

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

GARY NELSON and KAYLEIGH POTTER,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, NATIONAL
ASSOCIATION,

Defendant.

Civil Action No. 5:23-cv-00255-JS

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into by and between (i) Plaintiffs Gary Nelson and Kayleigh Potter (“Plaintiffs”), individually and as Class Representatives on behalf of the Settlement Class, and (ii) Defendant Bank of America, N.A. (“BANA” and together with Plaintiffs, the “Parties”). The Parties intend and agree to resolve, discharge, and settle fully, finally, and forever claims of the Settlement Class asserted in the case captioned *Nelson v. Bank of America, N.A.*, Case No. 5:23-cv-00255-JS, pending in the United States District Court for the Eastern District of Pennsylvania, subject to approval of the Court.

RECITALS

A. On December 23, 2022, Plaintiffs filed a Class Action Complaint in the Court of Common Pleas of Philadelphia County, Pennsylvania at Docket No. 221202205 (“State Action”) seeking to recover for alleged violation of the Pennsylvania UCC independently and *in pari materia* with the Pennsylvania MVSFA due to BANA’s alleged failure to comply with the MVSFA’s minimum notice period requirements relating to its Notices of Repossession.

B. BANA removed the State Action from state court to the United States District Court for the Eastern District of Pennsylvania on January 20, 2023 (“Action”) and filed a Motion to Dismiss on February 10, 2023, arguing that Plaintiffs failed to state a claim upon which relief can be granted. *See Nelson v. Bank of America, N.A.*, Case No. 5:22-cv-00255 at ECF Nos. 1, 11.

C. Plaintiffs filed a Motion to Remand on February 17, 2023 (ECF No. 13), BANA filed its Opposition on March 10, 2023 (ECF No. 17), and Plaintiffs filed their Reply on March 16, 2023 (ECF No. 18). On May 18, 2023, the Court denied the Motion to Remand. ECF Nos. 20, 21.

D. Due to the Parties' Consent Motion to Defer Briefing of BANA's Motion to Dismiss and the Court's approval thereof (ECF Nos. 12, 16), BANA was ordered to and did file a Renewed Motion to Dismiss on May 26, 2023 (ECF No. 24). Plaintiffs filed an opposition to the Renewed Motion to Dismiss on June 21, 2023 (ECF No. 32) and BANA filed its Reply on June 28, 2023 (ECF No. 33).

E. On July 3, 2023, the Court denied BANA's Renewed Motion to Dismiss.

F. On July 17, BANA filed its Answer (ECF Nos. 40).

G. The Parties entered into a Confidentiality Stipulation and Protective Order (the "Protective Order"), which the Court entered on October 31, 2023. ECF No. 46. The Confidentiality Stipulation dictates the Parties' production and use of documents, deposition testimony, and information designated "Confidential" by either Party, the destruction of such material upon the termination of this Action, and the obligations to redact and/or file under seal any documents, deposition testimony, or information designated as "Confidential."

H. On January 8, 2024, BANA filed its Amended Answer to the Complaint upon the Court's approval of BANA's request to amend under Federal Rule of Civil Procedure 15. *See* ECF Nos. 47, 52, 55, 56.

I. The Parties engaged in fact and expert written discovery, produced documents, and conducted depositions between June 2023 and February 2024.

J. On February 22, 2024, Plaintiffs filed their Motion for Class Certification and a Partial Motion for Summary Judgment (ECF Nos. 62, 63), and BANA filed its Motion for Summary Judgment and accompanying Statement of Material Undisputed Facts (ECF Nos. 59, 60).

K. On March 25, 2024, Plaintiffs filed their Opposition to BANA's Motion for Summary Judgment (ECF Nos. 74, 75), and BANA filed its Opposition to Plaintiffs' Motion for Class Certification and its Opposition to Plaintiffs' Partial Motion for Summary Judgment (ECF Nos. 71, 72).

L. On April 8, 2024, Plaintiffs filed their Reply in Support of Motion for Class Certification and their Reply in Support of Partial Motion for Summary Judgment (ECF Nos. 83, 84, 85), and BANA filed its Reply in Support of Motion for Summary Judgment (ECF No. 82).

M. Also on April 8, 2024, Plaintiffs filed a Renewed Motion to Remand seeking to have the Court remand the Action to state court for lack of Article III standing (ECF No. 86), to which BANA opposed on April 22, 2024 (ECF No. 90), and to which Plaintiffs replied on April 29, 2024 (ECF No. 92).

N. The Parties conducted two mediation sessions with Gregory Miller, JAMS, on April 2, 2024 and May 23, 2024, which led to the Parties' settlement of the class action.

O. The Parties agreed to a settlement in principle at the second mediation and executed a settlement Term Sheet on May 31, 2024.

P. Based upon their investigation and evaluation of the facts and law relating to the matters in the pleadings, mediations with Gregory Miller, and fruitful, months-long settlement discussions, the Parties have agreed to settle this Action pursuant to the provisions of this Agreement.

Q. BANA has denied and continues to deny each and every allegation of liability, wrongdoing, and damages, as it has factual and legal defenses to all claims and class allegations asserted in the Action. BANA has always maintained, and continues to maintain, that it has acted in accordance with governing law. Plaintiffs likewise maintain the strength of their positions. This

Agreement shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of the Parties with respect to any claim by any Class Member, any fault, liability, wrongdoing or damage, or any defenses BANA asserted. The Parties nonetheless have concluded that continuing the Action would be protracted, expensive, and disruptive to their business and/or lives. They therefore have decided that it is desirable to fully and finally settle the Action on the terms and conditions set forth herein to avoid the further expense, inconvenience, and distraction of the Action and to dispel any related uncertainty.

R. By this Agreement, and recognizing the consideration provided for under this Agreement, the Class Representatives and Class Counsel intend to fully and finally resolve the remaining claims against BANA in connection with the Action, as more fully set forth herein.

S. The Class Representatives and Class Counsel recognize the expense and length of proceedings necessary to continue the litigation through further discovery, motion practice, trial, and any possible appeals. They have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. They are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. Based upon their evaluation, the Class Representatives and Class Counsel have determined that the settlement set forth in the Agreement is in the best interests of the Class Representatives and the Settlement Class and is fair, adequate, and reasonable, based upon the following substantial benefits that the settlement bestows upon the Settlement Class:

- i. BANA will pay \$3,250,000 into a Settlement Fund for the benefit of the Settlement Class and for the purposes of implementing this settlement, which will be used to provide monetary relief to Settlement Class Members, as described below, to pay each Class Representative a service award, to pay the Settlement Administrator's costs associated with disseminating the Class Notice, setting up a Settlement Website, distributing funds, and any other costs associated with the Settlement Administrator's duties, and to pay

Attorney's Fees and Expenses requested through Class Counsel, all as approved by the Court;

- ii. Settlement Class Members will be entitled to a cash benefit equal to a pro rata share (*i.e.*, in proportion to Settlement Class Members' UCC Article 9 statutory damages) of the Net Fund (after deduction of the class representative Service Awards, Settlement Administration costs, and Attorney's Fees and Expenses); and
- iii. BANA will request the Credit Reporting Agencies Equifax, Experian, and TransUnion to delete the reporting of the Settlement Class Members' Accounts that are the subject of this Action.

T. This Agreement and all associated exhibits or attachments are made for the sole purpose of attempting to consummate settlement of this Action on a class-wide basis. This Agreement and the Settlement it evidences are made in compromise of disputed claims. Because the Action is pled as a class action, this Settlement must receive preliminary and final approval by the Court. Accordingly, the Class Representatives and BANA enter into this Agreement and associated settlement on a conditional basis. In the event that BANA or the Class Representatives exercise a right herein to terminate or rescind this Agreement, the Court does not execute and file the Final Approval Order, or the associated Judgment does not become Final for any reason, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever by anyone, and the negotiation, terms, and entry of this Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, any and all state or Federal statutes of a similar nature, and the mediation privilege. Notwithstanding the foregoing, BANA may use, offer, admit, or refer to the Agreement and to the Settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding.

U. The Parties expressly reserve all rights, claims, and defenses and do not waive any such rights, claims, or defenses in the event that the Agreement is not approved for any reason.

1. Definitions.

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meanings specified below:

1.1. “Action” means the matter initially filed on or about December 23, 2022 in the Court of Common Pleas of Philadelphia County, Pennsylvania, later removed to the United States District Court for the Eastern District of Pennsylvania, entitled *Nelson v. Bank of America, N.A.*, 5:23-cv-00255.

1.2. “Account” or “Accounts” means each Settlement Class Member’s account with BANA related to the financing of their vehicles, that were subsequently repossessed, and which are the subject of this Action.

1.3. “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release and all of its attachments and exhibits, which the Class Representatives and BANA understand and agree sets forth all material terms and conditions of the settlement of the Action between them and which is subject to Court approval. It is understood and agreed that BANA’s obligations under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date and other conditions set forth in this Agreement.

1.4. “Attorney’s Fees and Expenses” means such funds as may be awarded to Class Counsel pursuant to Paragraph 15 of the Agreement to compensate them for their fees and expenses in connection with the Action.

1.5. “Class” means the collective group of all persons: (a) who financed the purchase of a motor vehicle for consumer use through BANA by means of an installment sale contract, or who financed the purchased through another entity but such installment sale contract was thereafter assigned to BANA; (b) from whom BANA, as the secured party, repossessed the vehicle or ordered it repossessed, (c) who had a Pennsylvania address as of the date of repossession; (d) who were

sent a Notice of Plan to Sell Property or equivalent post-repossession notice of rights which set forth a day after which the collateral may be sold; (e) in the period commencing December 23, 2016 through February 16, 2024; and (f) where such person's RISC contains a choice of law provision electing Pennsylvania as the governing law.

1.6. "Class Counsel" means, collectively, all counsel of record representing the Class Representatives in this Action, including Cary L. Flitter, Andrew M. Milz, and Jody Thomas López-Jacobs of the law firm Flitter Milz PC.

1.7. "Class Member" means a natural person who is a member of the Class according to the Class definition herein.

1.8. "Class Notice" means the Notice that is provided by the Settlement Administrator to potential Settlement Class Members, in substantially the form attached as Exhibit 1 to this Agreement and/or as ultimately approved by the Court. Class Notice shall be provided not less than ninety days before the date set by the Court for the Final Approval Hearing.

1.9. "Class Representatives" or "Plaintiffs" means Gary Nelson and Kayleigh Potter, the named Plaintiffs and proposed class representatives in the Action identified in the first Paragraph of this Agreement.

1.10. "Complaint" and "Class Action Complaint" refer to the class action complaint filed in this Action.

1.11. "Confidential" means pursuant to the Protective Order entered in this Action.

1.12. "Consumer Credit Report" refers to a Class Member's credit report as issued by any of the three major Credit Reporting Agencies.

1.13. "Court" means the United States District Court for the Eastern District of Pennsylvania.

1.14. “Credit Reporting Agency” or “Credit Reporting Agencies” refers to TransUnion, Experian, Equifax, and any other credit reporting agency to which BANA reports.

1.15. “Defendant” or “BANA” refers to Bank of America, N.A.

1.16. “Defense Counsel” shall mean Defendant’s counsel of record in the Action, including K. Issac deVyver, Karla L. Johnson, and Brian E. Pumphrey of the law firm McGuireWoods LLP.

1.17. “Distribution Date” means 45 days after the Effective Date.

1.18. “Effective Date” means the date when all of the conditions set forth in Section 2 have occurred, provided, however, that Defendant has not exercised its right of termination under Section 13 of this Agreement.

1.19. “Final” means five business days after the latest of: (i) the date of final affirmance on an appeal of the Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Judgment; (iii) if no appeal is filed, the expiration of the date of the time for the filing or noticing any form of valid appeal or writ review from the Judgment. If the Judgment is set aside, modified, or overturned by any court including on appeal and is not fully reinstated on appeal, the Judgment shall not become Final.

1.20. “Final Approval Hearing” means a hearing set by the Court to take place on or about the date which is at least thirty days after the Opt-Out Deadline for the purpose of:

- (i) Determining the fairness, adequacy and reasonableness of the Agreement and associated Settlement pursuant to class action procedures and requirements;
- (ii) Approving Class Counsel’s attorney fees and expenses, as well as the Class Representatives’ service awards; and

(iii) Entering Judgment.

1.21. “Final Approval Order” shall mean an order to be entered and filed by the Court entitled “Final Judgment and Order of Dismissal with Prejudice”, substantially in the form attached hereto as **Exhibit 3**.

