac vice)
Edwin E. Elliott (pro hac vice)
SHAMIS & GENTILE, P.A.
14 N.E. 1st Avenue, Suite 1205
Miami, FL 33132
(305) 479-2299
ashamis@shamisgentile.com
edwine@shamisgentile.com

Scott Edelsberg (pro hac vice)
Christopher Gold (pro hac vice)
EDELSBERG LAW, P.A.
20900 NE 30th Avenue, Suite 417
Aventura, FL 33180
(786) 289-9471
scott@edelsberglaw.com
chris@edelsberglaw.com

Counsel for Plaintiffs and the Class

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

TAMI BRUIN, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 3:22-cv-140-MOC-WCM

**MEMORANDUM IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF SETTLEMENT**

INTRODUCTION

Plaintiffs Tami Bruin and Eline Barokas (“Plaintiffs”), on behalf of themselves and proposed a class of current and former Bank of America, N.A. (“BANA”) accountholders, reached a Settlement in this matter providing for a common fund of \$8,000,000, as well as practice changes valued at \$21,000,000. Notably, unlike many other consumer settlements, the \$8,000,000 cash fund will be automatically distributed to Settlement Class Members without the need for them to file a claim, and without any reversion of funds to BANA. The settlement is excellent by any standard, but even more so here as it was achieved in an entirely novel and complex case. Indeed, when this case was filed, no other case in the country had ever challenged the assessment of fees on ACH transfers for outbound or “push” transfers to an accountholder’s own external accounts (“ACH First Party Fees”), the central practice at issue in this case.

Pursuant to the Court’s order granting preliminary approval, the Parties sent out notice to members of the Class to gauge their reaction to the proposed Settlement, as well as every state Attorney General in the Country. The results were overwhelmingly positive. Not a single member of the nearly 1-million-person class objected to the Settlement in this case or to Counsel’s fee request. Moreover, no state Attorney General raised concerns with the Settlement proposal.

The preliminarily approved Settlement provides an outstanding recovery for Class Members and, as discussed herein, also satisfies all Fourth Circuit criteria for final settlement approval. Accordingly, Plaintiffs respectfully request that this Court enter an Order as follows: (1) granting Final Approval to the Settlement; (2) certifying the proposed Settlement Class for settlement purposes, pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (3) granting Plaintiffs’ pending Motion for Attorneys’ Fees, Costs, and Class Representative

Service Awards (Dkt. No. 47); and (4) entering Final Judgment. A proposed order is attached hereto.

FACTUAL BACKGROUND

I. The Litigation

The history of this litigation is fully set forth in Plaintiffs' Unopposed Motion for Attorneys' Fees. *See* Memo. in Supp. of Mot. for Attorneys' Fees, Dkt No. 47-1. For purposes of efficiency, Plaintiffs incorporate the Factual Background section contained in that Brief. The Court granted Plaintiffs' Motion for Preliminary Approval of the Settlement on November 17, 2023. *See* Order Granting Preliminary Approval of Settlement, Dkt. No. 46 ("Prelim. Approval Order"). The Court, *inter alia*, (1) preliminarily approved the Settlement as fair, reasonable, and adequate, (2) conditionally certified the Settlement Class, (3) appointed Class Counsel, (4) approved the Settlement Class Notice, and (5) scheduled a Final Approval Hearing. *Id.*

II. The Settlement

A. Overview

Under the Settlement Agreement, BANA has agreed to do the following: (1) make a cash payment into a Settlement Fund of **\$8,000,000**; and (2) cease assessing ACH First Party Fees for five years, which is reasonably valued at **\$21,000,000**. Settlement¹ ¶¶ 1.46, 1.35, 2.1, 2.2, 6.

The \$8 million Settlement Fund will be used to pay Settlement Class Members, the costs of notice and administration, and any attorneys' fees and expenses and Service Award that the Court may award. *Id.* ¶6.3.

¹ The Settlement Agreement was filed in connection with Plaintiffs' Motion for Preliminary Approval. *See* Dkt. No. 42-3

As a result of this litigation, BANA also agreed to not assess ACH First Party Fees for a period of at least five (5) years from the Preliminary Approval of the Settlement. *Id.* ¶ 1.35. This practice change is conservatively valued at \$21 million. Declaration of Wilkerson, et. al. (“Joint Decl.”), ¶ 7.

The Settlement Fund will be distributed to Settlement Class Members according to the distribution plan set out in the Settlement Agreement. Settlement ¶¶ 6.6, 6.7. Importantly, Settlement Class Members *do not* need to submit a claim form in order to receive payment. Current accountholders will receive automatic *pro rata* distributions straight to their accounts. *Id.* ¶ 6.6.3.2. Former accountholders will receive a check in the mail. *Id.* Payments from the Net Settlement Amount to each Settlement Class Member shall be distributed *pro rata* based on the unrefunded ACH First Party Fees paid from each Settlement Class Member Account, with all Settlement Class Members receiving a minimum payment of \$2.00. *Id.* ¶ 6.6.2.1.

Additionally, no settlement funds will revert to BANA. 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. *Id.* ¶ 6.7. If a second distribution of remaining funds costs more than the amount to be distributed or is otherwise economically unfeasible, or if additional funds remain after a second distribution, Class Counsel shall petition the Court to distribute any remaining funds to a consumer protection or financial services organization as a *cy pres* recipient. *Id.* There will be no reversion to BANA. *Id.*

B. The Settlement Class

The proposed Settlement Class is defined as the following:

ACH First Party Class: All Accountholders in the United States who, during the Class Period, paid and were not refunded an ACH First Party Fee.

Id. ¶ 3.1. The class period is April 4, 2018 through November 17, 2023. *Id.* ¶ 1.13. In exchange for the consideration described above, the Settlement Class shall release BANA from any claims that were or could have been alleged in this action. *Id.* ¶¶ 1.39, 11.1.

D. Release

The Release is narrowly tailored. As of the Effective Date of the Settlement, Plaintiffs and each Settlement Class Member who does not opt out agrees to release any claims “arising out of or relating in any way to the allegations made in the Action” *Id.* ¶ 1.38.

C. The Notice Program

Following the Court’s preliminary approval of the Settlement and appointment of Kroll Settlement Administration LLC (“Kroll”) as the Settlement Administrator (*see* Prelim. Approval Order ¶ 6), Kroll sent 628,642 Email Notices to current accountholders who have agreed to receive account statements electronically. Supplemental Declaration of Scott Fenwick in Support of Final Approval of Settlement (“Fenwick Decl.”), ¶ 9. Kroll received notice that 78,484 emails were undeliverable. *Id.* Kroll also sent initial Postcard Notices to 199,358 Settlement Class Members who were former accountholders or current accountholders who had not agreed to receive statements electronically. *Id.* ¶ 8. Kroll received 2,118 returned notices from USPS with forwarding information and promptly re-mailed Notice to the forwarding address provided by USPS. *Id.* ¶ 10. Kroll made a reasonable effort to locate correct addresses for the 11,741 Postcard Notices returned without forwarding information by performing an advanced address search. *Id.* ¶ 11. Following these efforts to obtain updated addresses, a second mailing of Postcard Notices was sent to 7,257 updated addresses. *Id.* Of those 7,257 Postcard Notices re-mailed, 736 have been returned as undeliverable a second time. *Id.* To locate correct addresses, Kroll is continuing to

skip-trace the remaining 736 undeliverable Postcard Notices. *Id.* As of March 28, 2024, Kroll has mailed and/or emailed Notice to 822,592 Settlement Class Members, with Notice to 5,408 unique Settlement Class Members currently known to be undeliverable, which is a 99.35% deliverable rate to the Class. *Id.* ¶ 12. In addition to the Postcard and Email Notices sent directly to Settlement Class Members, Kroll maintained a Settlement Website with information about the Settlement, important deadlines, and case-related documents. *Id.* ¶ 5. Kroll also established a toll-free Interactive Voice Response system to provide information and accommodate inquiries from Settlement Class Members. *Id.* ¶ 6. Class Counsel also actively responded to inquiries from potential Class Members, responding to numerous inquiries received via email and telephone. Joint Decl., ¶.1

The Notices included, among other information, a description of the material terms of the Settlement; a date by which Settlement Class Members may exclude themselves from, or “opt-out” of, the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class Members may access the Settlement Agreement and other related documents and information. Fenwick Decl., Exs. C-E.

E. Opt-Outs and Objections

The Notices informed Settlement Class Members of their right to opt out or object. *Id.* Settlement Class Members may opt out of the Settlement Class at any time during the Opt-Out Period. Settlement ¶ 1.51. The Opt-Out Period ended on March 18, 2024. Prelim. Approval Order ¶¶ 10, 26. The deadline for the Opt-Out Period was specified in each of the Notices. Fenwick Decl., Exs. C-E. The Notices also informed Settlement Class Members of their right to object to the Settlement and/or to Class Counsel’s application for attorneys’ fees, costs, and expenses, and/or

Service Award. *Id.* The postmark deadline for Objections was March 18, 2024. Prelim. Approval Order ¶¶ 10, 26. Following Notice to the Class, the Settlement Administrator received ten (10) timely requests for exclusion and zero (0) objections. Fenwick Decl., ¶ 14.

F. Attorneys' Fees, Costs, and Expenses, and Service Award

On February 15, 2024, Class Counsel filed a Motion requesting approval of attorneys' fees costs, and Class Representative service awards. *See* Memo. in Supp. of Mot. for Attorneys' Fees, Dkt. No. 47-1. Class Counsel have moved for an approval of attorneys' fees of one-third of the common fund (in the amount of \$2,666,667), costs of \$47,747.85, and Class Representative service awards totaling \$10,000. *Id.* at 1. BANA has not opposed this Motion in any respect, and no Class Member or state Attorney General has filed an Objection or challenge to this aspect of the settlement. Fenwick Decl., ¶ 14.

LEGAL STANDARD

Under Rule 23, a settlement must be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Fourth Circuit has enumerated several factors that may bear on the fairness of the settlement and the adequacy of the consideration to the Class. *See In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991). The factors for assessing fairness include "(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel in the area of securities class action litigation." *Id.* at 159. The factors for assessing adequacy include "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Id.* The

2018 amendments to Rule 23(e) also formalize a list of core considerations for settlement approval such as: (1) whether class representatives and class counsel have adequately represented the class, (2) whether the proposal was negotiated at arm's length, (3) whether the relief provided for the class is adequate, and (4) whether the proposal treats Settlement Class Members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). The 2018 amendments to Rule 23(e) also formalize a list of core considerations for settlement approval such as: (1) whether class representatives and class counsel have adequately represented the class, (2) whether the proposal was negotiated at arm's length, (3) whether the relief provided for the class is adequate, and (4) whether the proposal treats Settlement Class Members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). The Fourth Circuit has held that the *Jiffy Lube* standards "almost completely overlap with the new Rule 23(e)(2) factors, rendering the analysis the same." See *Herrera v. Charlotte School of Law, LLC*, 818 F. App'x 165, 176 n.4 (4th Cir. 2020) (citing *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, 952 F.3d 471, 474 n.8 (4th Cir. 2020)).

ARGUMENT

I. The Court Should Grant Final Approval to the Settlement.

The Settlement preliminary approved by this Court provides substantial cash compensation to Settlement Class Members along with significant business practice changes to protect Settlement Class Members and future BANA accountholders from incurring ACH First Party Fees for at least five years. In total, the Parties estimate the value of the Settlement be the combined value of a \$8,000,000 Settlement Fund, as well as business practice changes that will result in approximately \$21,000,000 in savings to Settlement Class Members who are current accountholders and future BANA accountholders over the next five years. This Settlement was the

result of lengthy, intense, arm's length negotiations by experienced counsel for both the Plaintiffs and BANA and represents an outstanding result for the Class. The Settlement was also reached after years of hard-fought litigation in two different federal courts by knowledgeable counsel during which time the Parties litigated Motions to Dismiss and engaged in substantive discovery, including numerous depositions. As such, the settlement is reasonable and fits comfortably within the range warranting approval.

A. The Settlement Is Fair.

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

First, the proposed settlement was reached after nearly three years of active, hard-fought litigation of an entirely novel case. Plaintiffs' claims were tested by BANA's Motions to Dismiss, which was thoroughly briefed and litigated by both sides and duly considered by this Court and the *Barokas* court, where Judge Carter also denied BANA's Motion for Reconsideration of the Opinion and Order denying its Motion to Dismiss as to Plaintiff Barokas' claims. *See Bruin v. Bank of America, N.A.*, S.D.N.Y. Case No. 1:21-cv-02272 (the "*Barokas* Action"), Dkt. No. 35.

Second, the Settlement follows active and extensive discovery by both sides. The Parties exchanged critical internal documents and data from BANA and documents from Plaintiffs. Plaintiffs have deposed a BANA representative, and BANA took, and Plaintiffs defended, the in-person deposition of Plaintiff Bruin, as well. The Parties have also exchanged formal written discovery in the form of interrogatories and requests for production of documents. Importantly, no mediation or settlement discussions took place until after Plaintiffs' counsel had obtained and analyzed classwide damages numbers in order to determine a reasonable settlement value. Plaintiffs' counsel retained an expert to opine on issues relating to ascertainability, and to analyze

potential classwide damages This extensive discovery has given both sides “additional insight to evaluate the merits” of the case and has “laid the groundwork for the arm’s-length negotiations that resulted in the settlement.” *Gaston v. LexisNexis Risk Sols. Inc.*, No. 516CV00009KDBDCK, 2021 WL 244807, at *6 (W.D.N.C. Jan. 25, 2021).

