

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

<p>IN THE MATTER OF</p> <p>DOLORES JACKSON, SHAWN JACKSON AND ODAMIS VILLA, Individually and on behalf of all others similarly situated,</p> <p style="text-align: right;">Petitioners,</p> <p style="text-align: center;">- against -</p> <p>BANK OF AMERICA, N.A.,</p> <p style="text-align: right;">Respondent.</p>
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Index No.: 15145/2011

Justice Richard Velasquez

**CLASS ACTION
SETTLEMENT
AGREEMENT
("AGREEMENT")**

Petitioners, on behalf of themselves and all Class Members (defined below), and Respondent (the "Parties"), after lengthy litigation, have agreed to resolve this matter upon the following terms:

Section 1. THE SETTLEMENT CONSIDERATION

1.1 **Settlement Fund and Account:** Within 30 days of the Preliminary Approval Order, respondent BANA¹ shall pay \$2,850,000 ("*Settlement Fund*") into an account to be administrated by the Settlement Administrator to satisfy BANA's obligations to the class and for attorneys' fees ("*Settlement Fund Account.*"). BANA shall provide notice to Class Counsel of this transfer.

1.2 **Additional Costs for Settlement Administrator:** In addition to, and separate from, the Settlement Fund, BANA shall pay all monies due and owing to the Settlement Administrator. BANA shall make such payments to the Settlement Administrator within 30 days of any invoice being issued by the Settlement Administrator.

¹ **BANA** includes Bank of America, N.A., and all its past and present direct and indirect parents, subsidiaries, affiliates, divisions, predecessors, successors, and assigns.

1.3 **No Other Payment Obligation:** Except for the amount set forth in sections 1.1, BANA shall have no obligation to make any other or further payments to any Class Representatives, Class Members, or Class Counsel.

1.4 **Purpose of Fund:** The Settlement Fund Account shall be under the control of Class Counsel, subject to review and objection to the Court by counsel for BANA. It shall be established in such a manner as to permit the Settlement Administrator to draw on it solely for purposes of paying Class Members, Class Representatives, and Class Counsel pursuant to the terms set forth in the Final Approval Order.

1.5 **Cooperation:** The Settlement Administrator and BANA will cooperate in the creation of the Settlement Fund Account, with the participation of Class Counsel and BANA's Counsel. The Settlement Administrator shall provide BANA all information required for creation of the Settlement Fund Account and for any of BANA's tax reporting requirements.

1.6 **Changes in Practices:** BANA agrees and acknowledges that solely as a result of this litigation, and to resolve this dispute, BANA has changed its' practices in the following manner:

- a) As of August 2017, when processing restraints, BANA no longer aggregates debtors' accounts prior to calculating the statutorily exempt amounts. The statutory exemption is applied to each account belonging to a judgment debtor prior to calculating the restrained amount.
- b) As of February 2023, BANA ceased its practice of automatically issuing checks for exempt amounts to judgment debtors. When BANA is served with a restraining notice or levy with respect to a judgment debtors' account(s), the judgment debtor will be able to utilize each such account in the normal course,

limited, however, to the amount of exempt funds to which they are entitled under New York State and federal law. Funds in excess of the exempt funds will be set aside in accordance with the restraining notice or levy. Any funds sought to be credited to the account(s) thereafter will be captured and set aside in further compliance with the restraining notice or levy without posting to the account. In addition to all disclosures required by EIPA and any other state and/or federal law, going forward, BANA shall provide notice to judgment debtors explaining the judgment debtors' rights and ability to fully utilize the exempt funds remaining in their accounts, including through checks, ACH transfers, debit cards, online payments, etc. Class counsel shall have the right to provide reasonable comments and suggested revisions as to the text of such notice.

1.7 **Permanence of Changes in Practice:** BANA agrees that the policies and practices set forth in section 1.6 will be permanent, unless required by a change in statutory, regulatory, or decisional law, or as may be required by a regulatory or governmental authority. Nothing in this Agreement shall release BANA from any potential liability occasioned by a future change in practice.

Section 2. DEFINITIONS

As used herein:

Account Holder(s) shall mean to holder(s) of an individual bank account as recorded in BANA's systems.

Action(s) shall mean the above-captioned special proceeding and any related appeals, actions, or proceedings.

Class Members shall mean all members of either or both of the two classes certified by the Court by Decision and Order dated January 6, 2020 in the above-captioned special proceeding.

Class Representatives or **Petitioners** shall mean Delores Jackson, Shawn Jackson, and Odamis Villa.

Class Counsel shall mean the Law Offices of G. Oliver Koppell & Associates.

Effective Date shall mean the first business day after which all of the following events have occurred:

- (a) the Court has entered the Preliminary Approval Order;
- (b) the Court has finally approved the Settlement, following notice to the Class as prescribed by Article 9 of the Civil Practice Law and Rules;
- (c) the time to exercise all termination rights or options provided in this Agreement have expired or otherwise been waived;
- (d) the Court has entered the Final Approval Order; and
- (e) the time for appeal or appellate review of any order or judgment has expired without any appeal having been filed; or (ii) if there has been an appeal, (a) that the appeal has been decided without causing a material change in the order or judgment; or (b) that the order or judgment has been upheld on appeal and is no longer subject to appellate review by further appeal or writ of certiorari.