1.22. “Judgment” means the Final Approval Order and judgment to be rendered by the Court pursuant to this Agreement, in the form attached hereto as **Exhibit 3**, or in a similar form without material changes thereto.

1.23. “Net Fund” means the amount that remains in the Settlement Fund after payment of Settlement Administrator costs, Class Representatives’ service awards, and Attorney’s Fees and Expenses.

1.24. “Notice of Repossession” means a notice of intent to dispose of a repossessed or surrendered motor vehicle, which are entitled “Notice of Plan to Sell Property.”

1.25. “Notice Approval Date” means the date of the Preliminary Approval Order when the Court approves the Notice.

1.26. “Notice List” means a list, to be treated as Confidential pursuant to the terms of the Protective Order, listing the names, last known addresses, and other information listed in Paragraph 7.2 of all Class Members provided by BANA to the Settlement Administrator for the purpose of disseminating the Class Notice. Usage of the Notice List shall be limited to administration of the Settlement.

1.27. The “Notice Mailing Date” shall be a date no later than forty-five days after the Notice Approval Date, when the Class Notice is mailed to the individuals on the Notice List.

1.28. “Objection Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections to the

Settlement, if any, in accordance with Section 12 of this Agreement to be able to object to the Settlement. The Objection Deadline shall be no earlier than thirty days after the Notice Mailing Date and not later than thirty days prior to the Final Approval Hearing.

1.29. “Opt-Out Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Request to Opt Out must be filed or submitted in writing to the Settlement Administrator in accordance with Section 11 of this Agreement in order for a person who would otherwise fall within the definition of Settlement Class to be excluded from the Settlement Class. The Opt-Out Deadline shall be no earlier than thirty days after the Notice Mailing Date and not later than thirty days prior to the Final Approval Hearing.

1.30. “Parties” means the Class Representatives, individually and on behalf of all Members of the Settlement Class, and BANA.

1.31. “Preliminary Approval Order” shall mean an order to be executed and filed by the Court entitled “Order Preliminarily Approving Settlement and Providing for Notice” substantially in the form attached hereto as **Exhibit 2**.

1.32. “Protective Order” shall mean the Confidentiality Stipulation and Protective Order entered in the Action for purposes of maintaining Confidentiality of certain information, entered at ECF No. 46.

1.33. “Released Claims” mean any and all claims, defenses, demands, actions, causes of action, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorneys’ fees, expenses, or liabilities of any kind whatsoever in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, statutory damages, contribution or

indemnity, penalties, interest, attorneys' fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate to: (1) allegations that were or could have been asserted in the Complaint related to the Accounts; (2) any claim regarding or relating to a Notice of Repossession, including the timing of a Notice of Repossession relating to an Account; (2) the origination, financing, assignment, and servicing of any Account; (3) the repossession, surrender to, and control of any vehicle by BANA or any individual or entity acting on its behalf relating to any Account; (4) the charging, payment, collection, and attempted collection of amounts relating to any Account; (5) any notice or other communication delivered or required to be delivered before, after, or otherwise in connection with the repossession, surrender, control, or disposition of any vehicle relevant to any Account; (6) any sale or disposition of any vehicle related to any Account; (7) the furnishing of information to Credit Reporting Agencies related to any Account; or (8) with respect to any Account, any claim arising out of or relating to the Uniform Commercial Code and the Pennsylvania Motor Vehicle Sales Finance Act.

1.34. "Releasees," "the Releasees," or "the Released Parties" means (1) BANA; (2) each of BANA's past, present, or future subsidiaries, parent companies (including Bank of America Corporation and all of its subsidiaries and affiliates), divisions, affiliates, partners or any other organization units of any kind doing business under their names, or doing business under any other names, or any entity now or in the past controlled by, controlling, or under the common control with any of the foregoing and doing business under any other names, and each and all of their respective affiliates and subsidiaries, and each of their respective predecessors, successors, and assigns; and (3) each of the present and former officers, directors, partners, shareholders, agents,

employees, attorneys (including any consultants hired by counsel), advisors, independent contractors, representatives, beneficial owners, insurers, accountants, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns of any person or entities in subparts (1) or (2) hereof. This definition specifically includes the Bank of America Consumer Vehicle Lending and Credit Assistance/Collections and Recovery business teams.

1.35. “Releasers” means the Class Representatives, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.

1.36. “Request to Opt Out” means the written request from a Class Member that seeks to exclude that person from the Settlement Class and that complies with the requirements set forth in Section 11 of this Agreement.

1.37. “RISC” means a motor vehicle retail installment sales contract or similar financing agreement for the purchase of a motor vehicle.

1.38. “Settlement” means the settlement terms set forth in this Agreement.

1.39. “Settlement Administrator” means third-party American Legal Claims Services, as agreed upon by the Parties, which will act as the Settlement Administrator and assist with implementing and effectuating the terms of this Agreement.

1.40. “Settlement Class” means the collective group of all the Class Members who do not properly and timely exclude themselves from a Settlement, and thus means the collective group of all of the Class Members who will become bound by the Judgment when the Effective Date occurs.

1.41. “Settlement Class Member” means any person who is a member of the Settlement Class.

1.42. “Settlement Fund” means the Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000) that BANA shall pay pursuant to Section 3 of the Agreement. The Settlement Fund is for the benefit of the Settlement Class and will be used to pay Settlement Class Members, the Class Representatives’ service awards, Attorney’s Fees and Expenses, and costs of settlement administration.

1.43. “Settlement Website” means the website to be established by the Settlement Administrator as set forth in Section 7.

1.44. “Unknown Claim” means any Released Claim related to the Account which any Releasor does not know or suspect to exist in his or her favor at the time of the entry of the Judgment, and which, if known by him or her might have affected his or her settlement with and release of the Releasees, or might have affected his or her decision to opt out of the Settlement Class or to object to this Settlement. With respect to any and all Released Claims against any and all Released Parties, the Parties stipulate and agree that, upon the Effective Date, the Class Representatives shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have to the fullest extent allowed by law, waived the provisions, rights, and benefits of any statute or principle of common law which provides that general releases do not extend to claims which the debtor does not know or suspect exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the creditor. Each Releasor may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but the Releasors, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released to the fullest extent allowed by law any and all Released Claims against any and all

Released Parties, whether such claims are known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, contract, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material term of the Settlement of which this release is a part.

1.45. The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

1.46. Other terms are defined in the text of this Agreement and shall have the meaning given to those terms in the text. In all documents related to the Settlement, capitalized terms shall have the meanings given to them in this Agreement.

2. Conditions and Effectiveness of Agreement.

2.1 This Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. The Effective Date of this Agreement shall be the date when all of the following actions and events listed below have occurred.

2.2 The Parties have signed the Agreement.

2.3 CAFA. This Settlement shall be administered as if governed by 28 U.S.C. § 1715. The Settlement Administrator to provide the notice to government officials under that statute but in no event shall the Final Approval hearing take place prior to the provision of effective notices and the expiration of statutory time. The Final Approval Order shall make a finding that 28 U.S.C. § 1715 was fully complied with.

2.4 Court Approval. The Court approves this Agreement in accordance with the following steps:

2.4.1 Motion for Preliminary Approval. Within fourteen days of execution of this Agreement, Class Counsel will provide a Motion for Preliminary Approval to Defense Counsel. BANA will have ten (10) calendar days to review and comment on the description of claims in the Motion for Preliminary Approval, and Plaintiffs shall file the Motion for Preliminary Approval promptly thereafter. The Motion for Preliminary Approval shall include the Class Notice, in substantially the form of **Exhibit 1** hereto, and the proposed Preliminary Approval Order, in substantially the form of **Exhibit 2** hereto.

2.4.2 Certification of Class for Settlement Purposes. In connection with the proceedings for Preliminary and Final Approval, the Class Representatives shall seek orders (Preliminary and Final, respectively) certifying the Class pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure for purposes of this Settlement only.

2.4.3 Entry of Preliminary Approval Order. The Court shall enter a Preliminary Approval Order in substantially the form of that attached as **Exhibit 2** hereto, which shall among other things:

- a. Preliminarily certify the proposed Class under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure for settlement purposes only;
- b. Preliminarily approve this Agreement as fair, reasonable, and adequate under Rule 23 of the Federal Rules of Civil Procedure subject to final determination by the Court;

- c. Approve the appointment of the Class Representatives as representatives of the Class for the Settlement and the appointment of Class Counsel as counsel for the Class for the Settlement;
- d. Approve a form of Class Notice substantially in the form of **Exhibit 1** to be sent to the individuals on the Notice List;
- e. Set deadlines consistent with this Agreement for mailing of the Class Notice, the filing of opt-outs and objections, and filing of motions, and the filing of papers in connection with the Final Approval Hearing;
- f. Direct the Settlement Administrator, following entry by the Court of the Preliminary Approval Order, to mail the Class Notice to each individual on the Notice List by first-class mail;
- g. Set a date for a Final Approval Hearing on final approval of this Settlement;
- h. Establish a procedure for Class Members to exclude themselves and set a date, at least thirty days before the Final Approval Hearing, after which no Class Member shall be allowed to opt out of the Settlement and shall be bound to the terms of the Settlement;
- i. Establish a procedure for Settlement Class Members to appear and/or object to the Settlement and set a date, at least thirty days before the Final Approval Hearing, after which no Settlement Class Member shall be allowed to object;
- j. Require any attorneys representing objecting Settlement Class Members, at the objecting Settlement Class Member's expense, to file a notice of appearance;
- k. Stay all proceedings in the Action against the Defendant, other than proceedings as may be necessary to carry out the terms and conditions of the Agreement;

- l. Pending Final Approval, and upon expiration of the Opt-Out Deadline, prohibit each Settlement Class Member, Class Counsel and other counsel from maintaining, commencing, prosecuting or pursuing directly, representatively, or in any other capacity any Released Claim subsumed and covered by the Release in this Agreement in any court or arbitration forum;
- m. Contain such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable; and
- n. Authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the terms of this Agreement.

2.5 Class Notice. The Settlement Administrator shall cause the Class Notice to be mailed pursuant to the Preliminary Approval Order and the terms of this Agreement.

2.6 Final Approval Order and Judgment. The Court shall enter the Final Approval Order substantially in the form attached as **Exhibit 3**, which shall among other things:

- a. Finds that (i) the Court has personal jurisdiction over the Settlement Class Members, (ii) the Court has subject matter jurisdiction over the claims asserted in the Action, and (iii) venue is proper;
- b. Finally approves the Settlement set forth in this Agreement and its terms as being a fair, reasonable and adequate settlement as to Settlement Class Members within the meaning of Fed. R. Civ. P. 23 and directing its consummation according to its terms;
- c. Finally certifies the Settlement Class for settlement purposes only;
- d. Finds that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United

- States Constitution, and find that the procedures used complied with Pennsylvania and federal law so as to give full effect to the Settlement;
- e. Enters Final Judgment with respect to the Released Claims of all Settlement Class Members and dismiss the Released Claims with prejudice;
 - f. Makes the Releases in Section 10 of this Agreement effective as of the date of the Final Judgment;
 - g. Permanently bars and enjoins the Class Representatives and all Settlement Class Members, Class Counsel and other counsel from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims;
 - h. Provides that it shall be a violation of the Court's Order for the Class Representatives or the Settlement Class Members to solicit the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action in any jurisdiction based on or relating to any of the Released Claims);
 - i. Finds that, by operation of the entry of the Judgment, the Class Representatives and all of the Settlement Class Members shall be deemed to have forever released, relinquished, and discharged the Released Parties from any and all Released Claims;
 - j. Authorizes the Parties to implement the terms of this Agreement;

- k. Retains with the Court exclusive jurisdiction over the Settlement and this Agreement, including relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purposed; and
- l. Issue related orders to effectuate the Final Approval of the Settlement and its implementation.

2.7 No Injunctive Relief. The Final Approval Order and Judgment shall not provide for any injunctive relief against Defendant.

2.8 Finality of Judgment. There is Finality of Judgment when the Final Approval Order has become Final, including expiration of the time for filing any appeal or other form of objection to the Final Approval Order, full and final resolution of any appeal or objection that may be filed, and expiration of the time for seeking review of that disposition through an appeal, *en banc* hearing, or higher level of review.

3. Settlement Consideration.

3.1 In consideration for the Releases set forth in Section 10 and other consideration as stated in the Agreement, BANA will provide the following benefits.