Third, the circumstances of the settlement negotiations demonstrate that the Settlement was the result of a fair, arm’s length process that was often contentious. While discovery was ongoing, the Parties participated in a private mediation session with Judge Diane Welsh (Ret.) on June 30, 2023, which ultimately resulted in the Parties reaching a settlement in principle. Following the mediation and an agreement in principle, the Parties proceeded with limited confirmatory discovery related to damages, and worked on finalizing the Settlement Agreement involving several more months of negotiations.

Finally, counsel for both sides have significant experience in consumer class-action litigation involving bank-fee practices. Class Counsel is highly experienced in consumer class action litigation, as demonstrated by their firm resumes, and they have brought that significant experience to bear in litigating and settling this case. *See* Joint Decl., ¶ 10 , Exs. A-D; *see also* Fed. R. Civ. P. 23(e)(2)(A). Class Counsel collectively have decades of experience litigating consumer class actions against financial institutions and have litigated and settled dozens of class actions involving various types of improper fees, recovering hundreds of millions of dollars for those classes. *Id.* Counsel “may be evaluated by their affiliation with well-regarded law firms with strong experience in the relative field,” and by any measure, Class Counsel satisfies this prong. *See In re Neustar, Inc. Securities Litig.*, No. 1:14cv885, 2015 WL 5674798, at *11 (E.D. Va. Sept. 23, 2015) (quoting *In re Am. Capital S’holder Derivative Litig.*, No. 11-2424-PJM, 2013 WL 3322294, at *4 (D. Md. June 28, 2013)). Based on their experience, Class Counsel endorse the

Settlement as fair and adequate. Joint Decl. ¶ 11. Counsel’s “endorse[ment of] the settlement as fair and adequate under the circumstances . . . should be afforded due consideration in determining whether a class settlement is fair and adequate.” *Gaston*, 2021 WL 244807, at *6 (collecting cases).

B. The Relief Provided to the Class Under the Settlement is Adequate.

The substantial relief provided by the Settlement also favors approval. Under the Settlement, BANA will provide a settlement fund of \$8 million, which alone represents a significant portion of the estimated classwide damages should Plaintiffs have prevailed on every issue at class certification and trial. Joint Decl., ¶ 6. Assuming Plaintiffs prevailed at trial on liability (which BANA would have vigorously contested), Plaintiffs would have argued for a refund of every improperly assessed fee incurred by Class members, and the \$8 million recovery represents approximately 37% of that damages figure. *Id.* In addition to this cash payment, however, BANA has also agreed to not charge fees on otherwise free push transfers of Accountholder funds via the National Automated Clearing House Association network to the Accountholders’ own external account, which will save Current and future Accountholder Settlement Class Members over \$21,000,000 over the next five years in fees. *Id.* ¶ 7. In short, the settlement benefits are tremendous.

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

1. The reaction of the Class to the Settlement

The reaction of the class to the settlement “is perhaps the most significant factor to be weighed in considering its adequacy.” *Sala v. Nat’l R.R. Passenger Corp.*, 721 F. Supp. 80, 83 (E.D. Pa. 1989). Here, the Class Members’ clear embrace of the Settlement “weighs significantly in favor of the settlement’s adequacy.” *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 257 (E.D. Va. 2009). Following notice to the Class, the Settlement Administrator and Class Counsel received ten (10) timely requests for exclusion and zero timely (or untimely) objections. Fenwick Decl., ¶ 14.

The complete lack of objections to the Settlement and the small number of opt-outs relative to the size of the Class “testifies to the value of the settlement in the eyes of the class[es],” and supports final approval. *Deloach v. Philip Morris Companies*, No. 00-CV-01235, 2003 WL 23094907, at *10 (M.D.N.C. Dec. 19, 2003). The lack of objections, in particular, “raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.” *Myers v. Loomis Armored US, LLC*, No. 18-CV-00532, 2020 WL 1815902, at *3 (W.D.N.C. Apr. 9, 2020) (quoting *West v. Cont’l Auto., Inc.*, No. 16-CV-00502, 2018 WL 1146642, at *6 (W.D.N.C. Feb. 5, 2018)). As such, the “utter absence of objections from the class . . . militates strongly in favor of approval of the settlement.” *Sala*, 721 F. Supp. at 83.

2. Costs, risks, and delay of trial and appeal

Plaintiffs’ remaining claims for violation of the NCUATPA, violation of the NY GBL § 349, and violation of the NJCFA are strong, but maintaining these claims through trial and appeal would entail significant risk, uncertainty, and costs for both sides. Throughout this case, BANA has zealously disputed all of the Plaintiffs’ claims. And BANA would have undoubtedly challenged class certification and moved for summary judgment. Both of these motions could have

required appellate resolution. Where, as here, both sides have notched significant litigation victories and defeats over the course of several years of litigation, the resolution of potential appeals by both sides “would require protracted adversarial litigation and appeals at substantial risk and expense to both Parties.” *Gaston*, 2021 WL 244807, at *6. This strong likelihood of “substantial future costs favors approving the proposed settlement.” *Id.*

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

The Settlement Fund will be *automatically* distributed to Settlement Class Members, without any need for a claim form, either by check or direct deposit. Under the terms of the Settlement, 45 days after the Settlement Effective Date, BANA will directly deposit payments under the settlement into the accounts of Settlement Class Members who are current accountholders as of the date of final approval of the Settlement. Settlement ¶ 6.6.3.3. For those Settlement Class Members that are not Current Accountholders at the time of final approval, BANA will mail them a check. *Id.* ¶ 6.6.3.4. Any remaining funds after the initial disbursement will be distributed to the Settlement Class Members that successfully cashed check or received direct deposits, to the extent economically feasible. *Id.* ¶ 6.7. If there are funds remaining after this second distribution or the distribution is not economically feasible, Class Counsel will petition the Court to distribute the remaining funds to an appropriate *cy pres* recipient, either a consumer protection or financial services charity. *Id.*

4. *Terms of the proposed award of attorneys’ fees*

Under the terms of the Settlement, Class Counsel may move for an award of attorneys’ fees. Settlement ¶ 9.1. As discussed more fully in Plaintiffs’ Motion for Attorneys’ Fees,²

² Class Counsel’s arguments in favor of approving the requested fee award are fully set forth in Plaintiffs’ Memorandum in Support of Plaintiffs’ Motion for Attorneys’ Fees. *See* Dtk. No. 47-1. This Memorandum is incorporated by reference.

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

5. *Existence of other agreements reached by the Parties outside the settlement*

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

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

The Settlement provides relief to Settlement Class Members on a *pro rata* basis depending on the total amount of unrefunded ACH First Party Fees that the Settlement Class Member paid during the Class Period. Settlement ¶ 6.6.2. This method for calculating each class member’s recovery treats each class member equitably based on the extent to which they were impacted by BANA’s conduct. All Current and future BANA Accountholder Settlement Class Members likewise benefit from the agreement not to assess ACH First Party Fees required by the Settlement.

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

A. *The Proposed Class Is Ascertainable.*

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

members of the Class are identifiable based on objective criteria applied to BANA's well-maintained records covering every potential transaction and Class member during the Class Period.

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

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

1. Numerosity

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

2. Commonality

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

Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). Rule 23(a) does not require commonality of all issues; rather, “even a single common question will do.” *Id.* at 359 (quotation omitted),

Here, there are several common legal and factual questions that are common to all members of the class. Common questions include: (1) whether BANA violated the consumer protection laws of North Carolina, New York, and New Jersey through its fee policies and practices; (2) the proper method or methods by which to measure damages; and (3) whether BANA was unjustly enriched. These common questions are sufficient to satisfy the requirements of Rule 23(a)(2).

3. Typicality

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

The proposed Class Representatives assert the same claims stemming from the same conduct by BANA as the absent Settlement Class Members. The proposed Class Representatives’ claims arise from the same factual circumstances, are based on the same legal theories, are subject to the same defenses, and rise or fall with the claims of the absent Settlement Class Members. Typicality is satisfied here.

4. Adequacy of Representation

The adequacy inquiry “serves to uncover conflicts of interest between named Parties and the class they seek to represent.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). For a conflict of interest to defeat class certification, that conflict “must be fundamental,” “must go to

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

There is no such conflict here. As discussed above, the proposed Class Representatives assert the same claims based on the same alleged conduct as the absent Settlement Class Members. There is likewise no conflict between the Settlement Class Members, as they are all compensated under the settlement on a *pro rata* basis based on the total amount of unrefunded ACH First Party Fees that the Settlement Class Member paid during the Class Period. Moreover, the proposed Class Representatives and absent Class Members who are Current or future Accountholders benefit from the agreement not to assess ACH First Party Fees.

Class Counsel also satisfies the adequacy requirement. Class Counsel has effectively handled numerous consumer protection and complex class actions, including in the area of financial services, and bank fees specifically. *See* Joint Decl., ¶ 10, Exs. A-D. Class Counsel are qualified, experienced, and able to conduct this litigation and will fully and adequately represent the Class.

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

1. Predominance

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

Here, Plaintiffs seek to remedy common legal grievances based on BANA's assessment of certain fees, allegedly in violation of BANA's account agreements. The common questions of the legality of this practice and BANA's policies associated with the practice predominate over questions—if any—affecting only individual Settlement Class Members, providing a common link between all the Settlement Class Members and BANA. *See Jeffreys v. Comm'ns Workers of Am., AFL-CIO*, 212 F.R.D. 320, 323 (E.D. Va. 2003) (finding predominance satisfied where “[t]he question in each individual controversy” would be resolved according to the same legal inquiry); *Talbott v. GC Servs. Ltd. P'Ship*, 191 F.R.D. 99, 105-06 (W.D. Va. 2000) (finding predominance satisfied based on the “standardized nature” of the defendant's conduct). “The fact that damages will differ from class member to class member does not defeat the finding of predominance because liability is common to the class.” *Jeffreys*, 212 F.R.D. at 323.

2. *Superiority*

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

First, individual suits are unlikely here because the probable recovery (even of full damages) is relatively small per Settlement Class Member, particularly compared to the expense of litigation. *See In re NeuStar, Inc.*, 2015 WL 5674798, at *8 (finding superiority satisfied where individual actions were “unlikely due to the size of probable recovery and expense of individual

litigation.”). Where the “policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights,” *Amchem*, 521 U.S. at 617, a suit like this is well-suited for class action litigation. Second, Class Counsel is not aware of other pending individual litigation against BANA regarding the practices at issue in this Action. Joint Decl., ¶ 12. And third, it would promote judicial economy to resolve this case as a class before this Court rather than requiring individual plaintiffs to file separate lawsuits. *In re NeuStar, Inc.*, 2015 WL 5674798, at *9. Accordingly, a class action is a superior method of adjudication.

III. The Court Should Appoint Settlement Class Counsel.

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

Proposed Class Counsel from the law firms of KalieGold PLLC (“KalieGold”), Edelsberg Law, P.A. (“Edelsberg Law”), Shamis & Gentile, P.A. (“Shamis & Gentile”), and The Van Winkle Law Firm (“Van Winkle”) have expended a great deal of time, effort, and expense investigating, litigating, and resolving this Action. Further, as set forth in the firm resumes, each attorney from each firm is highly experienced in complex consumer class action litigation. *See* Joint Decl., Exs. A-D (Firm resumes of Class Counsel). It is clear from their track-record of success that Class

Counsel are highly skilled and knowledgeable concerning class-action practice. Class Counsel have the experience to represent the Settlement Class vigorously. Accordingly, Plaintiffs request that the Court appoint Sophia Gold of KaliefGold; Christopher Gold of Edelsberg Law; and Andrew Shamis of Shamis & Gentile as co-lead counsel, and David M. Wilkerson of The Van Winkle Law Firm as liaison counsel.

IV. Notice to Class Members Was Adequate and Satisfies the Requirements of Rule 23 and Due Process.

The Notice Plan approved by this Court and carried out by the Settlement Administrator conforms with the procedural and substantive requirements of due process and Rule 23. Due process and Rule 23 require that Settlement Class members receive notice of the settlement and an opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B). The mechanics of the notice process are left to the discretion of the Court, subject only to the broad reasonableness standards imposed by due process.

Here, the Settlement Administrator, Kroll, directed Notice to the Settlement Class Members via direct mail and email. Fenwick Decl., ¶¶ 8-12. A Long Form Notice was also available for Settlement Class Members who requested it, and it was posted on the Settlement Website. *Id.* ¶ 5. To ensure that notice reaches as many Settlement Class Members as possible, Kroll performed reasonable address traces for the initial Postcard Notice and Email Notice. *Id.* ¶ 11.

All of the Notices included important information about the Settlement, including how to opt out or object, and where to find more information about the case or contact Class Counsel. *Id.*, Exs. C-E. The substance of the notice fully apprised Settlement Class Members of their rights. Additionally, the Notices were designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Settlement Class Members. The design of the

Notices followed principles embodied in the Federal Judicial Center’s illustrative “model” notices posted at www.fjc.gov. The Notices contained plain-language summaries of key information about Settlement Class Members’ rights and options. Under Rule 23(e), the notice must generally describe the settlement in sufficient detail to alert those with adverse viewpoints to investigate and come forward to be heard. The Notices contained all of the critical information required to apprise Settlement Class Members of their rights. This approach to notice is adequate and provided sufficient detail to allow Settlement Class Members with adverse viewpoints to come forward and be heard.