Judgment shall mean the final judgment in this special proceeding which shall, among other things, provide for the dismissal with prejudice of the Action against BANA.

Released Parties shall mean BANA, the Class Representatives, and the Class Members.

Settled Claims shall mean all claims, demands, causes of action and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law or statutory, under federal, state or local law or otherwise), whether known or unknown, asserted or unasserted, by reason of any act, omission, transaction, agreement, or occurrence, that the Class Representatives or Class Members ever had, now has, or hereafter may have against BANA with regard to the subject matter of this special proceeding

Section 3. RELEASES

3.1 **Consideration:** The obligations incurred pursuant to this Agreement shall be in full and final disposition of the Actions as against BANA and shall fully and finally release any and all Settled Claims as against all Released Parties.

3.2 **Judgment and Dismissal with Prejudice:** The Judgment shall, among other things, provide for the dismissal with prejudice of the Action against BANA without costs to any party, except as specifically stated in this Agreement.

3.3 **Scope of Judgment for Petitioners and Class Members:** Pursuant to the Judgment, on the Effective Date, each of the Petitioners and the Class Members, individually and on behalf of their respective heirs, executors, trustees, administrators, beneficiaries, and assigns, and any other person claiming by, through or on behalf of them, (a) shall be deemed by operation of law to have released, waived, discharged and dismissed each and every of the Settled Claims against the Released Parties; (b) shall forever be enjoined from commencing, instituting, or prosecuting any or all of the Settled Claims against the Released Parties; and (c) shall not institute, continue, maintain, or assert, either directly or indirectly, whether in the United States or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, or demand against any Released Parties concerning any Settled Claims.

3.4 **Terms of Agreement Preserved:** None of the provisions of this Section are intended to, nor shall they be construed to, amend, modify, excuse, or terminate any rights, duties or obligations of any Party, Class Counsel, or BANA's Counsel under the terms of this Agreement other than as expressly set forth in this Agreement.

Section 4. NO ADMISSION OF WRONGDOING

4.1 **No Admission & Non-Use:** This Agreement, whether or not consummated, and any proceedings taken pursuant to it:

(a) shall not be offered or received against BANA or any other Released Party as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by BANA or Released Parties concerning the truth of any fact alleged

by the Class Representatives or the validity of any claim that was or could have been asserted against BANA or Released Parties in these Actions or in any litigation, or of any liability, fault, misconduct or wrongdoing of any kind of BANA or Released Parties;

(b) shall not be offered or received against BANA or Released Parties as evidence of a presumption, concession or admission of any liability, fault, misconduct, or wrongdoing by BANA or the Released Parties, or against the Class Representatives or any Class Members as evidence of any infirmity in the claims of the Class Representatives or the other Class Members;

(c) shall not be offered or received against BANA or Released Parties, or against the Class Representatives or any other Class Members, as evidence of a presumption, concession, or admission concerning any liability, fault, misconduct, or wrongdoing of any kind, or in any way referred to for any other reason as against BANA or Released Parties, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement including but not limited to the protection from liability granted BANA by this Agreement;

(d) shall not be construed against BANA or Released Parties, or against the Class Representatives or any other Class Members as an admission, concession, or presumption that the consideration to be given by this Agreement means that the Class Representatives or Class Members suffered damages or that the consideration represents the amount which could be or would have been recovered after trial; and

(e) shall not be construed against the Class Representatives or any other Class Members as an admission, concession, or presumption that any of their claims are without merit or that damages recoverable in these Actions would not have exceeded the

aggregate of the Settlement payments to which Class Members are entitled under the terms of this Agreement.

Section 5. ADMINISTRATION OF THE SETTLEMENT

5.1 **Settlement Administrator:** The Settlement Administrator shall be chosen by BANA after review of bids from at least two experienced settlement claims administrator candidates. The selected administrator will only be appointed after consultation with, and approval of, Class Counsel. The Settlement Administrator shall be chosen prior to submission of the proposed Preliminary Approval Order to the Court.

5.2 **Supervision and Jurisdiction:** The Settlement Administrator shall discharge its duties under the joint supervision of BANA and Class Counsel, and subject to the jurisdiction of the Court. Any material disputes between BANA and Class Counsel arising from the Settlement Administrator's discharge of its duties shall be submitted to the Court for resolution on an expedited basis.

A. Identification of Class Members

5.3 **E-Files:** No later than sixty (60) days after the Court enters the Preliminary Approval Order, and subject to the Stipulated Protective Order, BANA shall deliver to the Settlement Administrator an electronic file, in a format to be agreed on by BANA and the Settlement Administrator, containing the following related data concerning each Class Member ("*Class Members E-File*"):

- (a) The name(s) of the Account Holder;
- (b) The address of the Account Holder;
- (c) The last known mailing address of the Account Holder;
- (d) The last known e-mail address of the Account Holder; and
- (e) The last known telephone number(s) of the Account Holder

5.4 **Class Counsel Receipt of Names:** No later than thirty (30) days after BANA provides the Settlement Administrator with the Class Members E-File, BANA shall provide Class Counsel with the name(s) of the Account Holders in the same format, subject to the Stipulated Protective Order and the Preliminary Approval Order.