3.2 Settlement Monetary Consideration. Settlement Consideration under this Agreement includes the following:

3.2.1 Within thirty days after the Court's entry of the Preliminary Approval Order, BANA will initially fund the Settlement Fund by depositing into an escrow account with the Settlement Administrator the sum of Seventy-Five Thousand Dollars (\$75,000) to cover the initial costs and expenses for implementing the terms of the Settlement set forth herein. The Parties agree to make reasonable efforts to direct the Settlement Fund to a financial institution with branches in Pennsylvania that agrees to waive check cashing fees.

Any balance of this initial funding remaining shall revert to BANA in the event that the Settlement is not approved. In no other event, except upon termination of this Settlement pursuant to Section 13, shall there be a reverter.

3.2.2 Within twenty-one days of the Effective Date, BANA will fund the remainder of the Settlement Fund by depositing the sum of Three Million One Hundred Seventy-Five Thousand Dollars (\$3,175,000) into the escrow account with the Settlement Administrator. The Parties and Settlement Administrator agree to provide any information or documentation necessary for BANA to complete the funding.

3.2.3 The Settlement Administrator's costs associated with disseminating the Class Notice, the Settlement Website, distributing checks or electronic payments to Settlement Class Members, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrator's distribution of payments as well as the service awards to the Class Representatives, Attorney's Fees and Expenses awarded by the Court, shall be paid out of the Settlement Fund.

3.2.4 After deducting the Court-approved service awards to the Class Representatives, as set forth in Paragraph 5.2, any Settlement Administrator costs, and the Attorney's Fees and Expenses from the Settlement Fund, Settlement Class Members shall be paid from the Net Fund in an amount equal to the pro rata share of the Net Fund, which is to be calculated as a proportional share according to the statutory damages under UCC Article 9 per Account included in the Settlement Class (unless there are co-borrowers, in which case the pro rata share payable on that Account will be divided equally among borrowers and co-borrowers with separate payments issued to each). This proportional share per Account is to be calculated using a numerator consisting of 10% of the "Amount

Financed” on the RISC plus the “Finance Charge” on the RISC for each Account, and a denominator consisting of 10% of the aggregate “Amount Financed” plus the aggregate “Finance Charge” for the Class. The ensuing figure is then multiplied by the Net Fund, resulting in the share payable on that Account. Settlement Class Members are eligible for only one pro rata payment per Account, regardless of whether the Account was subject to more than one repossession.

3.3 Under no circumstances shall BANA’s total payment obligation under the Settlement Agreement exceed \$3,250,000. BANA shall have no responsibility for any other costs, including, as further detailed in this Agreement, any Attorneys’ Fees and Costs, including any taxes or tax-related costs relating to the Settlement Fund, but all such fees, expenses, and costs shall be paid out of the Settlement Fund as approved by the Court. The Class Representatives and Settlement Class Members shall look solely to the Settlement Fund as full, final, and complete satisfaction of all Released Claims.

3.4 Deletion of Tradelines.

3.4.1 BANA represents and warrants that as soon as practicable after the Effective Date, it will request the Credit Reporting Agencies to delete the tradelines associated with each Settlement Class Member’s Account. If, after one hundred twenty days after the Effective Date, a request is made by Class Counsel or a Settlement Class Member to re-submit a deletion request to any Credit Reporting Agency because their tradeline has not been removed, BANA agrees to re-submit a deletion request for that Settlement Class Member within thirty days. Notice for the resubmission request should be made to BANA’s counsel as listed in Section 19 below. The resubmission request will include the name of the Settlement Class Member, their account number or if the Settlement Class Member

does not know their account number, other identifying information such as their Social Security Number, and a reasonable basis for the request (e.g., that the Settlement Class Member looked up their credit report 120 days or more after the Effective Date and the tradeline still appears on the report). If BANA is not so advised, BANA need take no further action. The Class Representatives on behalf of themselves and the Settlement Class agree that the Credit Reporting Agencies are separate entities from BANA and that BANA does not and cannot guarantee, warrant, or take responsibility for the performance of the Credit Reporting Agencies with respect to changing, deleting, suppressing, or making entries regarding any information previously reported to them by BANA concerning any Settlement Class Member's Account and that no cause of action can or will be stated against BANA, including any for breach of this Agreement against BANA, in the event any Credit Reporting Agency fails to amend a Settlement Class Member's credit history pursuant to the deletion request by BANA as provided in this Agreement. BANA is not required to request deletion from any credit reporting agency to which BANA has not reported the Account.

3.5 Tax Treatment. This Agreement is enforceable regardless of its tax consequences. The Parties understand and agree that this Agreement reflects the settlement of disputed legal claims and BANA makes no representations regarding the Agreement's tax consequences. For each payment made pursuant to this Settlement, BANA, itself or through the Settlement Administrator, may report each payment to government authorities including the IRS as required by law and consistent with the ordinary course of BANA's applicable tax accounting practices, and it may make all required deductions and/or withholdings. A Form 1099 may be issued to each Class Member who does not opt out. Settlement Class Members will be solely responsible for the

reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made pursuant to the Settlement. BANA makes no representations as to the taxability of any portions of the benefits provided to Settlement Class Members herein. The Class Notice will advise Settlement Class Members to seek their own tax advice prior to acting in response to the Notices.

4. Escrow Account.

4.1 Within (21) twenty-one days of the Effective Date, the Settlement Administrator shall establish and BANA shall fund an escrow account with funds sufficient for the payment of the remainder of the Settlement Fund, less any funds previously provided to the Settlement Administrator for the initial Settlement Administrator costs, as set forth in this Agreement. At BANA's election, the Settlement Administrator shall establish either an escrow account or a Qualified Settlement Fund. In the event that BANA elects to establish a Qualified Settlement Fund, the Settlement Administrator shall ensure compliance with the Qualified Settlement Fund provisions of the tax code, as defined in Treasury Regulations Section 1.468B-1, and shall take any necessary actions to protect the moneys from intentional or unintentional diversion, expenditure, forfeiture, escheat, or other dispersion that is inconsistent with the express terms of the Settlement. BANA shall pay no portion of the Settlement Fund until it has received a properly completed W-9 Form from the Settlement Administrator.

4.2 Following its remittance of the Settlement Fund monies as described in Section 3.2 of this Agreement, BANA shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of opt out letters, payments to Settlement Class Members, payments to the Class Representatives, investment of escrow funds, payment of federal, state, and local income, employment, unemployment, excise, and any other taxes, penalties, interest or other charges related to taxes imposed on the escrow

fund or its disbursements, payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the escrow fund, since it is agreed that such remittance shall fully discharge BANA's obligation to the Class Representatives, Settlement Class Members, Class Counsel and the Settlement Administrator with respect to the disposition of the Settlement Fund.

4.3 The Settlement Administrator shall file or cause to be filed, on behalf of the escrow fund, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements in accordance with the relevant tax provisions. The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder.

4.4 All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund, including any taxes or tax liability that may be imposed upon BANA or its counsel or Plaintiffs and Class Counsel with respect to income earned by the Settlement Fund for the purpose of federal or state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Settlement Fund. Plaintiffs and Class Counsel, and BANA and Defense Counsel, shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Plaintiffs and Class Counsel, and BANA and Defense Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

5. Payments from the Settlement Fund.

5.1 Payments to Settlement Class Members.

5.1.1 Within forty-five days of the Effective Date, and using the Notice List as set forth in Paragraph 7.2, the Settlement Administrator shall remit payment to the

Settlement Class Members in the amounts set forth in Paragraph 3.2.4 (the “Distribution Date”) based on the Settlement Class Member’s proportionate share of the Net Fund.

5.1.2 For Settlement Class Members whose checks are returned by the U.S. Postal Service for lack of current correct address, the Settlement Administrator shall seek an address correction via an advanced address search or skip tracing, and then re-send their checks to any subsequently obtained address that the Settlement Administrator reasonably believes to be valid. After one re-mailing, neither the Settlement Administrator nor BANA shall have any further obligation to locate any particular Settlement Class Member.

5.1.3 Each Settlement payment, notice accompanying a check shall state: “This payment is tendered to you as a class member in *Nelson v. Bank of America, N.A.*, Case No. 5:23-cv-00255-JS, pending in the United States District Court for the Eastern District of Pennsylvania, in consideration for your release from liability of Bank of America and other Released Parties as set forth in the Settlement Agreement.” The payment notices shall also notify the recipients the checks must be cashed within 90 days from the date on the check and the enclosed check shall not be valid after that date. In the event a Settlement check becomes void, the Settlement Class Member to whom that Settlement check was made payable will forfeit the right to payment and will not be entitled to have the check reissued or any further distribution from the Settlement Fund or to any further recourse against the Parties.

5.1.4 Settlement Class Members who are not located or whose checks are not cashed within ninety days after the Distribution Date shall be automatically rendered ineligible for cash refunds and shall be ineligible to share in the cash distribution portion

of the settlement. The Settlement Administrator may void any checks issued to such Settlement Class Members.

5.1.5 The Settlement Administrator shall notify counsel in writing within one hundred ten days after the Distribution Date of the number of Settlement Class Members who were sent checks, the number of Settlement Class Members who did not cash their checks, and the total dollar amount of the checks distributed by the Settlement Administrator, and the total dollar amount of uncashed checks.

5.1.6 In the event that the total dollar amount of uncashed checks remaining one hundred ten days after the Distribution Date is equal to or greater than twenty-five thousand dollars (\$25,000), a second distribution will be made. This second distribution will be allocated and made by sending checks or electronic payments, in proportional amounts pursuant to the formula set forth in Paragraph 3.2.4, to Settlement Class Members who cashed or deposited their previously issued payments. In the event that not all Settlement Class Members associated with an Account cashed previously issued checks, that account will be excluded from the second distribution. The Settlement Administrator shall issue the checks for the second distribution within one hundred twenty days of the original Distribution Date.

5.1.7 Following the expiration of ninety days after the date of the second distribution in Paragraph 5.1.6, all second distribution checks that have not been cashed will be deemed void. At that time, any remaining amount based on uncashed checks will be allocated by sending one or more checks to *the cy pres* recipient as set forth in Paragraph 5.4.

5.1.8 The Settlement Administrator will provide to Class Counsel, and Class Counsel will file with the Court, a final accounting within one hundred twenty days after the Distribution Date in the event of no second distribution, or within one hundred days after the second distribution in the event of a second distribution. The final accounting will include a summary of all distributions from the Settlement Fund.

5.2 Service Award. Within thirty days of the Effective Date and upon the Class Representatives' submission of a Form W-9 to the Settlement Administrator, the Settlement Administrator shall remit a service award to each of the Class Representatives from the Settlement Fund in the amount awarded by the Court but not to exceed \$15,000 per Class Representative.

5.3 Administration Costs. The Settlement Administrator's costs associated with disseminating the Class Notice, the Settlement Website, and any escrow, administrative and/or bank related fees and costs associated with the Settlement Administrator's distribution of payments shall be paid out of the Settlement Fund. BANA shall have no further responsibility for paying the costs of administration, except as stated here.

5.4 Cy Pres. As set forth in Paragraphs 5.1.5 through 5.1.7, the residue of the Settlement Fund, if any, shall be distributed to *cy pres* recipient Pennsylvania Legal Aid Network, Inc., as agreed upon by the Parties and approved by the Court.

6. Retention and Duties of Settlement Administrator.

6.1 The Settlement Administrator shall administer the Settlement pursuant to the terms of this Agreement. The Settlement Administrator shall be responsible for Class Notice (including data standardization and de-duplication of the Notice List including updating addresses through National Change of Address system or similar database ("NCOA"), reasonable efforts to update addresses for undeliverable notices, and printing and mailing the Class Notice), drafting and submitting the CAFA notice, status reporting, creating and hosting an informational website with

downloadable forms (as necessary) and case information, distributing the service award to the Class Representatives, and distributing payments to Settlement Class Members. The Settlement Administrator shall also be responsible for additional tasks the Parties jointly agree are necessary to accomplish administration of the Settlement.

6.2 The Settlement Administrator shall not have any duties with respect to settlement administration apart from those expressly provided for in this Agreement. All costs of settlement administration will be paid from the Settlement Fund and under no circumstances will BANA be responsible for any payments outside of the amount of the Settlement Fund.

6.3 Because the information about Settlement Class Members will consist of confidential information, non-public personal information, and other information protected by privacy laws, the Settlement Administrator will execute the Protective Order and will take all reasonable steps to ensure that any information provided to it by BANA will be used solely for the purpose of effecting this Settlement and otherwise shall comply with BANA's vendor and information security requirements. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and, without limiting the foregoing, shall treat any and all documents, communications and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity except as provided for in this Settlement Agreement or by court order.