The Federal Judicial Center states that a notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm.” Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide for Judges,” at 27 (3d ed. 2010).³ Here, notice reached approximately 99.35% of class members. Fenwick Decl., ¶ 12. The Notice to the Class here was the best notice that is practicable and is equivalent or superior to notice campaigns approved in similar class action settlements.⁴

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (1) grant Final Approval to the Settlement; (2) finally certify the proposed Settlement Class for settlement purposes, pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (3) grant

³ This document is available at <https://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf>.

⁴ Kroll also gave notice of the proposed Settlement to appropriate state and federal officials in compliance with the Class Action Fairness Act, 28 U.S.C. § 1715(b). Kroll sent CAFA Notice to government officials on September 21, 2023. Fenwick Decl., ¶ 4. CAFA Notice was mailed by first-class certified mail to the Attorney General of the United States and the appropriate government officials for all fifty (50) states, the District of Columbia, and the United States’ Territories. *Id.* Kroll also sent the CAFA notice via United Parcel Service to two offices of the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, and the Attorney General of the United States. *Id.*

Plaintiffs' pending Motion for Attorneys' Fees, Costs, and Class Representative Service Awards (Dkt. No. 47); and (4) enter Final Judgment.

Dated: April 1, 2024

Respectfully submitted,

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

Jeffrey D. Kaliel (pro hac vice)
Sophia Gold (pro hac vice)
KALIELGOLD PLLC
1875 Connecticut Ave., NW, 10th Floor
Washington, D.C. 20009
(202) 350-4783
jkaliel@kalielpllc.com
sgold@kalielpllc.com

Andrew J. Shamis (pro hac vice)
Edwin E. Elliott (pro hac vice)
SHAMIS & GENTILE, P.A.
14 N.E. 1st Avenue, Suite 1205
Miami, FL 33132
(305) 479-2299
ashamis@shamisgentile.com
edwine@shamisgentile.com

Scott Edelsberg (pro hac vice)
Christopher Gold (pro hac vice)
EDELSBERG LAW, P.A.
20900 NE 30th Avenue, Suite 417
Aventura, FL 33180
(786) 289-9471
scott@edelsberglaw.com
chris@edelsberglaw.com

Counsel for Plaintiffs and the Class

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

TAMI BRUIN, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 3:22-cv-140-MOC-WCM

**JOINT DECLARATION IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF SETTLEMENT**

We, David M. Wilkerson, Sophia Gold, Christopher Gold, and Andrew Shamis, declare and state that:

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

1. We have jointly responded to inquiries from dozens of class members regarding the settlement via both email and telephone. Many of these class members expressed thanks for the class representatives pursuing this litigation against Bank of America ("BANA").
2. Numerous class members had questions regarding the timing of final settlement approval, as well as the timing and method of payments under the settlement.
3. Numerous class members provided updated addresses for notices and payment.
4. No class members objected to the settlement.
5. No state Attorney Generals have objected or raised concerns about the settlement.

6. As part of the Settlement process, BANA provided data to Plaintiffs showing the amount of fees it took in under the practices in dispute in this litigation. Under the Settlement, BANA will provide a settlement fund of \$8 million (not including the value of the injunctive relief), which alone represents 37% of the estimated classwide damages.

7. In addition to this cash payment, BANA has also agreed to not assess fees on otherwise free push transfers of Accountholder funds via the National Automated Clearing House Association network to the Accountholders' external account, which will save current and future Accountholders over \$21 million over the next five years in fees they otherwise would have been assessed. In short, the settlement benefits are tremendous.

8. The total monetary value of the Settlement is an estimated \$8 million common fund combined with \$21 million in business practice changes, equivalent to over 133% of the damages the Class could have recovered.

9. Additionally, Class Counsel retained an expert to opine on issues relating to the ascertainability of the class, and to analyze potential classwide data.

10. Class Counsel collectively have decades of experience litigating consumer class actions (including those against financial institutions) and have litigated and settled dozens of class actions involving deceptive practices, including banking fees, and other types of allegedly wrongful conduct by financial institutions. *See* Joint Declarations, Dkt. Nos. 42-2, 47-2; *see also* Firm Resumes attached hereto as Exhibits A-D.

11. Based on their experience, Class Counsel endorses the Settlement as fair and adequate.

12. Class Counsel is not aware of other pending individual litigation against BANA regarding the practices at issue in this Action.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 1st day of April, 2024 at Asheville, North Carolina.

s/ David M. Wilkerson
David M. Wilkerson

Dated this 1st day of April, 2024 at San Francisco, California.

s/ Sophia Gold
Sophia Gold

Dated this 1st day of April, 2024 at Miami, Florida.

s/ Christopher Gold
Christopher Gold

Dated this 1st day of April, 2024 at Miami, Florida.

s/ Andrew Shamis
Andrew Shamis

EXHIBIT A

KALIELGOLD PLLC

KalielGold PLLC was founded in 2017 and is a 100% contingency Plaintiff-side law firm. Our attorneys have decades of combined experience and have secured hundreds of millions of dollars for their clients. Our firm's practice focuses on representing consumers in class action litigation and specifically on cases in the consumer financial services sector. In the four years since our firm was founded, our firm has been appointed lead counsel or co-lead counsel in numerous class action and putative class action lawsuits in state and federal courts nationwide including most recently in *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.); *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.); *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1st 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 1st 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^oN Federal Credit Union*. No. 19-CI-022873 (Jefferson Cir. Ct., Div. One); *Clark v. Hills Bank and Trust Company*, No. LACV080753 (Iowa Dist. Ct. Johnson Cnty.); *Morris v. Provident Credit Union*, Case No. CGC-19-581616 (Super. Ct., San Francisco Cnty., Cal.).

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

JEFFREY D. KALIEL

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

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

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

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

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

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

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

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

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

SOPHIA GOREN GOLD

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

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

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

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

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

BRITTANY CASOLA

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

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

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

AMANDA ROSENBERG

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

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

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

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

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

CLASS COUNSEL APPOINTMENTS

- *Roberts v. Capital One*, No. 1:16-cv-04841 (S.D.N.Y.);
- *Walters v. Target Corp.*, No. 3:16-cv-00492 (S.D. Cal.);
- *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.);
- *Robinson v. First Hawaiian Bank*, Civil No.17-1-0167-01 GWBC (1st 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 1st 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 B



SHAMIS & GENTILE, P.A.
CLASS ACTION LAW FIRM

Our Firm

Shamis & Gentile, P.A. has and continues to provide outstanding legal services in the Florida, New York, Texas, Georgia, Illinois, Ohio, Arizona, Missouri, and Washington communities. Shamis & Gentile, P.A. distinguishes itself because of our experience and legal resources to handle virtually any case involving class action, mass tort, mass arbitration, personal injury, personal injury protection, and contract disputes. Specifically, as it relates to class actions, Shamis & Gentile, P.A. has filed and litigated thousands of banking, insurance, data privacy, deceptive and unfair trade practice and product liability cases, often through contested class certification and even until trial. At Shamis & Gentile, P.A. our seasoned attorneys are some of the most innovative and progressive attorneys in the profession. Often, Shamis & Gentile, P.A. is called upon to litigate and settle cases that other law firms may not be able to handle on their own.

Shamis & Gentile, P.A. is committed to practicing law with the highest level of integrity in an ethical and professional manner. We are a diverse firm with lawyers and staff from all walks of life. Our lawyers and other employees are hired and promoted based on the quality of their work and their ability to treat others with respect and dignity.

Who We Are

Andrew Shamis is the managing partner at Shamis & Gentile, P.A. Mr. Shamis heads the class action and mass torts divisions of the firm, where his extensive experience in civil litigation has gained him the reputation of an attorney who can deliver where it matters the most, monetary results for his clients. Mr. Shamis has recovered over 1 billion dollars for consumers and plaintiffs throughout the country through his relentless, expertise, and calculated approach. Mr. Shamis is routinely certified class counsel and has successfully litigated over 10,000 civil cases in his young career.

Mr. Shamis is admitted to practice law in the states of Arizona, Florida, Georgia, Illinois, Missouri, New York, Ohio, Texas, and Washington as well as the U.S. District Courts for the Southern, Middle, and Northern Districts of Florida, Northern, Eastern, Western, and Southern Districts of New York, Northern, Southern, Central Districts of Illinois, Northern, Middle, and Southern Districts of Georgia, Eastern and Western Districts of Michigan, Eastern and Western Districts of Wisconsin, Northern and Southern Districts of Ohio, Eastern and Western Districts of Missouri, Eastern, Western, and Northern Districts of Oklahoma, Northern, Western, Eastern, and Southern Districts of Texas, Southern District of Indiana, U.S. District Court of Colorado, U.S. District Court of Connecticut, U.S. District Court of Arizona, and the U.S. District Court of Nebraska.

Mr. Shamis specializes in Consumer Protection Class Action Litigation, Mass Torts, Mass Arbitration, Personal Injury, Wrongful Death, as well as General Civil Litigation.

Angelica Gentile is a named partner at Shamis & Gentile P.A. Ms. Gentile heads the catastrophic injury, personal injury, and personal injury protection divisions of Shamis & Gentile, P.A. Ms. Gentile is recognized throughout the legal community as an extremely professional and efficient attorney. Ms. Gentile is admitted to practice law in both Florida and Texas and has extensive civil litigation experience, involving hundreds of depositions and motions throughout the state of Florida. Ms. Gentile not only prides herself in collecting millions of dollars in benefits owed to clients, but also in forging long lasting, successful relationships with clients.

Ms. Gentile specializes in Personal Injury, Personal Injury Protection, Class Action Litigation (TCPA, banking, insurance breach of contract, data breach, unfair and deceptive trade practices), Wrongful Death, Wrongful Termination, as well as General Civil Litigation.

Garrett Berg is a partner at Shamis & Gentile, P.A. and leads the firms' Data Privacy department. Mr. Berg's practice involves all aspects of federal and state civil litigation with a focus on consumer-protection class action lawsuits. Mr. Berg has been responsible for recovering millions of dollars owed to clients and class members across the nation and has litigated hundreds of cases.

Edwin Elliott is a partner at Shamis & Gentile, P.A. Mr. Elliott's practice involves all aspects of complex, high-level class action litigation. Mr. Elliott represents clients in federal and state courts across the nation in class actions involving consumer fraud, deceptive and unfair trade practices, false advertising, predatory financial services, digital privacy, and complex insurance disputes. Having prosecuted numerous class actions through all stages of the litigation process, Mr. Elliott's work has contributed to hundreds of millions in recoveries for consumers.

Our staff sets the standard on being innovative and technologically savvy. This innovation and use of fully customized cutting-edge case management software allows us to create an unparalleled level of customer service and attention to detail with our clients, which has led to an exceptional growth rate rarely seen in law firms.

Shamis & Gentile, P.A. has the resources, infrastructure and staff to successfully represent large putative classes. The attorneys and staff are not simply litigators, but directors of creating successful results with the ultimate level of satisfaction by the clients.

Class Actions

Shamis & Gentile, P.A. has initiated and served as both lead counsel and co-lead counsel in hundreds of class actions, many of which have generated internet articles. Currently, the firm serves as lead counsel or co-counsel on over 300 class action lawsuits. The lawsuits range from all Districts of Florida to the Central District of California. Shamis & Gentile, P.A. has also successfully settled many Class Action cases prior to verdict.

Prominent Class Action Settlements

Over the years, Shamis & Gentile attorneys have obtained outstanding results in some of the most well-known cases.

- *Arevalo, et. al. v. USAA Casualty Insurance Company, et. al.*, No. 2020CI16240 (Bexar County, Texas 2023) (\$4,089,287.50 Class Settlement)
- *Albrecht v. Oasis Power, LLC*, No. 1:18-cv-1061 (N.D. Ill. 2018) (\$7,000,000.00 Class Settlement)
- *Bloom v. Jenny Craig, Inc.*, No. 1:18-cv-21820-KMM, 2018 U.S. Dist. LEXIS 151686 (S.D. Fla. 2018) (\$3,000,000.00 Class Settlement)
- *Davis, et. al. v. Geico Casualty Company, et. al.*, No. 19-cv-02477 (S.D. Ohio 2023) (\$5,756,500.00 Class Settlement)
- *DeFranks v. Nastygal.com USA Inc.*, No. 19-cv-23028-DPG (S.D. Fla. 2019) (\$4,025,000.00 Class Settlement)
- *Deleon III, et. al. v. Direct General Insurance Company, et. al.* No. 19-CA-001636 (Fla. 9th Cir. Ct.) (\$2,450,000.00 Class Settlement)
- *Dipuglia v. US Coachways, Inc.*, No. 17-23006-Civ, 2018 U.S. Dist. LEXIS 72551 (S.D. Fla. 2018) (\$2,600,000.00 Class Settlement)
- *Dunleavey v. Sunrise Detox III, LLC*, No. 18-cv-25090 (S.D. Fla. 2018) (\$500,000.00 Class Settlement)
- *Eisenband v. Schumacher Automotive, Inc.*, No. 18-cv-01061 (S.D. Fla 2018) (\$5,000,000.00 Class Settlement)
- *Gottlieb v. Citgo Corporation*, No. 16-cv-81911 (S.D. Fla. 2016) (\$8,300,000.00 Class Settlement)
- *Jacques, et. al. v. Security National Insurance Company*, No. CACE-19-002236 (Fla. 17th Cir. Ct.) (\$6,000,000.00 Class Settlement)
- *Jones v. Washington State Employee's Credit Union*, No. 20-2-06596-5 (Superior Court of the State of Washington, County of Pierce) (\$2,400,000.00 Class Settlement)
- *Ostendorf v. Grange Indem. Ins. Co.*, No. 2:19-CV-1147 (S.D. Ohio 2020) (\$12,000,000.00 Class Settlement)
- *Papa v. Greico Ford Fort Lauderdale, LLC*, No. 1:18-cv-21897 (S.D. Fla. 2018) (\$4,800,000.00 Class Settlement)
- *Pena v. John C. Heath, Attorney at Law, PLLC, d/b/a Lexington Law Firm*, No. 18-cv-24407-UU (S.D. Fla. 2018) (\$11,450,863.00 Class Settlement)

EXHIBIT C

EDELSBERG **LAW**

MIAMI

20900 NE 30TH AVE #47 AVENTURA, FL 33180
786 289 9471 | EDELSBERGLAW.COM

ABOUT US

Your Trusted Class Action Law Firm. We are a dedicated class action firm committed to providing wide-ranging legal representation focused on delivering for our clients. Edelsberg Law is one of the top class action and commercial litigation law firms in the country.