5.5 **Additional Search:** No later than ten (10) days after receipt of the Class Members E-File, the Settlement Administrator will conduct a search on the National Change of Address Database of the names of all Account Holders to determine if the Last Known Mailing Address appears to remain valid.

5.6 **Current Address:** The Settlement Administrator will, if appropriate, revise the Last Known Mailing Address based on the results of its additional search and the Last Known Mailing Address or the revised address, as appropriate, shall be deemed the “**Current Address**” of the Account Holders for purposes of the Settlement Administrator mailing the Class Notice in the form approved in the Preliminary Approval Order (the “**Class Notice**”).

B. Creation Of Settlement Website

5.7 **Settlement Website:** No later than thirty (30) days after receipt of the Class Members E-File, the Settlement Administrator shall establish a website (“**Settlement Website**”) which shall contain the following information and possess the following functionality:

(a) Permit Class Members to view and print documents relevant to the Settlement, including this Agreement, the Class Notice and the Preliminary Approval Order;

(b) Contain a “**frequently asked questions**” section stating, among other things, the nature of the action and recovery, procedures for requesting exclusion from the Class pursuant to the terms of the Preliminary Approval Order; procedures for objecting to the Settlement pursuant to the terms of the Preliminary Approval Order; the scheduled date for the Settlement Hearing; and deadlines relevant to the Settlement as established in the Preliminary

Approval Order, including the dates for seeking exclusion from the Class, and objecting to the Settlement. The text of the website shall be mutually agreed on by Plaintiffs' Counsel and Counsel for BANA, with any disputes to be submitted to the Court for expedited resolution; and

(c) Provide contact information concerning Class Counsel, including a link to Class Counsel's website.

5.8 **Maintenance and Ownership:** The Settlement Administrator shall maintain the Settlement Website and ensure that it remains accessible to Class Members until the Closure Order (defined below) is entered, at which time the Settlement Administrator shall cease operation of the Settlement Website and promptly transfer ownership of the Settlement Website's uniform resource identifier to BANA. The Settlement Administrator shall retain a copy of the Settlement Website pages under its standard document retention policy.

C. Transmission of Notice

5.9 **E-Mailing of Notice:** For all those Class members for whom the Settlement Administrator has a valid email address, no later than thirty (30) days after receipt of the Class Members E-File, the Settlement Administrator shall email the Class Notice to each Class Member.

5.10 **First Class Mailing of Notice:** For all those Class members for whom the Settlement Administrator does not have a valid email address, no later than thirty (30) days after receipt of the Class Members E-File, the Settlement Administrator shall mail by First Class Mail, postage prepaid, the Class Notice to each Class Member at their Current Address or Revised Current Address.

5.11 **Skip Trace or Similar Search:** To the extent reasonable, if a mailed Class Notice for an Account Holder is returned to the Settlement Administrator as undeliverable, then the Settlement Administrator shall conduct, to the extent the Class Member data permits, a

onetime skip trace search (or similar search) of the Account Holder to determine if an address other than the Current Address is appropriate. Based on the results of its search, the Settlement Administrator will, if appropriate, revise the Current Address of the Account Holder (“**Revised Current Address**”) and resend, by mail, first class postage pre-paid, the Class Notice to the Account Holder at the Revised Current Address. BANA shall, to the extent permitted by applicable law, cooperate with any request of the Settlement Administrator to facilitate locating the address or confirming the identity of a Class Member, including, but not limited to, using reasonable efforts to provide a date of birth or the last four digits of a social security number upon request.

D. Additional Obligations Of The Settlement Administrator

5.12 **Other Duties:** The Settlement Administrator shall be responsible for the following additional duties:

- (a) establishing a post office box for receipt of requests for exclusions from the Class submitted by Class Members, respectively, through the mail;
- (b) establishing an email address for receipt of requests for exclusions from the Class submitted by Class Members;
- (c) training its employees and agents to fully and accurately (i) communicate with Class Members, Class Counsel, and BANA’s Counsel concerning all matters relevant to the administration of the Settlement, and (ii) perform all other functions required of the Settlement Administrator under this Agreement;
- (d) recording and retaining all requests for exclusion from the Class submitted by Class Members, including maintaining the original mailing envelope in which such exclusion requests were mailed;

(e) promptly furnishing to Class Counsel and BANA counsel copies of any requests for exclusion from the Class submitted by Class Members and any other written or electronic communications received by the Settlement Administrator from Class Members requested by Class Counsel or BANA counsel;

(f) recording and retaining all objections to the proposed Settlement that Class Members may erroneously send to the Settlement Administrator, including maintaining the original mailing envelope in which such objections were mailed, and promptly furnishing to Class Counsel and BANA counsel copies of any such objections;