6.4 The Settlement Administrator shall complete and provide to BANA any W-9 forms necessary to implement this Settlement.

7. Notice to the Class and Settlement Website.

7.1 Subject to the Court's approval, the form of Class Notice shall be substantially in the form of **Exhibit 1** attached hereto.

7.2 Within thirty days of the Court's entry of the Preliminary Approval Order, BANA shall provide the Settlement Administrator with the Notice List. This will include the last four digits of the Account number, the names of the Class Members affiliated with each Account, the last known mailing address of each Class Member, the Amount Financed and Total Finance Charge associated with each Account. To the extent that the Settlement Administrator determines that Social Security Numbers are needed for tax reporting for certain Class Members, BANA agrees to provide this information to the Settlement Administrator only upon request. The Settlement Administrator shall treat the Notice List as confidential pursuant to the terms of the Protective Order and Paragraph 6.3 of this Agreement.

7.3 If, by entering an order approving the final form of the Class Notice, the Court provides authorization to send the Class Notice to the individuals on the Notice List, the Settlement Administrator will mail the Class Notice to the individuals on the Notice List via first class mail through the United States Postal Service no later than the Notice Mailing Date. Prior to mailing, the Settlement Administrator shall attempt to update the last known addresses of the Class Members set forth on the Notice List through the NCOA. Class Notice shall be sent separately to co-borrowers in the event that they have a separate address pursuant to the Notice List following the updating of addresses pursuant to this Paragraph. The Agreement and Class Notice shall also be posted on the Settlement Website.

7.4 Following the mailing of the Class Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing.

7.5 Unless the Settlement Administrator receives a Class Notice returned from the United States Postal Service for reasons discussed below in this Paragraph, a Class Notice shall be deemed mailed and received by the individual to whom it was sent five days after mailing. In the

event that subsequent to the first mailing of a Class Notice, and prior to seven days before the Opt-Out Deadline, the Class Notice is returned to the Settlement Administrator by the United States Postal Service with a forwarding address for the recipient, the Settlement Administrator shall re-mail the Class Notice to that address, and the Class Notice will be deemed mailed at that point. The Class Notice shall be deemed received by the individual once it is mailed for the second time. Nothing in this Paragraph shall be construed to extend the Opt-Out Deadline for any Class Member.

7.6 No later than thirty days after the Effective Date, BANA, with the assistance of the Settlement Administrator, upon the approval of the Court to file under seal pursuant to the Protective Order (to protect the names, addresses, and other personal information of Class Members), will cause to be filed with the Court a list of the names and addresses of all Class Members to whom the Class Notice was sent, along with a list of all Class Members who excluded themselves from the Settlement pursuant to the opt-out provisions provided herein. Such list shall also be provided to Class Counsel at that time, and Class Counsel shall treat the Notice List as confidential pursuant to the terms of the Protective Order and Paragraph 6.3 of this Agreement.

7.7 No later than the mailing of the Class Notice, the Settlement Administrator shall establish the Settlement Website, which shall contain copies of this Agreement and Exhibits including the Class Notice as well as the Complaint, the Preliminary Approval Order, applications for attorney's fees and Class Representatives' service award, and the Final Approval Order, as they are filed with the Court or become available. The Settlement Website shall remain open and accessible until at least one hundred twenty days after the Distribution Date or one hundred twenty days after any second distribution, if one occurs.

8. Covenants Not to Sue.

8.1 The Class Representatives, on behalf of themselves and the Settlement Class Members, covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on any of the Released Claims against any of the Released Parties; (ii) not to organize or solicit the participating of Settlement Class Members, or persons who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Releasees.

9. Representations and Warranties.

9.1 The Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties, and further covenant that they will not assign or otherwise transfer any interest in any of the Class Representatives' Released Claims.

9.2 The Class Representatives represent and warrant that, upon the Effective Date, they have no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

9.3 The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations and mediation sessions among their counsel and with JAMS mediator Gregory Miller, that in executing the Settlement Agreement, they are relying solely upon their own judgment,

belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Settlement Agreement by representations, statements or omissions pertaining to any of the foregoing matters by any Party or by any person representing any party to the Settlement Agreement. Each of the Parties assumes the risk of mistake as to facts or law.

10. Releases.

10.1 On the Effective Date, Releasors, including but not limited to the Class Representatives, on their own behalf and on behalf of each Settlement Class Member, by operation of this Release and the Judgment set forth in the Final Approval Order, do hereby and shall be deemed to have fully, finally, conclusively, irrevocably, and forever released, settled, compromised, relinquished, and discharged any and all of the Releasees of and from any and all Released Claims and, without further action by any person or the Court, will be deemed: (a) to have consented to dismissal of the Action and the dismissal with prejudice of any and all Released Claims against any and all Released Parties; (b) to have released and forever discharged any and all Released Claims against any and all Released Parties; and (c) to be forever barred and enjoined from instituting or further prosecuting, in any forum whatsoever, including but not limited to any state, federal, or foreign court, or regulatory agency, or any arbitration forum, each and every Released Claim against each and every Released Party. The Parties agree that the Releasees will suffer irreparable harm if any Settlement Class Member takes action inconsistent with this Paragraph, and that in that event, the Releasees may seek an injunction as to such action without further showing of irreparable harm in this or any other forum.

10.2 The Releasors acknowledge and agree that they are aware that they may hereafter discover material or immaterial facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Release, that it is possible that unknown facts, losses, or claims exist, and that known losses may have been underestimated in amount or severity. This was explicitly taken into account in connection with this Agreement. It is the Releasors' intention to, and they do hereby, upon the Effective Date of this Agreement, fully, finally, and forever settle and release each and every one of the Releasees from each and every Released Claim, including any Released Claim against a Released Party arising from rights, remedies, or benefits available under California Civil Code section 1542 and all similar state, local, or federal statutes and other laws. California Civil Code section 1542 provides:

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

10.3 Subject to Court approval, each Settlement Class Member shall be bound by this Agreement and all of their Released Claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Action or its settlement in the form of the Class Notice or otherwise. The Release and agreements contained in this Section 10 shall apply to and bind all Settlement Class Members, including those Settlement Class Members whose Class Notices are returned as undeliverable, and those for whom no current address can be found, if any.

10.4 On the Effective Date, and after BANA fulfills its responsibility to fund the Settlement Fund under Paragraph 3.2.2, Releasors hereby release the Releasees from each and every Released Claim.

10.5 Promptly after the Effective Date, Settlement Class Members shall dismiss with prejudice all claims, actions, or proceedings that are released pursuant to this Agreement. In the event any such actions or proceedings are not dismissed and BANA learns of the action, BANA may provide notice to the Settlement Class Member of this Settlement and request dismissal of the action.

11. Opt Out Rights and Procedures.

11.1 A Settlement Class Member who wishes to be excluded from the Settlement Class must do so in writing. To opt out, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

11.2 In order to opt out, the Class Member must complete and send to the Settlement Administrator, at the address listed in the Class Notice and on the Settlement Website for this Settlement, a Request to Opt Out that is postmarked no later than the Opt-Out Deadline, as specified in the Class Notice. The Request to Opt Out must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the Action.” Mass or class opt outs shall be void. A request to Opt-Out by a borrower or co-borrower on an Account shall be deemed to be a request to Opt-Out by all borrowers on the Account.

11.3 Any Settlement Class Member who does not opt out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class upon the expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments.

11.4 Any Settlement Class Member who desires to opt out must take timely affirmative written action pursuant to this Section, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative or actual class member in any other class action filed against any of the Released Parties.

11.5 Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

11.6 The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests to Opt Out within seven days after the Opt-Out Deadline.

11.7 Notwithstanding the foregoing, a Class Member shall have the right to revoke a properly and timely submitted request for exclusion if a notice of the Class Member's election to revoke his or her exclusion is sent to the Settlement Administrator, postmarked on or before the Opt-Out Deadline.

12. Objections.

12.1 Overview. Any Settlement Class Member may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

12.2 Process. Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Clerk of Court and

mailed (with the requisite postmark) to Class Counsel and Defense Counsel (at the addresses identified in Section 19) no later than the Objection Deadline.

12.3 Form of Objection. The requirements to assert a valid written objection shall be set forth in the Class Notice and on the Settlement Website, and, to be valid, the written objection must include: (a) the case name and number; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.

12.4 Within seven days of the Objection Deadline, the Settlement Administrator shall provide a report to the Court setting forth a list of Objections that meet the above guidelines. The Court shall have the ultimate determination of whether an Objection has been appropriately made.

12.5 Waiver of Objection. Any Settlement Class Member who does not make his or her objection in the manner provided in this Section shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, unless otherwise ordered by the Court.

12.6 Appearance. Subject to approval of the Court, any Class Member who files and serves a written Objection in accordance with this Section and the Class Notice may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice of Intention to Appear”);

and (b) serves the Notice of Intention to Appear on all counsel designated in the Class Notice by the Objection Deadline.

12.7 The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

12.8 Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

13. Termination.

13.1 In the event that the Settlement set forth in this Agreement is not preliminarily or finally approved without material changes by the Court or, if one of the conditions upon which the Agreement is based is not satisfied, or if the Court determines that it lacks jurisdiction to approve the Settlement, or if before the Effective Date there is a court order from another court that takes jurisdiction over some or all of the Claims, or if there is a regulator determination that frustrates the purpose of and protection of the Settlement, or in the event that the Effective Date does not occur, Plaintiffs and BANA shall each have the absolute unilateral right (but not the obligation) to terminate the Agreement. In that case, no further payments shall be made by BANA to anyone in accordance with the terms of this Agreement, the Parties will bear their own costs and fees with regard to the efforts to obtain Court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever, except that the Settlement Administrator may be compensated for its expenses incurred. Reductions in the amount of the requested Attorneys' Fees and Expenses shall not be deemed a substantial change necessitating termination of the Settlement.

13.2 If any material portion of the Agreement or the Final Approval Order is vacated, modified, or otherwise altered on appeal, BANA or the Class Representatives may, in their sole

discretion, within fourteen calendar days of such appellate ruling, declare that the Agreement has failed to become effective, and in such circumstances the Agreement shall cease to be of any force and effect.

13.3 In the event that 5% or more Class Members exclude themselves from the Settlement Class, BANA shall have the absolute discretionary right to terminate this Settlement and Agreement and in such case, each and every one of BANA's obligations under this Agreement shall terminate, and this Agreement and any orders entered into in connection therewith shall be vacated (except for any provision included in the Preliminary Approval Order substantially similar to Paragraph 21 of the Preliminary Approval Order attached as **Exhibit 2**). If BANA exercises this option, the Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement. In addition, in such event, the Agreement and all negotiations, Court orders, and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other proceeding. BANA must exercise this option pursuant to this Paragraph within ten days after receiving the list of all timely Requests to Opt Out and at least three days prior to the Final Approval Hearing, by giving written notice of such exercise to Class Counsel.

13.4 If one of the Parties exercises a right herein to terminate or rescind this Agreement or this Agreement is not approved by the Court pursuant to the proposed Final Approval Order, this Agreement, the Settlement proposed herein (including any modifications made with the consent of the Parties), and any action taken or to be taken in connection therewith shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated (except for any provision included in the Preliminary Approval

Order substantially similar to Paragraph 21 of the Preliminary Approval Order attached as **Exhibit 2**), the Parties shall be restored to their respective positions existing prior to the execution of this Agreement and the Parties' rights and obligations with respect to the use of this Agreement and the Settlement contemplated hereby will be subject to Section 18 hereof. In addition, neither this Agreement, the preliminary certification of the Class, the Preliminary Approval Order, the Final Approval Order, nor any order on appeal shall be relied on, referred to, or used by anyone in any way for any purpose in connection with any further proceedings in this Action and/or any action, lawsuit, arbitration, or proceeding involving a Released Claim. Finally, all evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other proceeding.

14. Certification of Settlement Class For Settlement Purposes.

14.1 After the Preliminary Approval Order and no later than ten days before the Final Approval Hearing, the Class Representatives shall move for Final Approval of the Settlement and entry of Final Judgment and shall request that the preliminary certification of the Settlement Class for settlement purposes be made final. Class Counsel shall provide a draft of the Motion for Final Approval to Defense Counsel for review and comment on the description of claims at least ten days before it is filed. Any responsive papers shall be filed and served no later than seven calendar days prior to the Final Approval Hearing.