THE EDELSBERG LAW PROMISE

Never shying away from litigating large consumer national class actions, Edelsberg Law is trusted by clients across the country to represent their interests and resolve their legal matters.

OUR MISSION

The attorneys and legal professionals at Edelsberg Law take pride in offering the highest caliber legal representation. We strive to help those that need help vindicating their rights and do not shy away from the difficult cases. If we take your case, we promise to work hard, efficient, and in your best interest.

SETTLEMENTS

Defranks V. Nastygal Class Settlement For \$5 Million Case No. 19-Cv-23028 (S.D. Fla 2020), Picton V. Greenway Dodge Class Settlement For \$2,745,000 Case No. 19-Cv-196-Orl (M.D. Fla 2020), Ostendorf V. Grange Indem. Ins. Co. Class Settlement For \$12 Million Case No. 2:19-Cv-1147, 2020 WI 134169 (S.D. Ohio 2020), Banks V. Fuccilloo Affiliates Of Florida Class Settlement For \$1,854,260 Case No. 19-Cv-00227 (M.D. Fla 2020), Goldschmidt V. Rack Room CLASS SETTLEMENT FOR \$25.9 MILLION Case No. 18-CV-21220 (S.D. FLA 2020), PENA V. LEX LAW CLASS SETTLEMENT FOR \$11.5 MILLION Case No. 18-CV-24407 (S.D. FLA 2020), Cortazar V. Ca Ventures Class Settlement For \$600,000 Case No. 19-Cv-22075 (S.d. Fla 2020), Albrecht V. Oasis Power Class Settlement For \$11 Million Case No. 18-Cv-1061 (S.D. Fla 2020), Robley V. Ids Property Casulaty Ins. Co. Class Settlement For \$275,000 Case No. 2019-022263-Ca-01 (Fla. 11th Cir. Ct.), Bracero V. Mendota Ins. Co. Class Settlement For \$1.1 Million Case No. 2019-015886-Ca-01 (Fla. 11th Cir. Ct.), Avila-Preciado V. Horace Mann Property & Casualty Insurance Co. Class Settlementfor \$290,000 Case No. 19-Ca-004683 (Fla. 20th Cir. Ct.), Colon V. Direct General Ins. Co. Class Settlement For \$780,000 Case No. 2019-Ca-1636 Oc, (Fla. 9th Cir. Ct.), Junior Et Al. V. Infinity Auto Insurance Company Over \$20 Million Settlement For Unpaid Sales Tax And Certain Fees, Final Approval Pending Case No. 6:18-Cv-01598-Wwbejk (M.D. Fla), Smart Et Al. V. Auto Club Insurance Et Al. Class Settlement For Over \$850,000 Case No. 19-Ca-005580 (Fla. 13th Cir. Ct.), Suarez V. Mapfre Insurance Co. Of Florida Class Settlement For \$800,000 Case No. 2019-020729-Ca-01 (Fla. 11th Cir. Ct.), George V. Peachtree Casualty Insurance Co. Class Settlement For \$580,000 Case No. Ca-19-674 (Fla. 7th Cir. Ct.), Dunleavy V. Surinse Detox Class Settlement For \$500,000 Case No. 18-Cv-25090 (S.D. Fla 2019), Eisenband V. Schumacher Automative Class Settlement For \$5 Million Case No. 9:18-Cv-80911 (S.D. Fla 2019), Poirier V. Cubamax Class Settlement For \$800,000 Case No. 1:18-Cv-23240 (S.D. Fla 2019), Mclean V. Osborn Class Settlement For \$800,000 Case No. 18-Cv-81222 (S.D. Fla 2019), Bloom V. Jenny Craig Class Settlement For \$3 Million Case No. 1:18-Cv-21820 (S.D. Fla 2019), Papa V. Greico Ford Class Settlement For \$4.9 Million Case No. 18-21897 (S.D. Fla 2019), Wijesinha V. Susan B. Anthony Class Settlement For \$1,017,430 Case No. 18-Cv-22880 (S.D. Fla 2019), Halperin V. Youfit Heath Clubs Class Settlement For \$1,418,635 Case No. 18-Cv-61722 (S.D. Fla 2019), Dipuglia V. U.S. Coachways, Inc. Class Settlement For \$2.6 Million Case No. 17-23006-Civ (S.D. Fla 2018), Gottlieb V. Citgo Class Settlement For \$8.3 Million Case No. 9:16-81911 (S.D. Fla 2017), Masson V. Tallahassee Dodge Jeep Chrysler, Llc. Class Settlement For \$850,000 Case No. 1-17-Cv-22967 (S.D. 2017), Stathakos V. Columbia Sportswear Company Obtained Classwide Injunctive Relief Case No. 4:15-Cv-04543 (N.D. California 2017).



SCOTT EDELSBERG

PARTNER

E: scott@edelsberglaw.com

O: 310-438-5355

C: 305-975-3320

Scott Edelsberg's broad-based litigation experience representing both plaintiffs and defendants provides him with an invaluable perspective when prosecuting claims on behalf of consumers who have been harmed by corporate wrongdoing.

Scott Edelsberg is the founding partner of Edelsberg Law, PA and focuses his practice in the areas of class actions, consumer fraud and personal injury.

In connection with his representation in class action matters, Edelsberg has litigated cases in multiple state and federal jurisdictions throughout the country, including two multi-district litigation proceedings. In those cases, Edelsberg 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. His efforts have led to numerous class settlements, resulting in millions of dollars in relief for millions of class members.

Edelsberg is a native of South Florida and earned a Bachelor of Arts degree in Political Science from the University of Michigan. While at Michigan, he was awarded the Michigan Merit Scholar award and served as an intern for the Washtenaw County Public Defender's office. Edelsberg went on to receive a Juris Doctor degree, Cum Laude, from the University of Miami School of Law. While attending law school, he was on the Dean's List, a member of the International and Comparative Law Review, a Merit Scholarship recipient and served as an Equal Justice for America Fellow.

EDUCATION

University of Miami School of Law,
J.D. - 2012

University of Michigan, B.A. - 2009

BAR ADMISSIONS

Florida
California

COURT ADMISSIONS

Southern District of Florida
Middle District of Florida

PRIMARY PRACTICE
Class Action



ADAM SCHWARTZBAUM

PARTNER

E: adam@edelsberglaw.com

O: 786-673-2405

C: 305-725-1245

Adam Schwartzbaum is a Partner at Edelsberg Law in Miami, Florida, where he plays a leading role representing individuals in class action litigation across the country. Adam has a wealth of experience representing both plaintiffs and defendants in state and federal court and at the trial and appellate levels. Adam's passion for using the law to better the lives of ordinary people makes him a fierce advocate for his clients and a champion for justice. Further, Adam has helped recover over \$1.6 billion for his clients over the course of his legal career.

Adam was previously a partner at The Moskowitz Law Firm, where he worked on some of the country's largest class actions and multi-district litigation cases. Adam directly represented many survivors of the Champlain Towers South Condominium Collapse Litigation in the firm's role as lead counsel for the economic loss victims and helped achieve a historic \$1.1 billion settlement. Adam also worked directly with Co-Lead Counsel to help organize and run two federal multi-district litigations: the FieldTurf Artificial Turf Marketing and Sales Practices Litigation, and the Erie COVID-19 Business Interruption Insurance Protection Litigation. Other representative matters include the Transamerica and Lincoln cost of insurance litigation; the COVID-19 student fee cases against Florida public schools, including appeals in all of Florida's District Courts of Appeal; several Ponzi scheme cases on behalf of investors against both principals and aiders and abettors; suits challenging illegal and deceptive and unfair business practices in the insurance industry; and a certified issue class concerning the Fort Lauderdale Water Main Break against Florida Power & Light and several of its subcontractors that was affirmed on appeal and resulted in a trial victory for the certified class. Adam also chaired the firm's busy appellate practice, utilizing his twelve years of appellate experience to lead over a dozen appeals in the Florida District Courts of Appeal and the federal Circuit Courts of Appeal. For example, Adam helped lead a team of lawyers to brief and argue *Cherry v. Dometic*, 986 F.3d 1296 (11th Cir. 2021), an appeal that resulted in an opinion clarifying and revising the "ascertainability" standard to the benefit of class action plaintiffs across the country.

Adam began his legal career with a defense-oriented practice split between appellate and trial level advocacy. At Weiss Serota Helfman Cole & Bierman, Adam represented many local governments, as well as businesses and individuals, in both state and federal court, in a variety of commercial disputes and lawsuits involving complex constitutional and statutory issues. Prior to that, Adam practiced complex commercial litigation at White & Case.

Adam was raised in the Cuban-Jewish community in Miami Beach. He attended Brandeis University as a Justice Brandeis Scholar where he earned a Bachelor of Arts with highest honors and graduated summa cum laude and Phi Beta Kappa. Adam performed a year of national service in Washington, D.C. with City Year before attending the University of Pennsylvania Law School as a Levy Scholar. Adam was a Senior Editor of the University of Pennsylvania Law Review (which published his scholarship) and a member of the Penn Moot Court Board. Adam was President of the Penn Law student chapter of the American Constitution Society and was honored for his outstanding contributions to pro bono work on behalf of workers and children in Philadelphia.

Since 2015, Adam has served on the Board of Directors of Nu Deco Ensemble, Miami's 21st Century chamber orchestra, and is currently the corporate Secretary. Adam is the founder and Team Captain for Jewish Community Service's Miami Marathon and Half Marathon Team Blue Card, which since 2013 has raised over half a million dollars to support indigent Holocaust Survivors. Adam also sits on the Board of Directors of Temple Menorah in Miami Beach.

EDUCATION

Brandeis University, B.A., 2007

University of Pennsylvania Law School,
2011

BAR ADMISSIONS

Florida Bar

Southern District of Florida

Middle District of Florida

Eleventh Circuit Court of Appeals

Third Circuit Court of Appeals

AWARDS & RECOGNITION

Rising Star, Super Lawyer Magazine,
2018, 2019, 2020, 2021, 2022, 2023

Miami Dade County Bar Association
"40 Under 40" Award (2023)

Palm Beach Media Group
Top Lawyers, 2023

PRIMARY PRACTICE

Class Action



CHRIS GOLD PARTNER

E: chris@edelsberglaw.com

O: 786-673-2405

C: 561-789-4413

Chris's practice focuses on all forms of complex, high-level class action and mass tort litigation. Before joining the Firm, Chris spent over ten years at Robbins Geller Rudman & Dowd, the country's most elite plaintiffs' class action firm, where he was a partner and part of the team that achieved a \$650 million settlement against Facebook in a landmark biometric privacy case. As a result of that record-breaking achievement, Chris was named one of Florida's Most Effective Lawyers in the Privacy category by American Law Media, 2020.

Chris has experience litigating all genre of class action and multidistrict litigation against the most sophisticated litigants, including false advertising, consumer fraud, data breach, privacy, securities fraud, merger & acquisition, and insurance. Chris served on the Plaintiffs' Steering Committee in In re Allergan Biocell Textured Breast Implant Prods, Liab. Litig. (D.N.J.), and he sat on the Law and Briefing and Government Entity Committees in In re Juul Labs, Inc. Mktg., Sales Pracs., & Prods. Liab. Litig., where he represented the School Boards of Broward and Miami-Dade County, and other government entities seeking damages caused by the public nuisance of youth e-cigarette use in those communities.

Chris has also represented institutional investors and sovereign wealth funds in Brazilian arbitration proceedings against Brazilian oil giant, Petrobras, arising out of the company's massive Lava Jato fraud.

Some of Chris's other notable recoveries include the following:

- Settlement valued at \$15 million in In re Sony Gaming Networks & Customer Data Sec. Breach Litig. (S.D. Cal.), a case arising from a massive data breach of Sony's PlayStation Network.
- \$15 million settlement in Boland v. Gerdau S.A. (S.D.N.Y.) on behalf of investors in a Brazilian steel conglomerate that failed to disclose its alleged bribery of Brazilian tax authorities.
- \$9 million settlement in In re Winn-Dixie Stores, Inc. S'holder Litig. (Fla. 4th Cir. Ct.), for former Winn-Dixie shareholders whose stock was undervalued in a buyout of the company.
- \$10 million settlement in In re AuthenTec, Inc. S'holder Litig. (Fla. 18th Cir. Ct.), on behalf of the former shareholders of AuthenTec following its buyout by Apple, which incorporated AuthenTec's fingerprint technology into the Apple iPhone.