(g) maintaining the confidentiality of the Class Members' data and any other document containing private financial or personal identifiers of the Class Members according to the requirements of the Stipulated Protective Order and the Preliminary Approval Order, the Gramm-Leach-Bliley Act, and any other applicable federal or state privacy law;

(h) performing any tax reporting or other duties required by federal, state, or local law, including duties concerning Distribution Checks;

(i) maintaining adequate records of all its activities, including the dates of each mailing or emailing of the Notice; the date when the Settlement Website became publicly accessible; returned mail from Class Members; and other communications and attempted written or electronic communications with Class Members;

(j) retaining in an accessible manner all communications with Class Members;

(k) preparing all reports, schedules, and declarations which are described in this Agreement as the responsibility of the Settlement Administrator;

(l) preparing and mailing Distribution Checks to Class Members;

(m) referring to Class Counsel all inquiries by Class Members regarding matters not specified in this Agreement as within the scope of the Settlement Administrator's responsibilities;

(n) performing such other reasonable tasks as Class Counsel and BANA mutually request; and

(o) confirming in writing to Class Counsel and BANA its completion of the administration of the Settlement.

Section 6. DISPUTED CLASS MEMBERS

6.1 **Claims of Disputed Class Members:** In the event the Settlement Administrator or Class Counsel is contacted by an individual claiming to be a class member who did not receive Class Notice, Class Counsel, BANA, and the Settlement Administrator shall confer in good faith, within 14 days, to determine if the individual is a member of the class. If it is agreed that the individual is a member of the class, the individual shall be so informed by the Settlement Administrator and shall be added to the Class Member list and thereafter be treated as a Class Member. If it is agreed that the individual is not a Class Member, then the individual shall be so informed by the Settlement Administrator and be further informed that it is the responsibility of the individual to raise the issue before the Court.

6.2 **Class Membership Disputes:** Any disputes between the parties as to whether an individual is, or is not, a member of the class shall be resolved by the Court. If Class Counsel believes the individual is a Class Member, they shall have the duty to raise the issue before the Court. If Class Counsel does not believe the individual is a Class member, it shall be the responsibility of the individual to raise the issue before the Court.

Section 7. CONFIRMATORY DISCOVERY

7.1 **Scope of Confirmatory Discovery:** Prior to the application for final approval, Petitioners, Class Counsel, and BANA shall engage in a confirmatory discovery process. Said process was for the purpose of confirming that:

- (a) BANA accurately identified the members of the Class and the number of restrained accounts;
- (b) BANA accurately identified the amount of restraint fees collected by BANA; and
- (c) BANA has not imposed non-sufficient fund (“NSF”) fees on more than 2% of all restrained accounts.

7.2 **Costs for Confirmatory Discovery:** Each party shall bear their own costs associated with the confirmatory discovery.

7.3 **Scope of Confirmatory Discovery:**

- (a) BANA will provide an affidavit (or affidavits), under oath, that provides the number of class members, the number of restrained accounts, the total amount of the restraint fees collected by BANA, and proof that BANA has not imposed NSF fees on more than 2% of all restrained accounts. Said affidavit shall explain how this data was obtained and calculated, including the computer systems, programming, language, or queries used to obtain those results.
- (b) At the request of Class Counsel, the affiants propounded by BANA shall confer with any independent expert retained by Class Counsel to answer any questions said expert shall have about the affidavits and the manner in which BANA collected the information contained in the affidavits.

7.4 **Results of Confirmatory Discovery:** BANA acknowledges and recognizes that but for specific representations made by BANA in the settlement negotiation process as to what confirmatory discovery will reveal, Petitioners would not have agreed to the Settlement. Should the results of confirmatory discovery, including the findings of any expert retained by Class Counsel reviewing the affidavits propounded by BANA, materially deviate from representations made by BANA during the settlement negotiation process, the parties shall attempt to modify the Settlement to address these findings and provide fair compensation to the Settlement Class. If an agreement cannot be reached, Class Representatives shall also have the right, but not the obligation, to terminate the Settlement Agreement in accord with the terms of Section 12. Material deviations in the findings of confirmatory discovery may include, but are not limited to, a substantially greater amount of class members, a substantially greater amount of restraint fees collected by BANA, and NSF fees imposed on more than 2% of restrained accounts.

Section 8. PAYMENT DISTRIBUTION PROCESS

8.1 **Effective Date:** No Settlement payments shall be made to any Class Members or Class Counsel until after the Effective Date.

8.2 **Order of Payment:** Within fourteen (14) days after the Effective Date, the Settlement Administer shall draw checks on the Settlement Fund Account made payable to, in the following order:

(a) Class Counsel, for fees and costs awarded by the Court in connection with this Action and this Settlement;

(b) Class Representatives, for Service Awards awarded by the Court;

and

(c) Class Members, according to their respective Class Member

Payment.

8.3 **Class Member Payment:** The Settlement Administrator shall pay to each Class Member a pro rata share of all remaining proceeds of the Settlement Fund, as identified in the Final Distribution Schedule or Final Distribution Order Schedule, and as determined through the procedures stated in this Agreement.