14.2 If the Settlement is not granted final approval and the Final Approval Order is not entered in substantially the form attached hereto as **Exhibit 3**, the certification of the above-described Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for any other purposes in this or any other action can be or have been satisfied. In such circumstances, BANA reserves and shall have all rights to challenge certification of a Settlement Class or any other class for any other

purpose in the Action or any other action on all available grounds as if no Settlement Class had been certified.

15. Attorneys' Fees and Expenses, and Service Awards.

15.1 BANA will not object to Plaintiffs moving the Court for an award of Attorneys' Fees and Expenses in the Action in an amount not to exceed \$1,300,000, plus reimbursement of reasonable expenses of litigation.

15.2 Plaintiffs' application for Attorney's Fees and Expenses shall be filed and served no later than fourteen calendar days prior to the Final Approval Hearing, and may be filed as part of any Motion for Final Approval. Plaintiffs agree that the amounts of such costs and fees awarded shall compensate Class Counsel for all legal work in the Action up to and including the date of Final Judgment, including any appeal of the Judgment, as well as for all legal work and costs that may be incurred in the Action after the date of Final Judgment. Any award of Attorneys' Fees and Expenses shall be paid out of the Settlement Fund. In no event shall BANA be obligated to pay more than that which it will deposit into the Settlement Fund pursuant to Section 3.2.

15.3 Within thirty days after the Effective Date or entry of an order approving the application for attorneys' fees (whichever is later), the Settlement Administrator shall make payment of the Attorneys' Fees and Expenses awarded by the Court to Class Counsel, pursuant to payment instructions in writing from Class Counsel. In accepting this payment, the Class Representatives and Class Counsel, on behalf of themselves and all Settlement Class Members, acknowledge that the payment are in full satisfaction of any and all claims, rights, and demands that Class Counsel, the Class Representatives, or the Settlement Class had, have, or may claim to have in the future for attorneys' fees, costs, expenses, or any other payment in connection with this Action or this Agreement, up to the date of final judgment. BANA shall have no responsibility for allocation or distribution of the award among Class Counsel.

15.4 A Form 1099 for this payment may be filed by BANA and/or the Settlement Administrator. Class Counsel shall cooperate with BANA and the Settlement Administrator to provide all information necessary to process the any such payments including completing any requested tax forms (*e.g.*, IRS Form W-9 and applicable tax identification numbers). BANA shall have no responsibility for, and no liability whatsoever with respect to, any tax obligations or any allocation among the Class Representatives and Class Counsel, and/or any other person who may assert some claim thereto, of any award or payment made in this Action or pursuant to this Agreement, including but not limited to any award or payment pursuant to this Section 15. Class Counsel and the Class Representatives shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this Section 15.

15.5 Plaintiffs shall be entitled, subject to Court approval, to apply to the Court for a service award to each of the Class Representatives in an amount not to exceed \$15,000 as to each Class Representative, subject to Court approval. BANA will not oppose Plaintiffs' request for the service awards provided it is consistent with this Agreement.

15.6 Within thirty days after the Effective Date or entry of an order approving the application for the service awards to the Class Representatives (whichever is later), and upon the Class Representatives' submission of a Form W-9 to the Settlement Administrator, the Settlement Administrator shall make payment of the service awards authorized by the Court pursuant to payment instructions in writing from Class Counsel. Class Counsel shall be responsible for delivering the service awards to the Class Representatives after receipt of payment from the Settlement Administrator. A Form 1099 for the payment of any Incentive Award will be filed.

15.7 Neither BANA nor the Releasees shall have any responsibility for any application of Attorney's Fees and Expenses and service awards submitted by Class Counsel. The procedure for and the grant or denial or disallowance by the Court of the application for Attorneys' Fees and Expenses and service awards is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the applications for Attorneys' Fees and Expenses and service awards or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Finality of Judgment approving the Agreement and the Settlement, except as provided for in Section 13.

16. Stay of Discovery and Other Proceedings.

16.1 To the extent the Action has not already been stayed by the Court, upon execution of this Agreement, the Parties shall discontinue all discovery activity or related proceedings in the Action.

16.2 Upon the Effective Date, and notwithstanding any of the other provisions in this Agreement, the Defendant shall have no obligation to preserve documents and evidence with respect to Released Claims, and the Class Representatives and Class Counsel shall not pursue any spoliation claims or other actions or sanctions against Defendants with respect to documents or evidence related to the Released Claims.

17. Return/Destruction of Discovery Materials.

17.1 The Parties agree that the terms of the Protective Order govern the dealings of the Parties with respect to materials produced in discovery in this Action and shall continue in force after the Effective Date of the Settlement.

17.2 The Court shall retain jurisdiction to ensure compliance with the Protective Order.

18. Media and Confidentiality.

18.1 The Parties, including their Counsel, agree that the terms of this Settlement shall remain confidential and not be disclosed by any party until the Settlement Agreement is filed in connection with the Motion for Preliminary Approval, except that information may be provided to the Court and Settlement Administrator as necessary.

18.2 The Parties, including their counsel, agree that they shall not at any time publish or issue a press release including but not limited to newspapers, publications, or other mass media, regarding this Settlement Agreement or this Action.

18.3 The Parties, including their counsel, agree not to make any direct written solicitations to Class Members to opt out or object to the Settlement, and they shall take no action which would or might have the effect of inducing or encouraging any person included in the Class to seek exclusion from the Class.

19. Notices.

19.1 All notices (other than the Class Notice) required by the Agreement shall be made in writing and communicated by mail and email to the following addresses:

All notices to Class Counsel shall be sent to Class Counsel c/o:

Cary L. Flitter
Andrew M. Milz
Jody T. Lopez-Jacobs
FLITTER MILZ, P.C.
450 N. Narberth Avenue, Suite 101
Narberth, PA 19072
cflitter@consumerslaw.com
amilz@consumerslaw.com
jlopez-jacobs@consumerslaw.com

All notices to Defense Counsel shall be sent to Defense Counsel c/o:

K. Issac deVyver
Karla L. Johnson
MCGUIREWOODS LLP

260 Forbes Avenue, Suite 1800
Pittsburgh, Pennsylvania 15222
kdevyver@mcguirewoods.com
kjohnson@mcguirewoods.com

Brian E. Pumphrey
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219
bpumphrey@mcguirewoods.com

20. Miscellaneous Provisions.

20.1 Cooperation. The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

20.2 No Admission. The Agreement compromises claims that are contested in good faith, and it shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. The Parties agree that the amounts paid in settlement and the other terms of the Agreement were negotiated in good faith by the Parties and at arm's length and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. Neither the Agreement nor the Settlement, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Releasees; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Releasees, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Class Representatives and Class Counsel agree not to argue that BANA could not contest (or is estopped from contesting)

class certification and/or proceeding collectively on any grounds if this Action were to proceed; this Agreement shall not be deemed an admission by, or ground for estoppel against, BANA that class certification and/or proceeding collectively in the Action is proper or cannot be contested on any grounds.

20.3 Exhibits. All of the exhibits to the Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

20.4 Amendment/Modification. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement. Class Counsel, on behalf of the Class, are expressly authorized by the Class Representatives to take all appropriate action required or permitted to be taken by the Class pursuant to the Agreement to effect its terms, and also are expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Class which they deem appropriate.

20.5 Entire Agreement. The Agreement and the related documents entered at this time of this Agreement or referenced herein constitute the entire agreement among the Parties hereto concerning the Settlement of the Action. No representations, warranties, or inducements have been made to any Party concerning the Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in this Agreement. Except as otherwise provided herein, each party shall bear its own costs and attorney fees.

20.6 Authority. Each person executing the Agreement or any of its exhibits on behalf of any Party hereto hereby warrants that such person has the full authority to do so.

20.7 Counterparts. The Agreement may be executed in one or more counterparts, including by signature transmitted by facsimile or by email in PDF format. All executed counterparts and each of them shall be deemed to be one and the same instrument.

20.8 Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, successors, and assigns of the Parties hereto; but this Agreement is not designed to and does not create any third-party beneficiaries.

20.9 No Third-Party Rights or Beneficiaries. Except as expressly provided for herein, no government agency or official can claim any rights under this Agreement or Settlement, whether with respect to the conduct that is the subject of the Releases, the restrictions in Section 3, or the funds (or remainder of funds) paid or used in the Settlement. There are no third-party beneficiaries created or implied.

20.10 Jurisdiction. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement, and all Parties hereto submit to the jurisdiction of the Court for the sole purposes of implementing and enforcing the Settlement embodied in the Agreement until such time that the Court enters an order dismissing the action with prejudice.

20.11 Governing Law. The Agreement and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the Commonwealth of Pennsylvania, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the Commonwealth of Pennsylvania without giving effect to that State's choice of law principles.

20.12 Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall

be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any party and the canon of contract interpretation to the contrary shall not be applied.

20.13 Recitals. The recitals set forth above shall be and hereby are terms of this Agreement as if set forth herein. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

20.14 No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of Class Notices of the Settlement after the Final Judgment is entered.

Remainder of Page Left Blank

Dated: 08/30/24, 2024

CLASS REPRESENTATIVE
GARY NELSON

8/30/24

By: GARY NELSON

Dated: _____, 2024

CLASS REPRESENTATIVE
KAYLEIGH POTTER

By: KAYLEIGH POTTER

Dated: _____, 2024

DEFENDANT
BANK OF AMERICA, N.A.

By: _____

Name: _____

Title: _____

Signature: 
Gary Nelson (Aug 30, 2024 10:03 EDT)

Email: gdot29@gmail.com


Class Settlement Agreement (without exhibits)


Final Audit Report


2024-08-30


Created:	2024-08-29
By:	Jody Lopez-Jacobs (jlopez-jacobs@consumerslaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAR6g6oun5PBkiOxVzVJwBCJCavYYQ13zO


"Class Settlement Agreement (without exhibits)" History

 Document created by Jody Lopez-Jacobs (jlopez-jacobs@consumerslaw.com)
2024-08-29 - 8:03:33 PM GMT- IP address: 71.123.60.28

 Document emailed to Gary Nelson (gdot29@gmail.com) for signature
2024-08-29 - 8:03:49 PM GMT

 Email viewed by Gary Nelson (gdot29@gmail.com)
2024-08-30 - 1:06:30 PM GMT- IP address: 66.249.88.1

 Document e-signed by Gary Nelson (gdot29@gmail.com)
Signature Date: 2024-08-30 - 2:03:49 PM GMT - Time Source: server- IP address: 174.175.121.116

 Agreement completed.
2024-08-30 - 2:03:49 PM GMT


Dated: _____, 2024

CLASS REPRESENTATIVE
GARY NELSON

By: GARY NELSON

Dated: 08/29/24, 2024

CLASS REPRESENTATIVE
KAYLEIGH POTTER



Kayleigh Potter (Aug 29, 2024 16:10 EDT)

By: KAYLEIGH POTTER

Dated: _____, 2024

DEFENDANT
BANK OF AMERICA, N.A.

By: _____

Name: _____

Title: _____






Class Settlement Agreement (without exhibits)

Final Audit Report

2024-08-29

Created:	2024-08-29
By:	Jody Lopez-Jacobs (jlopez-jacobs@consumerslaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAANKprQ1oDshHvP1csUfVGxSmJdk5_ttsa

"Class Settlement Agreement (without exhibits)" History

-  Document created by Jody Lopez-Jacobs (jlopez-jacobs@consumerslaw.com)
2024-08-29 - 8:07:53 PM GMT- IP address: 71.123.60.28
-  Document emailed to Kayleigh Potter (kayleigh112187@gmail.com) for signature
2024-08-29 - 8:08:00 PM GMT
-  Email viewed by Kayleigh Potter (kayleigh112187@gmail.com)
2024-08-29 - 8:09:16 PM GMT- IP address: 66.249.88.3
-  Document e-signed by Kayleigh Potter (kayleigh112187@gmail.com)
Signature Date: 2024-08-29 - 8:10:35 PM GMT - Time Source: server- IP address: 71.206.214.46
-  Agreement completed.
2024-08-29 - 8:10:35 PM GMT

Dated: _____, 2024

CLASS REPRESENTATIVE
GARY NELSON

By: GARY NELSON

Dated: _____, 2024

CLASS REPRESENTATIVE
KAYLEIGH POTTER

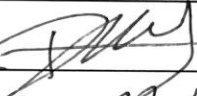
By: KAYLEIGH POTTER

Dated: _____, 2024

DEFENDANT
BANK OF AMERICA, N.A.