Chris was recognized as a Super Lawyer Rising Star in 2020 and 2021. He holds a Bachelor of Science degree in Business Administration from Lynn University, in Boca Raton Florida, and a Juris Doctor degree from DePaul University College of Law in Chicago, Illinois.

Chris is a Blackbelt in Brazilian Jiu-jitsu and a former MMA fighter. Chris is fluent in Brazilian Portuguese.

EDUCATION

DePaul University College of Law,
J.D. -2010

Lynn University, B.S., Business - 2006

BAR ADMISSIONS

Florida

United States District Courts for the
Middle and Southern Districts of
Florida

United States District Court for the
Eastern District of Michigan

United States District Court for the
Southern District of Texas

Southern District of Florida

Middle District of Florida

ACCOLADES

Named one of "Florida's Most Effective
Lawyers" in the Privacy category by
American Law Media, 2020

Rising Star, Super Lawyers Magazine,
2019-2020



GABRIEL MANDLER

SENIOR ASSOCIATE

E: gabriel@edelsberglaw.com

C: 786-200-4316

Gabriel Mandler is a Senior Associate at Edelsberg Law. His practice focuses on multi-state consumer class action litigation, representing clients in both state and federal courts at the trial and appellate levels.

Gabriel has experience litigating a broad range of class action disputes, including employment discrimination, insurance disputes and mass torts. Gabriel previously worked at Stroock & Stroock & Lavan LLP, where he was part of a team in the remedial phase of a Title VII class action that recovered approximately \$2 billion for African American and Latino teachers who were discriminated against by New York City's Board of Education. Gabriel also has extensive experience handling complex commercial litigation disputes through trial.

A Miami native, Gabriel graduated magna cum laude from the University of Miami School of Law, where he was a member of the Business Law Review and Charles C. Papy, Jr. Moot Court Board. During this time, Gabriel interned for the Honorable Jonathan Goodman, a United States Magistrate Judge for the Southern District of Florida. Prior to law school, Gabriel earned his Bachelor of Arts Degree in Journalism and Communications from the University of Florida.

EDUCATION

University of Miami Law School, J.D.
University of Florida, B.A.



RACHEL DEEPER OF COUNSEL

E: rachel@edelsberglaw.com

C: 305-610-5223

Rachel Dapeer's practice focuses on multi-state consumer class action litigation and complex commercial litigation. She handles a broad range of disputes involving insurance policies, fraudulent business practices, labeling claims, and other consumer matters.

Rachel is of-counsel at Edelsberg Law and manages her own law firm, Dapeer Law, P.A. where her litigation practice spans a variety of industries including real estate, automotive, banking and retail. Prior to joining Edelsberg law, Rachel was an Associate at Greenspoon Marder, LLP., where she represented businesses and individuals in a variety of disputes involving breach of contract, commercial transactions, fraud, business torts, deceptive and unfair trade practices, tax lien and real estate litigation.

Rachel attended undergraduate school at the University of North Carolina at Chapel Hill (B.S.B.A., 2007) and obtained a Juris Doctorate degree from Cardozo Law School (J.D., 2011). Before returning home to Miami, Rachel practiced in New York City at Windels, Marx, Lane & Mittendorf, LLP, representing lenders, financial institutions, and servicers with complex tax lien and mortgage foreclosure proceedings.

EDUCATION

Cardozo Law School, J.D. - 2011

University of North Carolina,
B.S., B.A. - 2007

EXHIBIT D

The Van Winkle Law Firm

The Van Winkle Law Firm's experience in class action litigation includes cases filed in around the nation, including appearances as lead counsel by several of its attorneys in the Federal District Courts. In addition, its attorneys have served as local and *de facto* liaison counsel in other complex litigation in association with firms outside the North and South Carolina.

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

David M. Wilkerson

Mr. Wilkerson is a Senior Partner in The Van Winkle Law Firm with over 25 years of experience in civil litigation practice. He is admitted to practice in numerous Federal Districts and is licensed in both North Carolina and South Carolina. He is involved in numerous class action cases around the country. He serves as interim liaison counsel in *Haff Poultry, Inc. et. al. v Koch Foods, Inc., et. al.* (E.D.N.C. 7:18-cv-00031). He was appointed interim co-liaison counsel in *Piazza's Carpet v. Hickory Springs, et. al.* (W.D.N.C. 5:10-cv-11), prior to the cases being consolidated by the MDL panel in another district. David currently serves on the Subscriber Discovery Committee in the case of *In Re Blue Cross Blue Shield* (MDL 2406) (N.D.A.L 2:13-cv-2000). He recently served as co-lead counsel in *Morris et al. v. Bank of America*, Case No. 3:18-cv-00157 (W.D.N.C.) and *Gaston v. LexisNexis Risk Solutions, et. al.*, Case No. 5:16-cv-0009 (W.D.N.C.). He currently serves as co-lead counsel in the District of South Carolina in *Millwood v. State Farm*, Case No. 7:19-cv-01445-dcc and in *Peters v. Aetna, Inc.*, Case No. 1:15-cv-00109 (W.D.N.C.).

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

David Wilkerson (SBN 35742)
dwilkerson@vwlawfirm.com
THE VAN WINKLE LAW FIRM
11 North Market Street
Asheville, NC 28801
Telephone: (828)-258-2991

EDELSBERG LAW, P.A.
Scott Edelsberg (pro hac vice)
Christopher Gold (pro hac vice)
20900 NE 30th Avenue, Suite 417
Aventura, FL 33180
Telephone: (786) 289-9471
scott@edelsberglaw.com
chris@edelsberglaw.com

SHAMIS & GENTILE, P.A.
Andrew J. Shamis (pro hac vice)
Edwin E. Elliott (pro hac vice)
14 N.E. 1ST Avenue, Suite 1205
Miami, FL 33132
Telephone: (305) 479-2299
ashamis@shamisgentile.com
edwine@shamisgentile.com

KALIELGOLD PLLC
Jeffrey D. Kaliel (pro hac vice)
Sophia Gold (pro hac vice)
1875 Connecticut Avenue, NW, 10th Floor
Washington D.C. 20009
Telephone: (202) 350-4783
jkaliel@kalielpllc.com
sgold@kalielpllc.com

Attorneys for Plaintiffs and the Class

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

TAMI BRUIN, on behalf of herself and all others
similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 3:22-CV-140-MOC-WCM

CLASS ACTION

**DECLARATION OF
SCOTT M. FENWICK OF KROLL
SETTLEMENT ADMINISTRATION LLC
IN CONNECTION WITH FINAL
APPROVAL OF SETTLEMENT**

Date: April 30, 2024

Time: 9:30 a.m.

Dept: 5A

The Hon. Max O. Cogburn, Jr.

I, Scott M. Fenwick, declare as follows:

INTRODUCTION

1. I am a Senior Director of Kroll Settlement Administration LLC (“Kroll”),¹ the Settlement Administrator appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with Final Approval of the Settlement and supplements the *Declaration of Scott M. Fenwick of Kroll Settlement Administration LLC Regarding Direct Notice Compliance*, filed February 15, 2024 (the “Notice Compliance Declaration”), referenced herein in its entirety.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

BACKGROUND

3. Kroll was appointed as the Settlement Administrator to provide notification and administration services in connection with that certain Stipulation and Settlement Agreement and Release (the “Settlement Agreement”) entered into in this Action. Kroll’s duties in connection with the Settlement have and will include: (a) preparing and sending notices in connection with the Class Action Fairness Act; (b) receiving and analyzing the Class List from Defendant’s Counsel; (c) creating a Settlement Website; (d) establishing a toll-free telephone number; (e) establishing a post office box for the receipt of mail; (f) preparing and sending the Postcard Notice via first-class mail; (g) preparing and sending Email Notice; (h) receiving and processing mail from the United States Postal Service (“USPS”) with forwarding addresses; (i) receiving and

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement as defined below.

processing undeliverable mail, without a forwarding address, from the USPS; (j) receiving and processing opt outs and objections; and (k) such other tasks as counsel for the Parties or the Court request Kroll to perform.

NOTICE PROGRAM

The CAFA Mailing

4. As noted above, on behalf of the Defendant, Kroll provided notice of the proposed Settlement pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b) (“the CAFA Notice”). At Defendant’s Counsel’s direction, on September 21, 2023, Kroll sent the CAFA Notice, a true and correct copy of which is attached hereto as **Exhibit A**, listing the documents required, via first-class certified mail to (a) the Attorney General of the United States, (b) two (2) to Office of the Comptrollers of the Currency, (c) the Consumer Financial Protection Bureau, and (d) the fifty-six (56) state and territorial Attorneys General identified in the service list for the CAFA Notice, attached hereto as **Exhibit B**. The CAFA Notice directed the recipients to the website www.CAFANotice.com, a site that contains all the documents relating to the Settlement referenced in the CAFA Notice.

Data and Case Setup

5. On September 9, 2023, Kroll created a dedicated Settlement Website entitled www.ACHFirstPartyFeeSettlement.com. The Settlement Website went live on December 28, 2023, and contains information about the Settlement, including important dates and deadlines, such as the Opt-Out Deadline, the Objection Deadline, and the date of the Final Fairness Hearing. The Settlement Website also contains answers to frequently asked questions, instructions on how to opt-out of the Settlement, contact information for the Settlement Administrator, and copies of important documents, including but not limited to the First Amended Complaint, Settlement Agreement, Motion for Preliminary Approval, Preliminary Approval Order, Long Form Notice, and motion seeking Fees and Costs Award and Service Award.

6. On September 19, 2023, Kroll established a toll-free telephone number, 833-933-5580, for Settlement Class Members to call and obtain additional information regarding the

Settlement through an Interactive Voice Response (“IVR”) system and have the option of leaving a voicemail to receive a callback from a live operator. As of March 28, 2024, the IVR system has received 941 calls and 103 callers have received a callback from a live operator.

7. On September 20, 2023, Kroll designated a post office box with the mailing address *Bruin v. Bank of America N.A.*, c/o Kroll Settlement Administration LLC, PO Box 5324, New York, NY 10150-5324, in order to receive requests for exclusion, objections and correspondence from Settlement Class Members.

The Notice Program

8. As previously set forth in the Notice Compliance Declaration, on December 29, 2023, Kroll caused 199,358 Postcard Notices to be mailed via first-class mail. *See* Dkt. No. 47-3, ¶ 4. A true and correct copy the Postcard Notice, as well as the Long Form Notice, are attached hereto as **Exhibits C and D**, respectively.

9. As previously set forth in the Notice Compliance Declaration, on December 29, 2023, Kroll caused the Email Notice to be sent to the 628,642 email addresses on file for Settlement Class Members. *See id.*, ¶ 7. A true and correct copy of a complete exemplar Email Notice (including the subject line) is attached hereto as **Exhibit E**. Of the 628,642 emails attempted for delivery, 78,484 emails were rejected/bounced back as undeliverable. On January 18, 2024, Kroll mailed Postcard Notices to those 78,484 Settlement Class Members.

NOTICE PROGRAM REACH

10. As of March 28, 2024, 2,118 Postcard Notices were returned by USPS with a forwarding address. Of those, 2,093 Postcard Notices were automatically re-mailed to the updated addresses provided by USPS. The remaining twenty-five (25) Postcard Notices were re-mailed by Kroll to the updated address provided by the USPS.

11. As of March 28, 2024, 11,929 Postcard Notices were returned by the USPS as undeliverable as addressed, without a forwarding address. Kroll ran 11,518 undeliverable records through an advanced address search. The advanced address search produced 7,257 updated addresses. Kroll has re-mailed Notices to the 7,257 updated addresses obtained from the advanced

address search. Of the 7,257 re-mailed Postcard Notices, 736 have been returned as undeliverable a second time. Kröll will continue to skip-trace the remaining 736 undeliverable Postcard Notices and any further Postcard Notices returned as undeliverable without a forwarding address.

12. Based on the foregoing, following all Postcard Notice re-mailings, Kröll has reason to believe that Email Notice and Postcard Notice likely reached 822,592 of the 828,000 persons to whom an Email Notice or Postcard Notice was sent, which equates to a reach rate of the direct email/mail notice of approximately 99.35%. This reach rate is consistent with other court-approved, best-practicable notice programs and Federal Judicial Center Guidelines, which state that a notice plan that reaches² over 70% of targeted class members is considered a high percentage and the “norm” of a notice campaign.³

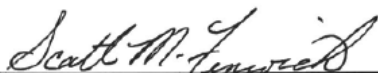
EXCLUSIONS AND OBJECTIONS

13. The Opt-Out Deadline and Objection Deadline was March 18, 2024.

14. Kröll has received ten (10) timely opt-out requests and no objections to the Settlement. A list of the opt-outs received is attached hereto as **Exhibit F**.

CERTIFICATION

I declare under penalty of perjury under the laws of the United States that the above is true and correct to the best of my knowledge and that this declaration was executed on March 28, 2024, in Inver Grove Heights, Minnesota.


SCOTT M. FENWICK

² FED. JUD. CTR., *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. The guide suggests that the minimum threshold for adequate notice is 70%.

³ Barbara Rothstein and Thomas Willging, *Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges*, at 27 (3d Ed. 2010).