8.4 **More than One Class Member on an Account:** If an account has more than one Class Member, then all such Class Members shall be (a) entitled to only one settlement payment; (b) solely responsible for the allocation, if any, of the payment between and among all such Class Members; and (c) solely responsible for taking all steps necessary to negotiate any Distribution Check made payable to all such Class Members, including but not limited to all costs associated with taking such steps. Delivery of a Distribution Check to one of several Class Members who were Account Holders for one account shall be deemed final and conclusive of BANA's obligations under this Agreement and the Settlement to all such Class Members.

8.5 **First Class Mailing:** The Settlement Administrator shall send such Distribution Checks, by first class mail, postage pre-paid, to the appropriate Class Members at such address as stated on the Final Distribution Schedule and the Final Distribution Order Schedule.

8.6 **No Distribution Responsibility/Liability:** BANA shall have (a) no responsibility for, or participation in, the drafting of Distribution Checks in the proper amounts to the appropriate Class Member or the distribution of the Distribution Checks to Class Members at the appropriate addresses; or (b) no liability for any act, omission, mistake, negligence, fault,

or misconduct of the Settlement Administrator or Class Counsel in the drafting or distribution of the Distribution Checks.

8.7 **Undeliverable:** For those Class Members whose Distribution Checks are returned by the Postal Service as undeliverable, the Settlement Administrator shall seek an address correction for those Class Members, and their checks will be resent if the Settlement Administrator, in consultation with Class Counsel, determines that a valid current address is then available.

8.8 **Unavailable Current Address:** If the Settlement Administrator determines that a valid current address is not available, it shall send an email to the Class Member, if an email address is available, in an effort to obtain a valid current address. If an email address is not available, then the Settlement Administrator shall make no further attempt to distribute the returned Distribution Check and it shall be treated as an Uncleared Distribution Check (defined below).

8.9 **Uncleared Distribution Check:** Those Class Members whose Distribution Checks are not cashed or otherwise negotiated within one hundred eighty (180) days after issuance (“*Uncleared Distribution Check*”) shall be ineligible to receive a settlement payment and neither BANA nor any other Released Party shall have any further obligation to make any payment pursuant to this Agreement or otherwise to such Class Member.

8.10 **Unpaid Funds:** The Settlement Administrator, under the supervision of Class Counsel, will take such steps as are required to ensure that all unpaid funds in the Settlement Fund Account associated with Uncleared Distribution Checks shall be paid as *cy pres* to the National Consumer Law Center.

8.11 **Distribution Checks Report:** As soon as practicable after all Distribution Checks have been mailed and the time periods applicable to all Uncleared Distribution Checks has expired, the Settlement Administrator shall prepare a report (“*Distribution Checks Report*”) identifying for each Class Member to whom a Distribution Check was mailed and whether the Distribution Check was negotiated or deemed an Uncleared Distribution Check.

8.12 **Receipt by Counsel:** The Settlement Administrator shall promptly provide the Distribution Checks Report to Class Counsel and BANA.

8.13 **Closure of Settlement Fund Account:** On provision of the Distribution Checks Report and its distribution of all unpaid funds in the Settlement Fund Account, the Settlement Administrator shall close the Settlement Fund Account.

Section 9. CLASS CERTIFICATION

9.1 **Certification and Appointment:** The Parties stipulate and agree to (a) certification of the Actions as a class action pursuant to CPLR §902 and CPLR §903 on behalf of the Classes as set forth in the Court’s Order of January 6, 2020; (b) appointment of Petitioners as Class Representatives; and (c) appointment of Petitioners’ Counsel as Class Counsel.

9.2 **No Admission:** Any certification of a conditional, preliminary, or final class pursuant to the terms of this Settlement shall not constitute, and shall not be construed as, an admission by BANA that this action is appropriate for class treatment, in whole or part.

9.3 **No Prejudice:** This Settlement is without prejudice to the rights of BANA to appeal the order granting Petitioner’s Motion for Class Certification, dated January 6, 2020, and any subsequent preliminary, conditional, or final certification of this Action should this Settlement not be preliminary or finally approved, or if it is terminated pursuant to the terms of this Agreement.

9.4 **No Individual Settlements.** This Settlement is a Class Settlement only and not individual settlements.

Section 10. CLASS SETTLEMENT PROVISIONS

B. Preliminary Approval Order

10.1 **Motion:** As soon as practical after execution of this Agreement, the Class Representatives shall move for the entry of the Preliminary Approval Order.

B. Notice To The Class

10.2 **Notice To The Class:** The Settlement Administrator, at the direction and under the supervision of Class Counsel, shall provide the Settlement Notices to the Class consistent with the terms of the Preliminary Approval Order and Section 5, Subsection C (Transmission of Notice) above.

C. Exclusions From The Class

10.3 **Exclusion Request:** No later than 30 days before the Settlement Hearing set in the Preliminary Approval Order, any Class Member may request to be excluded from the Class and not be a member of the Class pursuant to the terms and subject to the conditions stated in the Preliminary Approval Order.

10.4 **No Exclusion by Class Representatives:** The Class Representatives shall not request to exclude themselves from the Class.