By:

Name:


D. Michael Hanifée

Title:

Senior Vice President

EXHIBIT 1

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

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Re: Case No. 5:23-cv-00255

**Gary Nelson and Kayleigh Potter, individually and on behalf of all others
similarly situated v. Bank of America, N.A.**

**You may be entitled to receive a settlement payment and other benefits in
connection with a class action against
Bank of America, N.A.**

*A federal court has authorized this notice.
This is not a solicitation from a lawyer.
You are not being sued.*

- This settlement resolves a lawsuit over whether Bank of America, N.A. (“BANA”) sent borrowers proper notice of their rights after vehicle repossession and sale.
- BANA denies and disputes the claims asserted in the Action. The parties disagree about whether any money (and if so, how much) could have been awarded to you if the Plaintiffs were to prevail at trial. The settlement avoids the costs and risks to members of the Class like you from continuing with the lawsuit, and it provides relief to the Class.
- This settlement will: (a) provide a gross fund of \$3,250,000 to be distributed to Class Members after payment of administrative costs, Class Counsel fees and expenses, and a service award to each Plaintiff; and (b) require BANA to request credit reporting agencies to delete your auto loan history from your credit report, as set forth in the Class Action Settlement Agreement.
- Your rights are affected whether you act or not. Read this notice carefully.

Your Legal Rights and Options in this Settlement:

Do Nothing (Optional: Contact Settlement Administrator about preferred Payment Method) If the settlement is approved by the Court as presented, BANA will request the credit reporting agencies to delete your auto loan history with BANA from your credit report. You will also be paid a proportionate share of the net settlement proceeds, which you can view at this website: **[WEBSITE]**. **This payment will be sent to you by check unless you promptly contact the Settlement Administrator to request one of the other available payment methods it offers.**

Exclude Yourself You can choose to opt-out of the Settlement which means you are excluding yourself from the Settlement. You will keep your individual claims against BANA, but you will not receive payment as part of this Settlement or deletion of the BANA auto loan history. This is the only

option that allows you to ever be part of any separate lawsuit against BANA concerning repossession or financing of your vehicle. Act by **[DATE 30 DAYS AFTER MAILING]**.

Object

If you do not opt-out, but instead wish to object to the Settlement, you may do so by writing to the Court about why you don't like the settlement and do not want it approved. Act by **[DATE 30 DAYS AFTER MAILING]**.

Go to a Hearing

Ask to speak in Court about the fairness of the settlement on **[DATE 30 DAYS AFTER MAILING]**.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.
- For more information or to review key documents or the class action settlement agreement, you can visit **[WEBSITE]**.

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BASIC INFORMATION

1. Why did I get this notice package?

The Court approved this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options, before the Court decides whether to approve the settlement. If the Court approves it, and objections and appeals (if any), are resolved, the Settlement Administrator will make the payments the settlement allows.

The Court in charge of the case is the United States District Court for the Eastern District of Pennsylvania, and the case is known as *Gary Nelson and Kayleigh Potter, individually and on behalf of all others similarly situated, v. Bank of America, National Association*, No. 5:23-cv-00255-JS. The persons suing are Gary Nelson and Kayleigh Potter, the Plaintiffs (also called “Class Representatives”) and the company being sued, Bank of America, N.A., is called the Defendant, or “BANA.”

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible, and how to get them.

BANA’s records reflect that you and any co-borrower on your vehicle loan were sent a notice from BANA following the repossession of your vehicle in the period commencing December 23, 2016 through February 16, 2024. BANA’s conduct post-repossession, including its use of these notices, forms the basis for this lawsuit.

2. What is this lawsuit about?

The lawsuit claims that BANA violated Pennsylvania law by failing to send its borrowers in Pennsylvania proper notice after repossessing their vehicle(s). Specifically, Plaintiffs assert on behalf of themselves and a class of borrowers that the notices sent by BANA failed to accurately specify the date after which BANA would sell the vehicle that falls at least 15 days after the date of the notice.

BANA denies that it violated any law, and it asserts that it satisfied all of the legal requirements as to its notices. BANA asserts other defenses, including to the ability of this Action to proceed as a class action.

3. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case Gary Nelson and Kayleigh Potter) sue on behalf of all people who have similar claims. All these people are “Class Members,” and grouped together are a “Class.” One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. BANA has challenged whether this case should proceed as a class action but has agreed not to oppose this case proceeding as a class for settlement purposes only.

4. Why is there a settlement?

Plaintiffs believe the Class might have won more money than the settlement amount had the case gone to trial, but substantial delays and risks would have occurred, including the risk of the case not being certified as a class. BANA believes that its notices comply with the requirements of Pennsylvania law, and that the Plaintiffs may have recovered nothing if there had been a trial. But there has been no trial. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial and appeal, and Class Members like yourself will get compensation and other settlement benefits promptly. The Class Representatives and their attorneys think the settlement is best for all Class Members.

WHO IS IN THE SETTLEMENT

5. How do I know that I am part of the settlement?

If you received this Notice in the mail, BANA's records reflect that you are part of the Class. The Court has preliminarily certified the Class, which includes consumer borrowers who were sent notices after their vehicle was repossessed in the period commencing December 23, 2016 through February 16, 2024.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide for me?

- Cash Component:
 - BANA has agreed to create a Settlement Fund of \$3,250,000. Approved administrative costs, Class Counsel fees and expenses, and service awards for the Class Representatives will be paid from that fund. The Net Settlement Fund (money remaining after payment of administrative costs, Class Counsel fees and expenses, and service awards) that remains will be divided among members of the Class based on the formula described in the Settlement Agreement. You can look up the amount of your payment at this website: [\[WEBSITE\]](#)
 - **This amount will be sent to you by check unless you promptly contact the Settlement Administrator to request one of the other available payment methods it offers.**
 - If after the first distribution to the Class more than \$25,000 remains in the Net Fund (typically from uncashed or undistributable checks), there will be a second distribution to the Class to those class members that cashed or deposited their previously issued payments. A balance remaining after the second distribution will be paid to the *cy pres* beneficiary Pennsylvania Legal Aid Network, Inc.
- Credit Reporting Relief: BANA will request that the credit reporting agencies to whom it has reported your auto loan to update your credit report to remove any reference to your auto loan account with BANA. Note that the credit reporting agencies are separate entities from BANA and

that BANA does not and cannot guarantee, warrant, or take responsibility for the performance of the credit reporting agencies with respect to changing, deleting, suppressing, or making entries regarding any information previously reported to them by BANA. Further, you should understand that the credit reporting relief will remove all reporting relating to your auto loan account with BANA, not just negative reporting. Note that a change in credit reporting does not affect whether a deficiency balance, if any, is due. Details about how and when this will be done, and limits on BANA's obligation to provide credit reporting relief, are spelled out further in the Settlement Agreement.

TAX IMPLICATIONS

7. Tax Implications

This settlement has potential tax implications for you. The Settlement Administrator plans to issue IRS 1099-series forms for cash payments over \$600. You may be required to furnish your Social Security Number to the administrator as a condition of payment of settlement proceeds over \$600. You should consult your tax advisor.

HOW YOU GET THE BENEFITS OF THE SETTLEMENT

8. Do I need to do anything to get a payment or the credit reporting benefit

No. You do not need to do anything further to remain in the Class. You will get a payment and any credit reporting benefit automatically, assuming court approval of the Settlement.

9. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself, you will stay in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against BANA related to your repossessed motor vehicle. It also means that the Court's orders will apply to you and legally bind you. Unless you "opt-out" or exclude yourself from this case, you will automatically be deemed to have agreed to a "Release of Claims" which describes exactly the legal claims that you give up if you remain in the Class. The specific language of the release is set forth in the Settlement Agreement, which can be found on the website created for this case: [[WEBSITE](#)].

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment or other benefits from this settlement but you want to keep the right to sue or continue to sue BANA on your own with regard to your auto loan account, then you must take steps to get out. This is called excluding yourself – sometimes referred to as "opting out" of the Class.

10. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter to the Settlement Administrator, with copies to counsel, by mail saying that you, as well as any and all other person(s) who signed your vehicle loan, want to be excluded from *Gary Nelson v. Bank of America*, No. 5:23-cv-00255-

JS. The letter must: (a) identify the case name; (b) your name and address, as well as email and phone number; (c) be personally signed by you; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the Action.” Mail your exclusion request postmarked no later than [DATE 30 DAYS AFTER MAILING] to all of three different addresses below.

Settlement Administrator

Nelson v. Bank of America
Class Settlement
c/o Settlement Administrator
[ADDRESS]

Class Counsel

Jody T. López-Jacobs, Esq.
FLITTER MILZ, P.C.
450 N. Narberth Avenue
Suite 101
Narberth, PA 19072

Defense Counsel

K. Issac deVyver
McGuireWoods LLP
Tower Two-Sixty
260 Forbes Avenue
Suite 1800
Pittsburgh, PA 15222-3142

11. If I don't exclude myself, can I sue BANA for the same thing later?

No. Unless you exclude yourself, you give up any right to sue BANA for the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from this Class to continue your own lawsuit.

12. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not receive any money from this lawsuit or settlement, nor any credit report deletion that this Class Settlement provides.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has approved the law firm of Flitter Milz, P.C., in Narberth, PA to represent you and other Class Members. The lawyers at this firm are called Class Counsel. You will not be charged individually for these lawyers. If you want to be represented by your own lawyer, you may hire a firm at your own expense.

14. How will the lawyers and Representative Plaintiffs be paid?

As part of the class settlement, Plaintiffs will ask the court to approve a \$15,000 service award to each Plaintiff for their time and effort in bringing this case. Plaintiffs will ask the Court to approve a payment out of the Settlement Fund in the amount of \$1,300,000 for Class Counsel fees, and for reimbursement of expenses of totaling to approximately \$60,000. The fees would pay Class Counsel for investigating the facts, litigating the case, negotiating the settlement, filing legal papers with the Court, and oversight of future implementation of the settlement, including fielding

inquiries from Class Members. Class Counsel has not been paid for its time or services since this case was originally filed in December 2022. The Court could award less than this amount.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

15. How do I tell the Court that I don't like the settlement?

If you are a Class Member, you can object to the settlement if you don't like any part of it. You should state why you object and why you think the Court should not approve the settlement. The Court will consider your views. To object, you must file an objection, or send a letter saying that you object to the settlement in *Gary Nelson v. Bank of America*, No. 5:23-cv-00255-JS. Include in the letter: (a) the case name and number; (b) your name, address, telephone number and if you are represented by counsel, contact information for your counsel; (c) the basis for objection; and (d) a statement of whether you intend to appear at the Final Approval Hearing, either with or without counsel. Mail the objection to all of the three different places listed in Section 10 above, postmarked no later than [DATE 30 DAYS AFTER MAILING], and file with the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, PA, 19106.

16. What's the difference between objecting and excluding?

Objecting is telling the Court that you don't like something about the settlement, and that you, for that reason, want the settlement not to be approved. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to, and attendance is not required or expected unless you advise that you intend to appear or have your lawyer appear.

17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing on [DATE AND TIME].M. at the United States District Court for the Eastern District of Pennsylvania, 14613 U.S. Courthouse, Courtroom 14-B, 601 Market Street, Philadelphia, PA, 19106. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate and meets the test for class action settlements. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may also determine the Class Representatives' service awards and Class Counsel fees and expenses. Following the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take. Please note that the date and time of the hearing is subject to change, in which case the website and court docket will be updated.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you file an objection, you don't have to come to Court to talk about it, but you may. As long as you properly mailed (or electronically filed) your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, if you wish.

19. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you or your lawyer must send a letter stating that it is your "Notice of Intention to Appear in *Gary Nelson v. Bank of America*, No. 5:23-cv-00255-JS." Your Notice of Intention to Appear must be filed or mailed so as to be filed with the Court no later than [DATE 30 DAYS AFTER MAILING] and be sent to the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Courtroom 2609, Philadelphia, PA, 19106, and to Class Counsel, Defense Counsel, and the Settlement Administrator at the addresses set forth in Section 10. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that you will present to the Court in connection with the Fairness Hearing. You cannot speak at the hearing if you exclude yourself from the settlement.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do not exclude yourself and the Court finally approves the settlement, you will receive a settlement payment(s) and credit reporting relief as provided in the Class Action Settlement Agreement, and you will give up your right to sue BANA or continue any current lawsuit against BANA.