Exhibit A

VIA U.S. MAIL

Date: September 21, 2023

To: All “Appropriate” Federal and State Officials Per 28 U.S.C. § 1715
(see attached service list)

Re: CAFA Notice for the proposed Settlement in *Bruin v Bank of America, N.A.*, Case No. 3:22-cv-00140-MOC-WCM, pending in the United States District Court for the Western District of North Carolina Charlotte Division.

Pursuant to Section 3 of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, Defendant Bank of America, N.A. (the “Defendant”) hereby notifies you of the proposed settlement of the above-captioned action (the “Action”), currently pending in the United States District Court for the Western District of North Carolina Charlotte Division (the “Court”).

Eight items must be provided to you in connection with any proposed class action settlement pursuant to 28 U.S.C. § 1715(b). Each of these items is addressed below, and all exhibits are available for download at www.CAFANotice.com under the folder entitled *Bruin v. Bank of America*:

1. 28 U.S.C. § 1715(b)(1) – a copy of the complaint and any materials filed with the complaint and any amended complaints.

The Class Action Complaint and Amended Complaint are available as **Exhibit A** and **A1**.

2. 28 U.S.C. § 1715(b)(2) – notice of any scheduled judicial hearing in the class action.

On September 11, 2023, Plaintiff filed a motion for Preliminary Approval of the class action settlement, and the date of the Preliminary Approval hearing has not yet been set. The Court has not yet scheduled the Final Approval Hearing for this matter. The proposed Preliminary Approval Order is available as **Exhibit B**.

3. 28 U.S.C. § 1715(b)(3) – any proposed or final notification to class members.

Copies of the proposed Email Notice, Postcard Notice and Long-Form Notice will be provided to Settlement Class Members and will be available on the Settlement Website created for the administration of this matter. These are available as **Exhibits C, D, and E**, respectively. The Class Notices describe, among other

things, the Settlement Class Members' rights to object or exclude themselves from the Settlement Class.

4. 28 U.S.C. § 1715(b)(4) – any proposed or final class action settlement.

The Settlement Agreement is available as **Exhibit F**.

5. 28 U.S.C. § 1715(b)(5) – any settlement or other agreement contemporaneously made between class counsel and counsel for defendants.

There are no other settlements or other agreements between Class Counsel and counsel for Defendant beyond what is set forth in the Settlement Agreement.

6. 28 U.S.C. § 1715(b)(6) – any final judgment or notice of dismissal.

The Court has not yet entered a Final Judgment and Order of Dismissal. Accordingly, no such document is presently available.

7. 28 U.S.C. § 1715(b)(7) – (A) If feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement.

The definition of the Settlement Class in the proposed Settlement Agreement means all accountholders in the United States who, during the Class Period, paid and were not refunded an ACH First Party Fee.

At this juncture, it is not feasible to provide the name and state of residence for each of the estimated 803,000 class members covered by the proposed settlement. However, pursuant to Section (b)(7)(B), BANA provides the attached estimate of the number of class members residing in each state and the estimated proportionate share of the claims of those members to the settlement as **Appendix A**.

The proportionate share of the settlement amount that each class member is eligible to receive is dependent upon certain matters to be determined by the Court at the final approval hearing (including, for example, the amount of the attorneys' fees and litigation costs, if any, to award to class counsel and the amount of any class representative award to plaintiff), whether certain class members cannot be located, the results of additional diligence to resolve any discrepancies in Defendant's business records, and certain other matters that will not be known until the time of the final approval hearing (including, for example, the number of class members that request exclusion from the Bruin v Bank of America, N.A. Action).

At this time, and as set forth in detail in the Settlement Agreement, Defendant estimates that each class member who does not exclude himself or herself from the Bruin v Bank of America, N.A. Action will be eligible to receive either a credit to the account of current account members, or a check to remaining class members. Each Settlement Member shall receive a minimum payment of \$2.00.

8. 28 U.S.C. § 1715(b)(8) – any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6).

There has been no written judicial opinion. Accordingly, no such document is presently available.

If you have any questions about this notice, the Action, or the materials available for download at www.CAFANotice.com under the folder entitled *Bruin v Bank of America*, please contact the undersigned below.

Respectfully submitted,

Maggie McGill
Senior Manager
Maggie.McGill@kroll.com

CAFA NOTICE SERVICE LIST

U.S. Attorney General

Merrick B. Garland
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Office of the Comptroller of the Currency

Robert Barnes
Deputy Examiner in Charge
201 North Tryon Street
19th Floor
Charlotte NC 28202

Office of the Comptroller of the Currency

Greg Taylor
Director, Litigation Division
400 7th Street, S.W.
Washington, DC 20219

Consumer Financial Protection Bureau

1700 G Street NW
Washington, DC 20552.

Alabama Attorney General

Steve Marshall
501 Washington Ave.
P.O. Box 300152
Montgomery, AL 36130

Alaska Attorney General

Treg Taylor
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

American Samoa Attorney General

Fainu'ulelei Falefatu Ala'ilima-Utu
Executive Office Building, Utulei
Territory of American Samoa
Pago Pago, AS 96799

Arizona Attorney General

Kristin Mayes
2005 N Central Ave
Phoenix, AZ 85004

Arkansas Attorney General

Tim Griffin
323 Center St., Suite 200
Little Rock, AR 72201

California Attorney General

Rob Bonta
1300 I St., Ste. 1740
Sacramento, CA 95814

Colorado Attorney General

Phil Weiser
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203

Connecticut Attorney General

William Tong
165 Capitol Avenue
Hartford, CT 06106

Delaware Attorney General

Kathy Jennings
Carvel State Office Building
820 N. French St.
Wilmington, DE 19801

District of Columbia Attorney General

Brian Schwalb
400 6th Street NW
Washington, D.C. 20001

Florida Attorney General

Ashley Moody
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399

Georgia Attorney General

Chris Carr
40 Capitol Square, SW
Atlanta, GA 30334

Guam Attorney General

Douglas Moylan
Office of the Attorney General ITC Building
590 S. Marine Corps Dr, Ste 706
Tamuning, Guam 96913

Hawaii Attorney General

Anne Lopez
425 Queen St.
Honolulu, HI 96813

Idaho Attorney General

Raúl Labrador
700 W. Jefferson Street, Suite 210
P.O. Box 83720
Boise, ID 83720

Illinois Attorney General

Kwame Raoul
James R. Thompson Ctr.
100 W. Randolph St.
Chicago, IL 60601

Indiana Attorney General

Todd Rokita
Indiana Government Center South
302 West Washington St., 5th Fl.
Indianapolis, IN 46204

Iowa Attorney General

Brenna Bird
Hoover State Office Building
1305 E. Walnut
Des Moines, IA 50319

Kansas Attorney General

Kris Kobach
120 S.W. 10th Ave., 2nd Fl.
Topeka, KS 66612

Kentucky Attorney General

Daniel Cameron
700 Capital Avenue
Capitol Building, Suite 118
Frankfort, KY 40601

Louisiana Attorney General

Jeff Landry
P.O. Box 94095
Baton Rouge, LA 70804

Maine Attorney General

Aaron Frey
State House Station 6
Augusta, ME 04333

Maryland Attorney General

Anthony Brown
200 St. Paul Place
Baltimore, MD 21202

Massachusetts Attorney General

Andrea Campbell
1 Ashburton Place
Boston, MA 02108

Michigan Attorney General

Dana Nessel
P.O. Box 30212
525 W. Ottawa St.
Lansing, MI 48909

Minnesota Attorney General

Keith Ellison
75 Dr. Martin Luther King, Jr. Blvd.
Suite 102, State Capital
St. Paul, MN 55155

Mississippi Attorney General

Lynn Fitch
Department of Justice, P.O. Box 220
Jackson, MS 39205

Missouri Attorney General

Andrew Bailey
Supreme Ct. Bldg., 207 W. High St.
P.O. Box 899
Jefferson City, MO 65101

Montana Attorney General

Austin Knudsen
Office of the Attorney General, Justice Bldg.
215 N. Sanders St., Third Floor
P.O. Box 201401
Helena, MT 59620

Nebraska Attorney General

Mike Hilgers
2115 State Capitol
P.O. Box 98920
Lincoln, NE 68509

Nevada Attorney General

Aaron D. Ford
100 N. Carson St.
Old Supreme Ct. Bldg.
Carson City, NV 89701

New Hampshire Attorney General

John Formella
33 Capitol St.
Concord, NH 03301

New Jersey Attorney General

Matthew J. Platkin
Richard J. Hughes Justice Complex
25 Market Street, 8th Floor
P.O. Box 080
Trenton, NJ 08625

New Mexico Attorney General

Raul Torrez
P.O. Drawer 1508
Santa Fe, NM 87504

New York Attorney General

Letitia A. James
Department of Law
The Capitol, 2nd Floor
Albany, NY 12224

North Carolina Attorney General

Josh Stein
Department of Justice
P.O. Box 629
Raleigh, NC 27602

North Dakota Attorney General

Drew Wrigley
State Capitol
600 E. Boulevard Ave.
Bismarck, ND 58505

Northern Mariana Islands Attorney General

Edward E. Manibusan
Administration Building
P.O. Box 10007
Saipan, MP 96950

Ohio Attorney General

Dave Yost
State Office Tower
30 E. Broad St., 14th Floor
Columbus, OH 43215

Oklahoma Attorney General

Gentner Drummond
313 NE 21st Street
Oklahoma City, OK 73105

Oregon Attorney General

Ellen F. Rosenblum
Oregon Department of Justice
1162 Court St., NE
Salem, OR 97301

Pennsylvania Attorney General

Michelle Henry
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Puerto Rico Attorney General

Domingo Emanuelli Hernandez
P.O. Box 9020192
San Juan, PR 00902

Rhode Island Attorney General

Peter F. Neronha
150 S. Main St.
Providence, RI 02903

South Carolina Attorney General

Alan Wilson
Rembert C. Dennis Office Bldg.
P.O. Box 11549
Columbia, SC 29211

South Dakota Attorney General

Marty Jackley
1302 East Highway 14, Suite 1
Pierre, SD 57501

Tennessee Attorney General

Jonathan Skrmetti
425 5th Avenue North
Nashville, TN 37243

Texas Attorney General

Ken Paxton
Capitol Station
P.O. Box 12548
Austin, TX 78711

U.S. Virgin Islands Attorney General

Carol Thomas- Jacobs
34-38 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, Virgin Islands 00802

Utah Attorney General

Sean Reyes
State Capitol, Rm. 236
Salt Lake City, UT 84114

Vermont Attorney General

Charity Clark
109 State St.
Montpelier, VT 05609

Virginia Attorney General

Jason Miyares
202 North Ninth Street
Richmond, VA 23219

Washington Attorney General

Bob Ferguson
1125 Washington St. SE
P.O. Box 40100
Olympia, WA 98504

West Virginia Attorney General

Patrick Morrissey
State Capitol Complex, Bldg. 1, Rm. E-26
1900 Kanawha Blvd. E
Charleston, WV 25305

Wisconsin Attorney General

Josh Kaul
Wisconsin Department of Justice State
Capitol, Room 114 East
P.O. Box 7857
Madison, WI 53707

Wyoming Attorney General

Bridget Hill
State Capitol Bldg.
109 State Capitol
Cheyenne, WY 82002

APPENDIX A

State	Total Customers	Estimated Share
Foreign Address	6,259	0.68%
AA	24	0.00%
AE	697	0.09%
AK	820	0.10%
AL	2,603	0.35%
AP	388	0.06%
AR	3,167	0.38%
AS	4	0.00%
AZ	18,608	2.10%
CA	162,972	17.89%
CO	8,782	0.95%
CT	13,916	1.87%
DC	5,567	0.72%
DE	1,945	0.23%
FL	81,537	10.55%
GA	35,671	4.85%
GU	64	0.01%
HI	2,300	0.26%
IA	1,447	0.15%
ID	1,907	0.20%
IL	18,301	2.09%
IN	3,053	0.31%
KS	4,320	0.50%
KY	1,776	0.22%
LA	1,988	0.24%
MA	46,161	5.98%
MD	29,165	4.40%
ME	2,784	0.35%
MI	12,177	1.43%
MN	2,940	0.30%
MO	9,643	1.10%
MP	8	0.00%
MS	1,269	0.19%
MT	1,060	0.12%
NC	28,977	3.66%
ND	245	0.03%
NE	830	0.09%
NH	4,872	0.66%
NJ	32,160	3.86%
NM	3,320	0.47%
NV	9,932	1.27%
NY	43,506	5.41%
OH	5,420	0.56%
OK	3,625	0.49%
OR	8,711	1.01%

State	Total Customers	Estimated Share
PA	13,951	1.55%
PR	1,240	0.20%
RI	4,008	0.57%
SC	12,801	1.66%
SD	456	0.05%
TN	11,928	1.58%
TX	81,238	10.38%
UT	2,550	0.24%
VA	29,554	3.72%
VI	175	0.02%
VT	1,109	0.15%
WA	30,417	3.28%
WI	2,500	0.25%
WV	670	0.10%
WY	427	0.05%