D. Objections To The Settlement

10.5 **Objections:** No later than 30 days before the Settlement Hearing set in the Preliminary Approval Order, any Class Member may object to the Settlement and any provisions of this Agreement, including but not limited to the award of Class Counsel Fees and the Service Awards, pursuant to the terms and subject to the conditions stated in the Preliminary

Approval Order by filing with the Court, and serving Class Counsel and BANA, a written objection.

10.6 **No Objections by Class Representatives:** The Class Representatives shall not object to the Settlement or any provision of this Agreement.

E. Settlement Hearing

10.7 **Motion:** Pursuant to the schedule stated in the Preliminary Approval Order for the holding of the Settlement Hearing, the Class Representatives shall submit all moving and reply papers and any other documents, including any declarations of the Settlement Administrator, in support of the Court's approval of the Settlement on the terms stated in this Agreement and for the Court's entry of the Judgment on the terms stated in this Agreement.

10.8 **BANA's Right To Respond to Class Counsel Motions:** BANA may join in any of the Class Representatives' submissions, make separate submissions, or decline to make any submission, but BANA may not oppose the Court's approval of the Settlement on the terms stated in this Agreement or entry of the Judgment on the terms stated in this Agreement.

10.9 **Timing of Judgment:** The Parties shall not seek entry by the Court of the Judgment until ninety (90) days following the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under 28 U.S.C. §1715(b), which notice shall be served by BANA within the time provided by that statute.

Section 11. SETTLEMENT FEES, COSTS AND EXPENSES

11.1 **Costs:** The Parties shall bear their own costs and expenses concerning the Action except as specifically provided in this Section.

B. Class Counsel Fees and Expenses**11.2 Class Counsel Fees:**

(a) Class Counsel in the Actions shall seek Court approval for attorneys' fees and reimbursement of costs and expenses, Attorneys' fees shall be an amount no greater than one-third of the total Settlement Fund (33.33%). BANA shall not oppose an application in that or any lesser amount.

(b) Costs and expenses reimbursed to class counsel shall be calculated separately, and independently of the attorneys' fees, and shall also be separately payable to Class Counsel from the Settlement Fund. BANA shall not oppose an application for the reimbursement of reasonable costs and expenses to class counsel.

(c) Any Class Counsel fees and expenses awarded by the Court shall be payable from the Settlement Fund as set forth in Section 1.1.

11.3 Entire Amount: Any amounts that may be awarded by the Court for Class Counsel Fees and Expenses shall compensate Class Counsel, Petitioners, and all Class Members fully, completely and entirely for all attorneys' fees, costs and expenses of any kind (including but not limited to travel, court reporter and videographer expenses, expert fees and costs, document review and production costs, and costs and expenses associated with the administration of the Settlement) that (a) were or may be incurred concerning the Actions up to and including the date the Judgment becomes Final and (b) that may be incurred in the Actions after the date the Judgment becomes Final through the distribution of all Distribution Checks to Class Members and the closure of the Settlement Fund Account.

11.4 No Effect on Agreement: An award of Class Counsel Fees and Expenses is not a condition of this Agreement.

11.5 **No Effect on Effective Date:** The Court's decision not to approve, in whole or in part, the Class Counsel Fees and Expenses sought by Class Counsel shall neither prevent the Effective Date from occurring nor be grounds for termination of the Settlement or this Agreement.

11.6 **No Challenges:** Class Counsel and the Class Representatives may not challenge the Settlement or this Agreement based on the Court's or any appellate court's ruling concerning Class Counsel Fees and Expenses. Nothing in this Agreement shall preclude the Class Representatives and Class Counsel from appealing any decision of the Court on Class Counsel Fees and Expenses.

11.7 **Severance:** If the Court declines to approve, in whole or in part, any award of Class Counsel Fees and Expenses, and such decision is upheld, in whole or part on any appeal, then the remaining provisions of this Agreement shall remain in full force and effect.

B. Service Awards

11.8 **Service Awards:** Class Counsel will seek an award by the Court to each of the Class Representatives in an amount of \$13,000 each (a "**Service Award**") and collectively "**Service Awards**") and BANA shall not contest Class Counsel's request for such an award. Any Service Awards awarded by the Court shall be payable from the Settlement Fund as set forth in Section 1.1.

11.9 **No Effect on Agreement:** The Court's decision to award or not to award, in whole or part, a Service Award to each Class Representative is not a condition of this Agreement.

11.10 **No Challenges:** Class Counsel and the Class Representatives may not challenge the Settlement or this Agreement based on the Court's or any appellate court's ruling concerning the Service Awards. Nothing in this Agreement shall preclude the Class

Representatives and Class Counsel from appealing any decision of the Court on the Service Awards.

11.11 **Severance:** If the Court declines to approve, in whole or in part, the Service Award sought on behalf of the Class Representatives, and such decision is upheld, in whole or part, on any appeal, then the remaining provisions of this Agreement shall remain in full force and effect.