GETTING MORE INFORMATION

21. Are there more details about the settlement?

This notice summarizes the proposed settlement. The pleadings and other records in this Action, including a copy of the Settlement Agreement, may be examined at any time during regular office hours at the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, PA, 19106, and are available for purchase and viewing from the court's docket via the Public Access to Court Electronic Records (PACER), <https://pacer.uscourts.gov>. Important case documents will also be available for viewing—at no cost—on a website created for this case: [WEBSITE].

You may also contact the following:

**Nelson v. Bank of America
c/o Settlement Administrator
[ADDRESS]**

Or

**Class Counsel
FLITTER MILZ, P.C.
450 N. Narberth Avenue, Suite 101
Narberth, PA 19072
1-888-668-1225**

Please **do not** call the Court, BANA, or BANA's counsel.

EXHIBIT 2

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

GARY NELSON and KAYLEIGH POTTER,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

BANK OF AMERICA, NATIONAL
ASSOCIATION,

Defendant.

Civil Action No. 5:23-cv-00255-JS

**PROPOSED ORDER GRANTING PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, the above-entitled action is pending before this Court (the “Action”);

WHEREAS, the parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order approving settlement of this Action, in accordance with the Settlement Agreement and Release dated _____, 2024 (the “Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Agreement and the exhibits Annexed thereto;

WHEREAS, all defined terms herein have the same meanings as set forth in the Agreement;

WHEREAS, the Court has reviewed Plaintiffs’ Motion for Preliminary Approval and supporting brief requesting that this Court: (1) conditionally certify the Settlement Class; (2) preliminarily approve the parties’ proposed class action settlement; (3) appoint Plaintiffs Gary

Nelson and Kayleigh Potter as Class Representatives, their counsel as Class Counsel, and _____ as the Settlement Administrator; (4) set the deadlines for written exclusion or objections to the Agreement; (5) approve the form of Notice to the Settlement Class; and (6) schedule a hearing on the final approval of the Agreement for _____, 2024.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Nature of the Action.** Plaintiffs Gary Nelson and Kayleigh Potter (“Plaintiffs”) allege that Defendant Bank of America, N.A. (“BANA”), violated the Pennsylvania Uniform Commercial Code (“UCC”) independently and *in pari materia* with the Pennsylvania Motor Vehicle Sales Finance Act (“MVSFA”) due to BANA’s alleged failure to comply with the MVSFA’s minimum notice period requirements relating to its Notices of Repossession. BANA disputes and denies all of Plaintiffs’ claims.

2. **Settlement.** Plaintiffs Gary Nelson and Kayleigh Potter (the “Class Representatives”), individually and as Class Representatives on behalf of the Class, and BANA (collectively, the “Parties”) have negotiated a potential settlement of the Action to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims (as defined in the Agreement) against BANA and the Releasees.

3. **Review.** At the preliminary approval stage, the Court’s task is to evaluate whether the settlement is within the “range of reasonableness.” 4 Newberg on Class Actions § 11.26 (4th ed. 2010). “A district court may approve a settlement agreement only ‘after a hearing and on finding that it is fair, reasonable, and adequate.’” *Good v. Nationwide Credit, Inc.*, 314 F.R.D. 141, 150 (E.D. Pa. 2016) (quoting Fed. R. Civ. P. 23(e)). In determining whether class action settlements should be approved, courts within the Third Circuit analyze “(1) the complexity,

expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.” *Good*, 314 F.R.D. at 156 (quoting *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir.1975)). Further, settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See Manual for Complex Litigation*, Third, § 30.42 (West 1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms’-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted).

The Court has carefully reviewed the Agreement, including the plan of allocation and the release of claims, as well as the files, records, and proceedings to date in the Action. The terms and conditions in the Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise indicated, capitalized items in this Order shall have the meanings attributed to them in the Agreement.

4. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all of the Class Members, and venue in this Court is proper.

5. **Preliminary Settlement Approval.** Based on the review the Court has conducted, as set forth in paragraph 3, the Court does hereby preliminarily approve the Agreement and the Settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below. The Court finds on a preliminary basis that the

Settlement as set forth in the Agreement falls within the range of reasonableness and was the product of informed, good-faith, arms'-length negotiations between the Parties and their counsel, and therefore meets the requirements for preliminary approval. The Court finds and concludes that the assistance of experienced JAMS mediator Gregory Miller in the settlement process supports the finding that the Settlement is non-collusive.

6. **Certification of Settlement Class.** Pursuant to Federal Rule of Civil Procedure 23, the Court conditionally certifies, for settlement purposes only, (and for no purposes and with no other effect upon the Action, including no effect upon the Action should the Agreement not receive Final Approval or should the Effective Date not occur), a class defined as the collective group of persons: (a) who financed the purchase of a motor vehicle for consumer use through BANA by means of an installment sale contract, or who financed the purchase through another entity but such installment sale contract was thereafter assigned to BANA; (b) from whom BANA, as the secured party, repossessed the vehicle or ordered it repossessed, (c) who had a Pennsylvania address as of the date of repossession; (d) who were sent a Notice of Plan to Sell Property or equivalent post-repossession notice of rights which set forth a day after which the collateral may be sold; (e) in the period commencing December 23, 2016 through February 16, 2024; and (f) where such person's Retail Installment Sales Contract contains a choice of law provision electing Pennsylvania as the governing law. The Class does not include any individual who validly opts out of the Settlement pursuant to the procedures set forth herein.

Pursuant to Federal Rule of Civil Procedure 23(a) and b(3), the Court preliminarily finds, for settlement purposes only, that:

- a. The Class is so numerous that joinder of all members is impracticable, as the class consists of 819 class member accounts;
- b. There are questions of law or fact common to the Class, including (a) whether

Plaintiffs and the class entered into installment sale contracts secured by a vehicle purchased for consumer use; (b) whether BANA, as secured party, repossessed or ordered the repossession of the vehicles of Plaintiffs and the Class; (c) whether Plaintiffs and the class were sent Notice that understated the time period to redeem before the vehicle would be sold; and (d) whether BANA's alleged understatement of the time period to redeem violates Pennsylvania law;

- c. Plaintiffs' claims are typical of the Class claims, as BANA sent Plaintiffs, like every member of the proposed class, the same form of Notice that Plaintiffs allege violates Pennsylvania law;
- d. Plaintiffs will fairly and adequately protect the interests of the Class in connection with the proposed Settlement, as Plaintiffs have no interests that appear antagonistic to the Class;
- e. Common questions of law and fact predominate over questions affecting only individual Class Members, and the Class appears to be sufficiently cohesive for settlement of the claims on a class-wide basis; and,
- f. Certification of the Class is superior to other available methods for the fair and efficient resolution of the Class claims.

7. **Designation of Class Representatives and Class Counsel.** The Court finds and concludes that the Class Representatives Gary Nelson and Kayleigh Potter have claims typical of and are adequate representatives of the Settlement Class they propose to represent. The Court hereby appoints Gary Nelson and Kayleigh Potter as the Class Representatives for the Settlement Class. The Court finds and concludes that the law firm Flitter Milz PC, including Cary L. Flitter, Andrew M. Milz, and Jody Thomas López-Jacobs has extensive experience and expertise in prosecuting auto repossession consumer class actions. The Court hereby appoints Plaintiffs' counsel of record in this case as Class Counsel.

8. **Final Approval Hearing.** A hearing (the "Final Approval Hearing") shall be held before this Court on _____, 202__, at _____ .m., at the James A. Byrne U.S. Courthouse, 601 Market Street Philadelphia, PA 19106 to determine, among other things: (i) whether the proposed Settlement of the Action on the terms and conditions set forth in the

Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court; (ii) whether a Judgment as provided in Paragraph 1.22 of the Agreement should be entered; (iii) whether Settlement Class Members should be bound by the Release set forth in the Agreement; (iv) any amount of fees and expenses that should be awarded to Class Counsel and any award to the Class Representatives for their representation and service to the Class; (v) to consider any Settlement Class Member's objections to the Settlement and/or any application of Class Counsel for payment or reimbursement of attorney's fees, costs, and expenses and any application for an award to the Class Representatives; and (vi) to rule upon such other matters as the Court may deem appropriate. The Court may hold the Final Approval Hearing by video conference or telephone. The Parties shall include the date of the Final Approval Hearing in the Notice to be mailed to the Settlement Class.

9. **Class Notice.** The Court approves the form, substance, and requirements of the Class Notice (the "Notice") annexed hereto as **Exhibit 1**. The Court further finds that the form, content, and distribution of the Notice, substantially in the manner and form set forth in Paragraph 9 of this Order, meets the requirements of the Federal Rule of Civil Procedure 23 and due process. The Notice fairly, plainly, accurately, and reasonably informs potential Class Members of appropriate information about: (1) the nature of this action, the definition of the Settlement Class, the identity of Class Counsel, and the essential terms of the Settlement, including the plan of allocation for the monetary and other relief, and includes the address for a website maintained by the Settlement Administrator that has links to the notice, motions for approval and for attorney's fees, and any other important documents in this case; (2) Class Representatives' forthcoming application for the Class Representatives' service award and Class Counsel's attorneys' fees and costs award; (3) how the Settlement Class Members' pro rata share of the Net Fund will be calculated and distributed;

(4) this Court's procedures for final approval of the Settlement; (5) how to Opt-Out or Object to the Settlement; (6) how to obtain additional information regarding this Action and the Settlement, including instructions on how to access the case docket via the Public Access to Court Electronic Records ("PACER") or in person at the Courthouse; and (7) the date of the Final Approval Hearing and that the date may change without further notice to the Settlement Class, and that Class Members may check the settlement website to confirm that the date has not been changed.

The Court further finds and concludes that the proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all individuals who would be bound by the Settlement. Under this plan, prior to distributing the Notice and after receiving a Notice List from BANA, the Settlement Administrator will update addresses through the NCOA or similar databases. After the Settlement Administrator updates the Settlement Class's addresses, the Notice will be sent out via first-class mail to the Settlement Class Members. No later than the mailing of the Notice, the Notice will be posted to the Settlement Website. There is no additional method of distribution that is cost-effective and would be reasonably likely to notify potential Class Members who may not receive notice under this proposed distribution plan.

The Court hereby concludes that the proposed Notice and Notice plan are the best practicable under the circumstances and are reasonably calculated, under all the circumstances, to apprise potential Class Members of the pendency of the Action, to apprise persons who would otherwise fall within the definition of the Class of their right to exclude themselves from the proposed Class, and to apprise Class Members of their right to object to the proposed Settlement and their right to appear at the Final Approval Hearing. The Court further finds that the Notice constitutes due and sufficient notice to all persons entitled thereto.

10. **Settlement Administrator.** The Court approves the appointment of _____ to supervise and administer the notice procedure as more fully set forth below:

- a) No later than forty-five (45) days from the entry of this Order (the “Notice Mailing Date”), the Settlement Administrator shall cause a copy of the Notice, substantially in the form annexed as Exhibit 1 hereto, to be mailed by first class U.S. mail to the last known mailing address of each individual on the Notice List, after being updated by the Settlement Administrator using the NCOA or similar databases;
- b) No later than the Notice Mailing Date, the Settlement Administrator shall establish a settlement website, and shall post on the website the Agreement and Exhibits, including the Class Notice substantially in the form annexed as Exhibit 1 hereto, as well as this Preliminary Approval Order, applications for attorneys’ fees and class representatives’ service award (when available), the Final Approval Order (when available), and the operative Complaint in this Action;
- c) Following the mailing of the Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing and publication via website;
- d) The Settlement Administrator shall otherwise carry out its duties as set forth in the Agreement.
- e) The Notice List shall be treated as Confidential pursuant to Section 17 of the Settlement Agreement.

11. **Escrow Account.** At BANA’s election, the Settlement Administrator is authorized to establish either an escrow account or a “Qualified Settlement Fund” within the meaning of Treasury Regulation Section 1.468B-1, promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. As set forth in the Settlement Agreement, the Settlement Administrator

will administer the Settlement Fund and will be the “Administrator” of this escrow account. Class Counsel and/or the Settlement Administrator shall establish the escrow account in accordance with the terms of the Settlement Agreement.

12. **Exclusion from the Class.** Any Class Member may, upon timely request, be excluded from the Class. Any such Class Member must submit a written Request to Opt Out to the Settlement Administrator at the mailing address listed in the Class Notice no later than thirty (30) days after the Notice Mailing Date. To be valid, the Request to Opt Out must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the Action,” as set forth in Section 11 of the Agreement. All Class Members who submit valid, verified, and timely Requests to Opt Out in the manner set forth in this Paragraph shall have no rights under the Agreement and shall not be bound by the Agreement or any Final Judgment. Mass or class opt outs shall not be allowed. A request to Opt-Out by a borrower or co-borrower on an Account shall be deemed to be a request to Opt-Out by all borrowers on the Account. A Class Member who desires to opt out must make timely affirmative written action pursuant to this Order and the Agreement, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of the Released Parties.