Exhibit B

COMPANY	FULL NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	ZIP
Alabama Attorney General	Steve Marshall	501 Washington Ave.	P.O. Box 300152	Montgomery	AL	36130
Alaska Attorney General	Treg Taylor	1031 W. 4th Avenue	Suite 200	Anchorage	AK	99501
Arizona Attorney General	Kris Mayes	2005 N Central Ave		Phoenix	AZ	85004
Arkansas Attorney General	Tim Griffin	323 Center St	Suite 200	Little Rock	AR	72201
California Attorney General	Rob Bonta	1300 I St.	Suite 1740	Sacramento	CA	95814
Colorado Attorney General	Phil Weiser	Ralph L. Carr Colorado Judicial Center	1300 Broadway 10th floor	Denver	CO	80203
Connecticut Attorney General	William Tong	165 Capitol Ave.		Hartford	CT	6106
Delaware Attorney General	Kathy Jennings	Carvel State Office Building	820 N. French St.	Wilmington	DE	19801
District of Columbia Attorney General	Brian Schwab	400 6th Street NW		Washington	DC	20001
Florida Attorney General	Ashley Moody	Office of the Attorney General, State of Florida	The Capitol, PL 01	Tallahassee	FL	32399
Georgia Attorney General	Chris Carr	40 Capitol Square, SW		Atlanta	GA	30334
Hawaii Attorney General	Anne Lopez	425 Queen St.		Honolulu	HI	96813
Idaho Attorney General	Raul Labrador	700 W Jefferson St, Suite 210	P.O. Box 83720	Boise	ID	83720
Illinois Attorney General	Kwame Raoul	James R Thompson Ctr.	100 W Randolph St.	Chicago	IL	60601
Indiana Attorney General	Todd Rokita	Indiana Government Center South - 5th Floor	302 West Washington Street	Indianapolis	IN	46204
Iowa Attorney General	Brenna Bird	Hoover State Office Building	1305 E. Walnut	Des Moines	IA	50319
Kansas Attorney General	Kris Kobach	120 S.W. 10th Ave, 2nd Fl		Topeka	KS	66612
Kentucky Attorney General	Daniel Cameron	700 Capital Avenue	Capitol Building, Suite 118	Frankfort	KY	40601
Louisiana Attorney General	Jeff Landry	PO Box 94095		Baton Rouge	LA	70804
Maine Attorney General	Aaron Frey	State House Station 6		Augusta	ME	4333
Maryland Attorney General	Anthony Brown	200 St. Paul Place		Baltimore	MD	21202
Massachusetts Attorney General	Andrea Campbell	1 Ashburton Place	20th Fl	Boston	MA	2108
Michigan Attorney General	Dana Nessel	PO Box 30212	525 W. Ottawa St.	Lansing	MI	48909
Minnesota Attorney General	Keith Ellison	75 Dr. Martin Luther King, Jr. Blvd.	Suite 102, State Capital	St. Paul	MN	55155
Mississippi Attorney General	Lynn Fitch	Department of Justice	P.O. Box 220	Jackson	MS	39205
Missouri Attorney General	Andrew Bailey	Supreme Ct. Bldg.	207 W. High St. P.O. Box 899	Jefferson City	MO	65102
Montana Attorney General	Austin Knudsen	Office of the Attorney General, Justice Bldg., Third Floor	215 N. Sanders P.O. Box 201401	Helena	MT	59620
Nebraska Attorney General	Mike Hilgers	2115 State Capitol	P.O. Box 98920	Lincoln	NE	68509
Nevada Attorney General	Aaron D. Ford	100 N. Carson St.	Old Supreme Ct. Bldg.	Carson City	NV	89701
New Hampshire Attorney General	John Formella	33 Capitol St.		Concord	NH	3301
New Jersey Attorney General	Matthew J. Platkin	25 Market St. P.O. Box 080	Richard J. Hughes Justice Complex	Trenton	NJ	8625
New Mexico Attorney General	Raul Torrez	P.O. Drawer 1506		Santa Fe	NM	87504
New York Attorney General	Letitia A. James	Dept. of Law - The Capitol	2nd Floor	Albany	NY	12224
North Carolina Attorney General	Josh Stein	Dept. of Justice	P.O. Box 629	Raleigh	NC	27602
North Dakota Attorney General	Drew Wrigley	State Capitol	600 E Boulevard Avenue	Bismarck	ND	58505
Ohio Attorney General	Dave Yost	State Office Tower	30 E. Broad St. 14th Floor	Columbus	OH	43215
Oklahoma Attorney General	Gentner Drummond	313 NE 21st St		Oklahoma City	OK	73105
Oregon Attorney General	Ellen F. Rosenblum	Oregon Department of Justice	1162 Court St., NE	Salem	OR	97301
Pennsylvania Attorney General	Michelle Henry	16th Floor, Strawberry Square	Pennsylvania Office of Attorney General	Harrisburg	PA	17120
Rhode Island Attorney General	Peter F. Neronha	150 S Main St		Providence	RI	2903
South Carolina Attorney General	Alan Wilson	P.O. Box 11549	Rembert C. Dennis Office Bldg.	Columbia	SC	29211
South Dakota Attorney General	Marty Jackley	1302 East Highway 14	Suite 1	Pierre	SD	57501
Tennessee Attorney General	Jonathan Skrmetti	425 5th Avenue North		Nashville	TN	37243
Texas Attorney General	Ken Paxton	Capitol Station	P.O. Box 12548	Austin	TX	78711
Utah Attorney General	Sean Reyes	State Capitol, Rm. 236		Salt Lake City	UT	84114
Vermont Attorney General	Charity Clark	109 State St.		Montpelier	VT	5609
Virginia Attorney General	Jason Miyares	202 North Ninth Street		Richmond	VA	23219
Washington Attorney General	Bob Ferguson	1125 Washington St. SE	P.O. Box 40100	Olympia	WA	98504
West Virginia Attorney General	Patrick Morrisey	State Capitol Complex Building 1, Room E-26	1900 Kanawha Blvd. E	Charleston	WV	25305
Wisconsin Attorney General	Josh Kaul	Wisconsin Department of Justice State Capitol, Room 114 East	PO Box 7857	Madison	WI	53707
Wyoming Attorney General	Bridget Hill	109 State Capitol	State Capitol Bldg.	Cheyenne	WY	82002
Guam Attorney General	Douglas Moylan	590 S Marine Corps Dr, Ste 706	Office of the Attorney General ITC Building	Tamuning	GU	96913
American Samoa Attorney General	Fainu'ulelei Falefatu Ala'ilima-Utu	Executive Office Building, Utulei	Territory of American Samoa	Pago Pago	AS	96799
Northern Mariana Islands Attorney General	Edward Manibusan	Administration Building	P.O. Box 10007	Saipan	MP	96950
U.S. Virgin Islands Attorney General	Ariel K. Smith	34-38 Kronprindsens	Gade Gers Building, 2nd Floor	St Thomas	VI	802
Puerto Rico Attorney General	Domingo Emanuelli Hernandez	PO Box 9020192		San Juan	PR	902
The Attorney General of the United States	Merrick B. Garland	U.S. Department of Justice	950 Pennsylvania Avenue, NW	Washington	D.C.	20530
Office of the Comptroller of the Currency	Robert Barnes, Deputy Examiner in Charge	201 North Tryon Street	19th Floor	Charlotte	NC	28202
Office of the Comptroller of the Currency	Greg Taylor, Director, Litigation Division	400 7th Street, S.W.		Washington	D.C.	20219
Consumer Financial Protection Bureau		1700 G Street NW		Washington	D.C.	20552

Exhibit C

Bruin, et al. v. Bank of America, N.A. Settlement
P.O. Box 5324
New York, NY 10150-5324

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

ELECTRONIC SERVICE REQUESTED

Legal Notice

If you had a consumer checking and/or savings Account with Bank of America, N.A., and paid certain ACH Transfer Fees for push transfers to your own external account, between April 4, 2018, and November 17, 2023, you may be entitled to payment from a class action Settlement.

(833) 933-5580

www.ACHFirstPartyFeeSettlement.com

<<Refnum Barcode>>

CLASS MEMBER ID: <<Refnum>>

Postal Service: Please do not mark barcode

<<MAIL ID>>

<<NAME 1>>

<<NAME 2>>

<<Address 1>>

<<Address 2>>

<<Address 3>>

<<Address 4>>

<<Address 5>>

<<City>>, <<State>> <<Zip>>

<<Country>>

A Settlement has been reached with Bank of America, N.A. (“BANA”) in a class action lawsuit about ACH Transfer Fees assessed for push transfers to Accountholders’ own external accounts (“ACH First Party Fees”) from **April 4, 2018, through November 17, 2023.**

Who is included? BANA records indicate that you are a “Settlement Class member” in this Settlement because you fit the following Settlement Class definition: All Accountholders in the United States who, during the Class Period, paid and were not refunded an ACH First Party Fee. Excluded from the Settlement Class is BANA, its parents, subsidiaries, affiliates, officers, directors, employees, all Settlement Class Members who make a timely election to opt-out, and all judges assigned to this Action and their immediate family members.

What does the Settlement provide? BANA will create an \$8,000,000 Settlement Fund. After deducting Attorneys’ Fees and Costs, a Service Award to the Class Representatives, and the Settlement Administration Costs, the Net Settlement Fund will be divided *pro rata* among all Settlement Class Members with a minimum payment of \$2.00.

What are my options? If you do nothing and the Settlement is approved by the Court 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 and receive a Settlement Class Member Payment, you must opt-out of the Settlement by **March 18, 2024**. Unless you opt-out, you will not be able to sue or continue to sue BANA for any claim made in this Action or released by the Settlement Agreement. If you stay in the Settlement (and do not opt-out), you may object to it by **March 18, 2024**.

The Court’s Final Fairness Hearing. The Court will hold a Final Fairness Hearing on **April 30, 2024 at 9:30am ET**. At this hearing, the Court will decide whether to approve: (1) the Settlement; (2) Class Counsel’s request for Attorneys’ Fees of up to 33% of the Settlement Fund and reimbursement of \$47,747.85 in Costs; and (3) a Service Award of \$5,000 for each of the Class Representatives. You or your lawyer may appear at the hearing at your own expense, but you do not have to.

Exhibit D

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 ACH TRANSFER FEES FOR PUSH TRANSFERS TO YOUR EXTERNAL ACCOUNT BETWEEN APRIL 4, 2018, AND NOVEMBER 17, 2023, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

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

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
DO NOTHING	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).
OPT-OUT and EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS	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 legal right to bring your individual claims against BANA, but you will not receive a Settlement Class Member Payment from this Settlement. The deadline to opt-out of the Settlement is March 18, 2024 . If you opt-out, but still want to recover against BANA, then you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT	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 March 18, 2024 .

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

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled: Tami Bruin and Eline Barokas v. Bank of America, N.A., Civil Action No. 3:22-cv-140 (“Action”). The people who sued are called the “Class Representatives” or “Plaintiffs.” The Defendant is “BANA.” The case is a “class action.” That means that Class Representatives are acting on behalf of the Settlement Class. The transactions at issue occurred **between April 4, 2018, and November 17, 2023** (“Class Period”).

All Accountholders in the United States who, during the Class Period, paid and were not refunded an ACH First Party Fee. Excluded from the Settlement Class is BANA, its parents, subsidiaries, affiliates, officers directors, employees, all Settlement Class Members who make a timely election to opt-out, and all judges assigned to this Action and their immediate family members.

BANA denies all wrongdoing and liability and denies that Plaintiffs’ claims entitle Plaintiffs or the Settlement Class Members to any relief and denies that anyone was harmed by the conduct that Plaintiffs allege.

2. Why did I receive a Class Notice of this Action?

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 Representatives’ 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 Representatives. The Class Representatives have the duty to act in the best interests of the Settlement Class as a whole and, in this case, it is their 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 ACH Transfer Fees that are the subject of this Action. There is also uncertainty about whether the Class Representatives’ claims are subject to other defenses that might result in no or less recovery to Settlement Class Members. Even if the Class Representatives were to win at trial, there is no assurance that the Settlement Class Members would be awarded more than the current Settlement Fund, 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 the best interest of both Parties and the Settlement Class.

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 Settlement Class Member 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 Action; (2) opt-out of the Settlement and you will not receive a Settlement Class Member Payment; or (3) participate in the Settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

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

The deadline for sending a letter to opt-out or exclude yourself from the Settlement is **March 18, 2024**.

The deadline to file an objection with the Court is **March 18, 2024**.

7. Under what circumstances should I opt-out?

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.

8. What happens if I file an objection?

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.

9. 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 **April 30, 2024 at 9:30am ET**.

THE SETTLEMENT PAYMENT

10. How much is the Settlement?

BANA has agreed to create a Settlement Fund of \$8,000,000 (“Settlement Fund” or “Settlement Amount”). As discussed separately below, Attorneys’ Fees and Costs, a Service Award to the Class Representatives, and Settlement Administration Costs will be paid out of this amount. The remainder is the Net Settlement Fund. Subject to Court approval, the Net Settlement Fund will be divided among all Settlement Class Members on a *pro rata* basis pursuant to the formula described in the Settlement Agreement.

11. How much of the Settlement Fund will be used to pay for Attorneys’ Fees and Costs?

Class Counsel will request that the Court award up to 33.33% of the Settlement Fund as Attorneys’ Fees, plus reimbursement of \$47,747.85 in litigation Costs incurred in prosecuting the Action. The Court will decide the amount of the Attorneys’ Fees and Costs 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.

12. How much of the Settlement Fund will be used to pay the Class Representatives a Service Award?

Class Counsel, on behalf of the Class Representatives, will request a Service Award of \$5,000 for each of the Class Representatives. The Service Award must be approved by the Court.

13. How much will my payment be?

Subject to Court approval, the Net Settlement Fund will be divided among all Settlement Class Members entitled to Settlement Class Member Payments *pro rata* with a minimum payment of \$2.00 as outlined in the Settlement Agreement, which may be found at www.ACHFirstPartyFeeSettlement.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.