Section 12. TERMINATION

12.1 **Termination Rights:** BANA and Class Representatives each shall have the absolute, sole, and complete discretion to terminate the Settlement and this Agreement by providing written notice to the other of an election to do so within thirty (30) days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect; (b) the Court's declining to finally approve this Agreement and Settlement or any material part of it; (c) the Court's declining to enter the Judgment in any material respect; or (d) the date on which the Judgment is modified or reversed in any material respect by any Court of Appeals or the Supreme Court of the United States.

12.2 **Effect of Termination:** Except as stated in this Agreement, if this Agreement and the Settlement are terminated, then this Agreement shall be without prejudice, and none of its terms shall be effective or enforceable and the fact of the Agreement and the Settlement shall not be admissible in any trial of these Actions, and the Parties shall be deemed to have reverted to their respective status in these Actions immediately before execution of the Agreement and, except as expressly provided, such Parties shall proceed as if this Agreement and any related orders had not been entered, including the return to BANA of the Settlement Fund, and that BANA may seek the return of any monies distributed to Class Counsel,

Petitioners, or Class Members, or have those amounts applied to any future judgment or settlement, at BANA's sole discretion.

12.3 **Continuing Obligations:** If this Agreement is terminated, then BANA's obligation of to pay all settlement administration costs reasonably incurred through the date of termination shall remain in full force and effect.

Section 13. MISCELLANEOUS

13.1 **Exhibits Incorporated:** All of the exhibits attached are incorporated by reference and are a material part of this Agreement.

13.2 **No Bad Faith or Unreasonableness:** The Class Representatives and BANA shall not assert that these Actions were brought by the Class Representatives or defended by BANA in bad faith or without a reasonable basis.

13.3 **Rule 11 Satisfied:** The Parties shall not assert any claims for violation of Rule 11 of the Federal Rules of Civil Procedure or New York Rule 130-1 concerning the prosecution, defense, or settlement of these Actions.

13.4 **Good Faith:** All terms of this Settlement were negotiated at arm's length in good faith by the Parties and reflect a Settlement that was reached voluntarily after consultation with experienced legal counsel and the assistances of an experienced non-party mediator.

13.5 **Joint Press Release:** Class Counsel may issue a press release regarding the Settlement. Said press release shall be reviewed and approved by BANA prior to publication.

13.6 **Media Response:** If the media makes any inquiry, then any response shall be restricted to referring to the Settlement Website and the Joint Press Release, if any.

13.7 **Modification:** This Agreement may be modified or amended, and its terms may be waived, only by a writing signed by, or on behalf of, all Parties, their successors in interest, or their assigns; and, this Agreement and its terms shall neither be, nor deemed to be, modified, amended, or waived by any kind of oral or unsigned communications or course of conduct.

13.8 **Non-Disparagement.** Class Representatives and Class Counsel represent that they and their spouses, attorneys and agents, successors and assigns, or representatives of any kind shall refrain from making any negative or disparaging remarks about BANA with regard to the subject matter of this special proceeding. The agreement in this Paragraph includes, but is not limited to, refraining from the publication of any negative or disparaging remarks on the Internet, or in any other media.

13.9 **Time Computations:** All time periods shall be computed in calendar days unless otherwise expressly provided.

13.10 **Weekends or Holidays:** Any deadline falling on a Saturday, Sunday or Federal or New York holiday shall be deemed to fall on the following business day.

13.11 **Retained Jurisdiction:** The administration and consummation of the Settlement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders enforcing the terms of this Agreement and the administration of the Settlement.

13.12 **Waiver:** The waiver by one party of any breach of this Agreement by any other party is not, and shall not be deemed, a waiver of any other prior or subsequent breach of this Agreement.

13.13 **Execution by Counterparts:** This Agreement may be executed in one or more manually signed counterparts delivered by hand, mail, or through email of an Adobe PDF.

13.14 **Effect of Counterparts:** All signed counterparts of this Agreement are, and shall be deemed to be, a single document.

13.15 **Successors and Assigns:** This Agreement shall be binding on, and inure to the benefit of, the Parties' successors and assigns.

13.16 **Construction:** This Agreement's construction, interpretation, operation, effect, and validity, and all documents needed to effectuate it, are, and shall be, governed by the laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

13.17 **No Other Representations or Advice:** No opinion or advice concerning the tax consequences of the Settlement to individual Class Members or any of the Parties or any of the Released Parties is being given or will be given by Class Counsel or BANA; and no representation or warranty about tax consequences is made or implied by this Agreement. Class Members are directed to consult their own tax advisors regarding the tax consequences of the proposed settlement and any tax reporting obligations they might have concerning it.

13.18 **Tax Obligations:** Each Class Member's tax obligations, and the determination of them, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

13.19 **No Strict Construction:** This Agreement results from arm's length negotiations and drafting by the Parties; all Parties have contributed substantially and materially

to its preparation; and it shall not be construed more strictly against one party than another merely because any part of it was prepared or revised by counsel for one of the Parties.

13.20 **Authority:** All persons signing this Agreement, its exhibits, or any related Settlement documents have the full authority and power to do so; to bind the principal on whose behalf they are acting; and to take appropriate action required or permitted to be taken by the Agreement to effectuate its terms.

13.21 **Cooperation:** Class Counsel and BANA shall cooperate in seeking Court approval of the Preliminary Approval Order, this Agreement and the Settlement; and shall use their best efforts and take any reasonably needed actions to agree promptly on and sign any other documents reasonably required to obtain Court approval of the Settlement and entry of the Judgment and to cause the Judgment to become Final.

13.22 **Notice:** If any Party or its counsel is required to give notice to the other Party or to the Settlement Administrator under this Agreement, then such notice shall be in writing and shall be deemed to have been duly given on (a) receipt of hand delivery; (b) sending by overnight courier, next business day delivery; or (c) sending of electronic mail, provided that no rejection notice occurs and that identical notice is sent by first class mail, postage pre-paid.

13.23 **Notice Address:** Notice shall, consistent with the method for giving such notice, be provided as follows:

If to the Class
Representative or Class
Counsel:

G. Oliver Koppell
Daniel F. Schreck
Law Offices of G. Oliver Koppell & Associates
99 Park Ave., Suite 1100
New York, New York 10016
okoppell@koppellaw.com
dschreck@koppellaw.com

If to BANA

Bob Austin
Senior Vice President & Associate General Counsel

Bank of America
901 Main Street, 15th Floor
Mailstop: TX1-492-15-03
Dallas, TX 75202
bob.austin@bofa.com

-with a copy to-

Yoav M. Griver
Zeichner Ellman & Krause LLP
730 Third Avenue
New York, New York 10017
ygriver@zeklaw.com

If to the Settlement
Administrator:

Kroll Settlement Administration LLC
55 East 52nd Street, 17th Floor
New York, NY 10055
Attn: Legal Department
ksalegal@kroll.com

13.24 **Change to Notice Address:** Any Party may, on notice to all other Parties and their counsel, unilaterally change the name or address to which notice under should be sent for such Party and its counsel.

13.25 **Settlement Administrator Engagement:** The engagement agreement with the Settlement Administrator shall provide the following: (1) all notices, schedules, and any other written information that the Settlement Administrator is required under this Agreement to provide to Class Counsel or BANA shall be delivered, in the manner specified in this Agreement, to the addresses stated above; (2) the Settlement Administrator will sign the Declaration to the Stipulated Protective Order; (3) the Settlement Administrator shall maintain the confidentiality of the Class Members' data and any other document containing private financial or personal identifiers of the Class Members according to the requirements of the Gramm-Leach-Bliley Act and any other applicable federal or state privacy law; and (4) the Settlement Administrator shall adhere to BANA's data security procedures.

13.26 **Third Party Beneficiaries:** All Released Parties who are not BANA are intended third party beneficiaries who are entitled as of the Effective Date to enforce the terms of the releases stated in this Agreement.

13.27 **Headings.** The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

13.28 **Entire Agreement:** This Agreement and all attached exhibits collectively constitute the entire agreement between the Parties concerning this Settlement. No other oral or written agreements, terms, representations, warranties, promises, inducements, or courses of conduct are part of, or change, this Agreement or its terms and exhibits.

[Signature Pages Follow]


IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date, defined above.

DELORES JACKSON

SHAWN JACKSON

ODAMIS VILLA

BANK OF AMERICA, N.A.

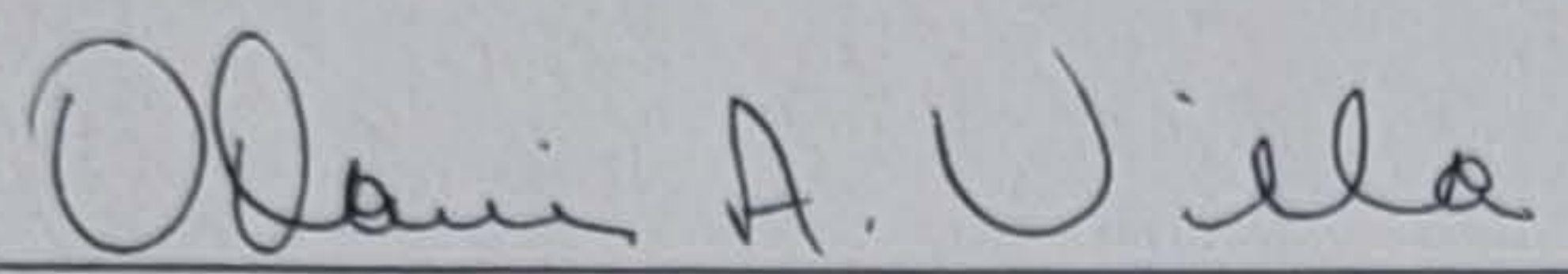
By: 

Name: *Edward Bach*
Title: *Managing Director*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date, defined above.

DOLORES JACKSON

SHAWN JACKSON



ODAMIS VILLA

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date, defined above.

DOLORES JACKSON

SHAWN JACKSON

ODAMIS VILLA

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$2.85 Million Bank of America Settlement Resolves Restraint Fees Lawsuit](#)