14. 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 legal right to bring 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.

15. When will I receive my payment?

The Court will hold a Final Fairness Hearing on **April 30, 2024 at 9:30am ET**, 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

16. 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 Action, then you must opt-out of the Settlement.

To opt-out, you **must** send a letter to the Settlement Administrator that you want to opt-out from the Settlement. Your letter can simply say, "I hereby elect to opt-out from the Settlement in the *Tami Bruin, et al. 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 March 18, 2024**, and sent to the following address:

Bruin v. Bank of America Settlement
Opt-Out Requests: Bank of America ACH Fee Class Action
P.O. Box 5324
New York, NY 10150-5324

17. 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.

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

No. If you opt-out, you will not be entitled to a Settlement Class Member Payment.

OBJECTING TO THE SETTLEMENT

19. 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:

- A statement of your intention to object to the Settlement in the Tami Bruin, et al. v. Bank of America, N.A. class Action;
- 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;
- a list, by case name, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative; and
- the objector's signature (an attorney's signature is not sufficient).

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

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

The objection must also include the dates when the objector is available for deposition, which dates may be no later than 45 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 45 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 or received by the Settlement Administrator and/or Court by **March 18, 2024**, and served at the same time to Class Counsel and BANA’s Counsel to the following addresses:

SETTLEMENT ADMINISTRATOR	CLERK OF COURT	CLASS COUNSEL	BANA’S COUNSEL
Bruin v. Bank of America Settlement P.O. Box 5324 New York, NY 10150-5324	United States Courthouse Western District of North Carolina 401 West Trade Street Room 1200 Charlotte, NC 28202	Andrew Shamis Shamis & Gentile P.A. 14 N.E. 1 st Ave Suite 705 Miami, FL 33132 Chris Chagas Gold Edelsberg Law P.A. 15th 20900 NE 30 th Ave Suite 417 33180 Aventura, FL 33139 Sophia Goren Gold KalieGold PLLC 950 Gilman Street Suite 200 Berkeley, CA 94710 David M. Wilkerson The Van Winkle Law Firm P.O. Box 7376 Ashville, NC 28802	Bradley Kutrow MCGUIREWOODS LLP 201 North Tryon Street Suite 3000 Charlotte, NC 28202 Laura Brys Goodwin Procter LLP 601 S. Figueroa Street Suite 4100 Los Angeles, CA 900017 Allison Schoenthal Goodwin Procter LLP 620 Eighth Avenue New York, NY 10018

20. 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 Action.

21. 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

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

The Court will hold a Final Fairness Hearing on **April 30, 2024 at 9:30am ET**. 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 Representatives should get as a Service Award for acting as the Class Representatives.

23. 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.

24. 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 **March 18, 2024**, and in that notice you must:

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

You must also deliver a copy of the Notice of Intent to Appear with the above listed items to Class Counsel and BANA's Counsel.

IF YOU DO NOTHING

25. What happens if I do nothing at all?

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

THE LAWYERS REPRESENTING YOU

26. 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.

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

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

28. Who determines what the Attorneys' Fees will be?

The Court will be asked to approve the amount of Attorneys' Fees and Costs 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 Costs Award at the website established by the Settlement Administrator, www.ACHFirstPartyFeeSettlement.com.

GETTING MORE INFORMATION

This Long Form Notice only summarizes the proposed Settlement. More details are contained in the Settlement Agreement, which can be viewed/obtained online at www.ACHFirstPartyFeeSettlement.com (or at the Office of the Clerk of the Western District of North Carolina, which is located at 401 West Trade Street, Charlotte, NC 28202, 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:

Bruin v. Bank of America Settlement
P.O. Box 5324
New York, NY 10150-5324
(833) 933-5580
www.ACHFirstPartyFeeSettlement.com

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

Exhibit E

From: Kroll Settlement Administration
To:

Subject Line: Re: Legal Notice of Class Action Settlement

Class Member ID: <<Refnum>>

IF YOU HAD A CONSUMER CHECKING AND/OR SAVINGS ACCOUNT WITH BANK OF AMERICA, N.A. AND PAID CERTAIN ACH TRANSFER FEES FOR PUSH TRANSFERS TO YOUR OWN EXTERNAL ACCOUNT **BETWEEN APRIL 4, 2018, AND NOVEMBER 17, 2023**, YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.

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

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

For more information, including a more detailed description of your rights and options, please click [here](#) or visit www.ACHFirstPartyFeeSettlement.com

A Settlement has been reached with Bank of America, N.A. ("BANA") in a class action lawsuit about ACH Transfer Fees assessed for push transfers to Accountholders' own external accounts ("ACH First Party Fees") related to certain ACH transactions that were charged on Accounts from **April 4, 2018, through November 17, 2023**.

Who is included? BANA records indicate that you are a "Settlement Class Member" in this Settlement because you are in the following Settlement Class definition: All Accountholders in the United States who, during the Class Period, paid and were not refunded an ACH First Party Fee. Excluded from the Settlement Class is BANA, its parents, subsidiaries, affiliates, officers, directors, employees, all Settlement Class Members who make a timely election to opt-out, and all judges assigned to this Action and their immediate family members.

What does the Settlement provide? BANA will create an \$8,000,000 Settlement Fund. After deducting Attorneys' Fees and Costs, a Service Award to the Class Representatives, and the Settlement Administration Costs, the Net Settlement Fund will be divided *pro rata* among all Settlement Class Members with a minimum payment of \$2.00.

What are my options? If you do nothing and the Settlement is approved by the Court 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 and receive a Settlement Class Member Payment, you must opt-out of the Settlement by **March 18, 2024**. Unless you opt-out, you will not be able to sue or continue to sue BANA for any claim made in this Action or released by the Settlement Agreement. If you stay in the Settlement (and do not opt-out), you may object to it by **March 18, 2024**.

The Court's Final Fairness Hearing. The Court will hold a Final Fairness Hearing on **April 30, 2024 at 9:30am ET**. 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 (up to \$47,747.85); and (3) a Service Award of \$5,000 for each of the Class Representatives. You or your lawyer may appear at the hearing at your own expense, but you do not have to.

For more information, including a detailed copy of the Long Form Notice and the full Settlement Agreement, visit www.ACHFirstPartyFeeSettlement.com or call (833) 933-5580.

Exhibit F

Exclusion List

Count	Record Identification Number
1	77904CMFXW8JW
2	77904CT2F2C9T
3	77904CMNRQ0KW
4	77904CGZV7K8F
5	77904CJ97TGVM
6	779043PPMWSTP
7	7790475M55X7B
8	77904BD1JQS2M
9	779047Z66W8N4
10	77904CGGRJ31Z

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

TAMI BRUIN, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 3:22-cv-140-MOC-WCM

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT

WHEREAS, Plaintiffs have submitted to the Court the Unopposed Motion for Final Approval of Class Action (“Action”) Settlement (“Settlement”);

WHEREAS, on November 17, 2023, the Court entered a Preliminary Approval Order which, *inter alia*: (i) preliminarily approved the Settlement; (ii) determined that, for purposes of the settlement only, the Action should proceed as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure; (iii) appointed Plaintiffs as Class Representatives; (iv) Sophia Gold of KalielGold; Christopher Gold of Edelsberg Law; and Andrew Shamis of Shamis & Gentile as co-lead counsel, and David M. Wilkerson of The Van Winkle Law Firm as liaison counsel; (v) approved the form and manner of the Notice Plan; and (vi) set a hearing date to consider Final Approval of the Settlement;

WHEREAS, Notice was provided to all persons identified in the Settlement Class member list in accordance with the Court’s Preliminary Approval Order by individual email and/or mailings to all persons in the Settlement Class who could be reasonably identified;

WHEREAS, on April 30, 2024, at 9:30 a.m., U.S. District Court for the Western District of North Carolina, located at 401 West Trade Street, Charlotte, NC 28202 the Honorable Max O. Cogburn, Jr. held a Final Approval Hearing to determine whether the Settlement was fair, reasonable, and adequate, and to consider the application of Class Counsel for attorneys' fees and costs for Service Awards for the Class Representatives; and

WHEREAS, based on the foregoing, having considered the papers filed and proceedings held in connection with the Settlement, having considered all of the other files, records, proceedings in the Action, and arguments of counsel, and being otherwise fully advised,

IT IS HEREBY ORDERED as follows:

1. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

2. This Order incorporates the definitions in the Settlement Agreement, and all capitalized terms used in this Order have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

3. The Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances, and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The Notice fully satisfied the requirements of due process, Federal Rule of Civil Procedure 23, and all other applicable law and rules.

4. The notice to government entities, as given, complied with 28 U.S.C. § 1715.

5. The Settlement (i) is in all respects fair, reasonable, and adequate to the Settlement Class, (ii) was the product of informed, arms-length negotiations among competent, able counsel, and (iii) was made based upon a record that is sufficiently developed and complete to have enabled

the Parties to adequately evaluate and consider their positions. In finding the Settlement fair, reasonable, and adequate, the Court has also considered (1) that there were no objections to the Settlement, (2) the small number of opt-outs, indicating an overwhelming positive reaction from the Settlement Class, and (3) the opinion of competent counsel concerning such matters.

6. The distribution plan proposed by the Parties is fair, reasonable, and adequate.

7. The Class Representatives and Class Counsel have fairly and adequately represented and will continue to adequately represent and protect the interests of Settlement Class Members in connection with the Settlement.

8. A list of the individuals who have opted out of the Settlement is attached hereto as **Exhibit A**. Those individuals will not be bound by the Settlement or the Releases contained therein.

9. Because the Court approves the Settlement set forth in the Settlement Agreement as fair, reasonable, and adequate, the Court authorizes and directs implementation of all terms and provisions of the Settlement Agreement.

10. All Parties to this Action, and all Settlement Class Members, are bound by the Settlement as set forth in the Settlement Agreement and this Order.

11. The appointment of the Plaintiffs Tami Bruin and Eline Barokas as Class Representatives is affirmed.

12. The appointment of Sophia Gold of KalielGold; Christopher Gold of Edelsberg Law; and Andrew Shamis of Shamis & Gentile as co-lead counsel, and David M. Wilkerson of The Van Winkle Law Firm as liaison counsel is affirmed.

13. The Court affirms the finding that the Settlement Class meets the relevant requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) for purposes of the Settlement in

that: (1) the number of Settlement Class Members is so numerous that joinder is impracticable; (2) there are questions of law and fact common to the Settlement Class members; (3) the claims of the Class Representatives are typical of the claims of the Settlement Class members; (4) the Class Representatives are adequate representatives for the Settlement Class, and have retained experienced counsel to represent them; (5) the questions of law and fact common to the Settlement Class members predominate over any questions affecting any individual Settlement Class member; and (6) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

14. Judgment shall be, and hereby is, entered dismissing the Action with prejudice, on the merits, and without taxation of costs in favor of or against any Party.

15. The Releasing Parties hereby fully and irrevocably release and forever discharge as of the Effective Date, and in exchange for the relief described in the Settlement, the Class Representatives and each Settlement Class Member who did not validly opt out of the Settlement, and each of their respective heirs, executors, administrators, trustees, guardians, agents, successors, and assigns, and all those acting or purporting to act on their behalf, fully and finally release and discharge the Released Parties of and from the Released Claims. The Released Claims are dismissed with prejudice and released regardless of whether these claims are known or Unknown Claims, actual or contingent, liquidated or unliquidated.

16. If, consistent with the plan of distribution set forth in the Settlement Agreement, any Residual Funds exist after the first distribution, the residue will go to Settlement Class Members by way of a secondary distribution, if economically feasible. Otherwise, the residue will go to an appropriate *cy pres* recipient, either a consumer protection or financial services charity, to be decided by the Court.

17. The Court hereby decrees that neither the Settlement Agreement, nor this Order, nor the fact of the Settlement, is an admission or concession by Defendant or the Released Parties of any fault, wrongdoing or liability whatsoever, or as an admission of the appropriateness of class certification for trial or dispositive motion practice. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Nothing relating to the Settlement shall be offered or received in evidence as an admission, concession, presumption or inference against Defendant or the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Settlement Agreement or to support a defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense.

18. Class Counsel is awarded attorneys' fees in the amount of \$2,666,667 and costs in the amount of \$47,747.85, such amounts to be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

19. The Class Representatives are awarded Service Awards totaling \$10,000, such amount to be paid from the Settlement Fund in accordance with the terms of the Settlement Agreement.

20. The Court hereby retains and reserves jurisdiction over: (a) implementation of this Settlement and any distributions from the Settlement Fund; (b) the Action, until the Effective Date, and until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms and conditions of the Settlement Agreement, including the exhibits appended thereto; and (c) all Parties, for the purpose of enforcing and administering the Settlement.

21. In the event that the Effective Date of the Settlement Agreement, does not occur, the Settlement shall be rendered null and void to the extent provided by and in accordance with

the Settlement Agreement, and this Order shall be vacated. In such event, all orders entered and releases delivered in connection with the Settlement shall be null and void and the Action shall return to its status immediately prior to execution of the Settlement Agreement.

22. With the exception of those listed on Exhibit A, the Court adjudges that the Class Representatives and all Settlement Class Members shall be bound by this Final Approval Order.

23. There being no just reason for delay, the Clerk of Court is hereby directed to enter final judgment forthwith pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: _____

Hon. Max O. Cogburn, Jr.
United States District Judge