13. **Copies of Requests to Opt Out.** The Settlement Administrator shall provide Class Counsel and BANA’s Counsel with a list of all timely Requests to Opt Out within seven days after the Opt Out Deadline.

14. **Entry of Appearance.** Any member of the Class who does not exclude himself or herself from the Settlement Class may enter an appearance in the Action, at his or her own expense, individually or through counsel of his or her own choice. If he or she does not enter an appearance, he or she will be represented by Class Counsel.

15. **Binding Effect on Class.** All Class Members who do not exclude themselves from the Settlement Class by properly and timely submitting a Request to Opt Out shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

16. **Objections.** Any Class Member who does not timely and validly exclude himself or herself from the Settlement Class may appear and show cause, if he or she has any reason to object to the Settlement; provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Final Judgment to be entered thereon approving the same, or any attorney's fees and expenses to be awarded to Class Counsel or award made to the Class Representatives, unless a written objection is sent to the Settlement Administrator at the mailing address listed in the Class Notice no later than thirty (30) days after the Notice Mailing Date. The written objection must also be mailed to the Clerk of Court no later than thirty (30) days after the Notice Mailing Date. To be valid, the written objection must: (a) identify the case name and number; (b) identify the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) be personally signed by the person objecting, or if represented by counsel, signed by his/her counsel; (d) the basis and grounds for objection with specificity; and (e) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.

Within seven (7) days of the Objection Deadline, the Settlement Administrator shall provide a report to the Court setting forth a list of Objections that meet the above guidelines. The Court shall have the ultimate determination of whether an Objection has been appropriately made. Any Settlement Class Member who does not make his or her objection in the manner provided in this Section shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from making any objection to the Settlement, unless otherwise ordered by the Court.

17. **Appearance of Objectors at Final Approval Hearing.** Any Settlement Class Member who files and serves a written objection in accordance with Paragraph 16 of this Order may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objector files with the Clerk of Court a notice of intention to appear at the Final Approval Hearing and serves the same on all counsel designated in the Class Notice by the Objection Deadline (“Notice of Intention to Appear”). The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

18. **Service of Motion for Final Approval.** The motion in support of final approval of the Settlement shall be filed and served no later than ten days prior to the Final Approval Hearing.

19. **Fees, Expenses, and Awards.** Class Counsel's application for Attorneys' Fees and Expenses shall be filed and served no later than ten calendar days prior to the Final Approval Hearing. Neither BANA nor the Releasees shall have any responsibility for any application for Attorney's Fees and Expenses submitted by Class Counsel. At or after the Final Approval Hearing, the Court shall determine whether to approve Class Counsel's request for Attorneys' Fees and Expenses and whether to approve any request for an award to the Class Representatives for their service to the Class.

20. **Releases.** If the Settlement is finally approved, the Releasers shall release the Releasees from the Released Claims.

21. **Use of Order.** Neither this Order, the fact that settlement was reached and filed, the Agreement, nor any other related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of BANA, the Class Representatives, or the Settlement Class Members. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any negotiations relating to it in any way be used in this Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, to argue that BANA is liable for the actions alleged in the Complaint or that a class can or should be certified for any reason, except for purposes of settlement. The only exception to this provision shall be that the Parties may refer to the settlement, Settlement Agreement and any Orders of Court in order to take actions in furtherance of the Settlement.

22. **Continuance of Final Approval Hearing.** The Court reserves the right to continue the date of the Final Approval Hearing without further notice to the Members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

23. **Stay of Proceedings.** All proceedings in this Action are stayed until further Order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Agreement.

24. **Temporary Bar for all Class Members.** Pending final determination of whether the Settlement should be approved, and upon expiration of the Opt-Out Deadline, all Class Members who do not timely and validly exclude themselves from the Settlement Class, and each of them, and anyone who purports to act on their behalf, are barred from directly or indirectly maintaining, commencing, prosecuting, or pursuing directly, representatively, or in any other capacity, any Released Claim subsumed and covered by the Release in the Agreement, including in any court or arbitration forum.

25. **Termination of Settlement.** If: (a) the Agreement is terminated as provided in Section 13 of the Agreement; or (b) any specified material term or condition of the Settlement as set forth in the Agreement is not satisfied as provided in Section 13 of the Agreement, then this Order may not be introduced as evidence or referred to in any actions or proceedings by any person or entity and shall be treated as vacated, *nunc pro tunc* (except Paragraph 21 of this Order shall remain in effect), and each party shall be restored to his, her, or its respective position in this Action as it existed prior to the execution of the Agreement.

26. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this Action.

27. **Authority.** The Court hereby authorizes the Parties to take such further steps as necessary and appropriate to establish the means necessary to implement the terms of the Agreement.

28. **Jurisdiction.** The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Agreement and the Settlement.

IT IS SO ORDERED.

BY THE COURT:

Juan R. Sánchez, J.

EXHIBIT 3

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

GARY NELSON and KAYLEIGH POTTER,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, NATIONAL
ASSOCIATION,

Defendant.

Civil Action No. 5:23-cv-00255-JS

**[PROPOSED] FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE**

This matter came before the Court for hearing pursuant to the Order of this Court dated _____, 202_, on the application of the Parties for approval of the Settlement as set forth in the Settlement Agreement and Release dated _____, 2024 (the “Agreement”). On _____, 2024, this Court granted preliminary approval to the proposed class action settlement set forth in the Agreement between Plaintiffs Gary Nelson and Kayleigh Potter (“Plaintiffs” or “Class Representatives”), individually and as Class Representatives on behalf of the Class and Defendant Bank of America, N.A. (“BANA”) (collectively the “Parties”). This Court also provisionally certified the Class for settlement purposes, approved the procedure for giving Notice to members of the Class, and set a Final Approval Hearing to take place on _____, 202_. The Court finds that due and adequate notice was given to the Settlement Class as required in the Court’s Order Granting Preliminary Approval of Class Settlement and Providing for Notice.

The Court has reviewed the papers filed in support of the Motion for Final Approval, including the Settlement Agreement and exhibits thereto, memoranda, and arguments submitted on behalf of the Settlement Class, and supporting affidavits.

On _____, 2024, this Court held a duly noticed Final Approval Hearing to consider: (1) whether the terms and conditions of the Agreement are fair, reasonable, and adequate; (2) whether a judgment should be entered dismissing the Settlement Class Members' Released Claims on the merits and with prejudice; (3) whether and in what amount to award attorneys' fees and expenses to Class Counsel; and (4) any award to the Class Representatives for their representation of the Class.

Based on the papers filed with the Court and the presentations made to the Court by the Parties and by other interested persons at the Final Approval Hearing, it appears to the Court that the Settlement Agreement is fair, adequate, and reasonable, and in the best interests of the Settlement Class.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. **Definitions.** This Judgment incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Settlement Agreement.

2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and over the Parties, the Class, and the claims asserted in this Action, and venue in this Court is proper.

3. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

4. **Settlement Class.** Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the settlement of this Action, as embodied in the terms of the Settlement Agreement, is hereby finally approved as a fair, reasonable, and adequate settlement, in the best interests of the

Settlement Class, in light of the factual, legal, practical and procedural considerations raised by this case, with the Settlement Class comprised of all persons:

- a) who financed the purchase of a motor vehicle for consumer use through BANA by means of an installment sale contract, or who financed the purchased through another entity but such installment sale contract was thereafter assigned to BANA;
- b) from whom BANA, as the secured party, repossessed the vehicle or ordered it repossessed;
- c) who had a Pennsylvania address as of the date of repossession;
- d) who were sent a Notice of Plan to Sell Property or equivalent post-repossession notice of rights which set forth a day after which the collateral may be sold;
- e) in the period commencing December 23, 2016 through February 16, 2024; and
- f) where such person's RISC contains a choice of law provision electing Pennsylvania as the governing law.

The Class does not include any individual who validly opted out of the Settlement pursuant to the Settlement Agreement.

Having considered the Parties' briefing and hearings before the Court, the Court finds, for settlement purposes only, that class certification under Federal Rule of Civil Procedure 23(a) and (b)(3) is appropriate in that, in the settlement context: (a) the Settlement Class Members are so numerous that joinder of all Settlement Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual question; (c) the claims of the Class Representatives are typical of the claims of the Class; (d) the Class Representatives will fairly and adequately represent and protect the interests of the Class Members because their interests are co-extensive with those of the Class Members, and they have retained experienced counsel to represent them and the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. **Designation of Class Representatives and Class Counsel**. The Court confirms the prior appointments of the Plaintiffs Gary Nelson and Kayleigh Potter as Class Representatives

for the Class and the counsel of record representing the Class Representatives in the Action as Class Counsel.

6. **Settlement Approval.** Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the Settlement set forth in the Agreement and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class. The Court further finds that the Settlement set forth in the Agreement is the result of a good faith arm's-length negotiation between experienced counsel representing the interests of the Parties, with the assistance of the Gregory Miller of JAMS through mediation. Accordingly, the Settlement embodied in the Agreement is hereby finally approved in all respects, there is no just reason for delay, and the parties are hereby directed to perform its terms. The terms and conditions of the Settlement Agreement are fully incorporated as through fully set forth in this Order.

7. **Settlement Fund and Distribution.** A Settlement Fund has been created consisting of the \$3,250,000 Settlement Amount. The Settlement Fund shall be used to pay Settlement Class Members, the costs of settlement administration, Attorneys' Fees and Expenses, and Class Representative service awards, as set forth herein and in the Settlement Agreement. All unclaimed and excess monies in the Settlement Fund shall be distributed to *Cy Pres* recipient the Pennsylvania Legal Aid Network, Inc. pursuant to the timetable set out in paragraphs 5.1.5 through 5.1.7 of the Settlement Agreement. Following BANA's payment to the Settlement Fund, BANA shall have no responsibility, financial obligation or liability with respect to the Settlement Fund, the notice process, the distributions to Settlement Class Members, the request and award of Attorneys' Fees and Expenses, or any other aspect of implementing the Settlement Agreement.

8. **Dismissal with Prejudice.** Final Judgment is hereby entered with respect to the Released Claims of all Settlement Class Members, and the Released Claims in the Action are hereby dismissed in their entirety with prejudice and without costs. All claims in the Action are

dismissed, and the case shall be closed pursuant to Paragraph 23 of this Order. Nothing herein is intended to waive or prejudice the rights of the Class Members who have timely excluded themselves from the Class. This matter will remain open solely to ensure an orderly administration process.

9. **Releases.** The releases as set forth in Section 10 of the Agreement together with the definitions relating thereto in Paragraphs 1.33, 1.34, 1.35, and 1.44 are expressly incorporated herein in all respects and made effective by operation of this Judgment. The Court hereby approves the release provisions as contained and incorporated in Section 10 of the Agreement, including but not limited to the definitions of Released Claims, Releasers, Releasees, and Unknown Claims. The Releasers shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims and Unknown Claims against the Releasees.

10. **Permanent Bar.** The Releasers, including the Class Representatives and all Settlement Class Members, and anyone claiming through or on behalf of any of them, are forever barred from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims. The Releasers further are forever barred from organizing the Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Member but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action) in any jurisdiction based on or relating to any of the Released Claims.

11. **Permanent Injunction Regarding Releases.** The terms of the Settlement Agreement and of this Order shall be forever binding on the Class Releasers and BANA, and those

terms shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings involve the Released Claims.

12. **Approval of Class Notice and CAFA Notice.** Upon the Affidavit of _____ of _____, the Settlement Administrator, the Court finds that the form and means of disseminating the Class Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all Class Members who could be identified through reasonable effort. Said Notice provided the best notice practicable under the circumstances of the proceedings and the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution. The Settlement Administrator has served the CAFA Notice of Proposed Settlement and BANA has complied in all respects with its obligations under 28 U.S.C. § 1715.

13. **Attorneys' Fees and Expenses.** Plaintiffs and Class Counsel have moved for an award of attorneys' fees, costs, and expenses in the amount of \$_____. The Court finds that an award of \$_____ in attorneys' fees and \$_____ for reimbursement of expenses is fair and reasonable, and the Court approves of Class Counsel's attorney's fees and expenses in this amount. The Court directs the Settlement Administrator to disburse these funds as provided in the Settlement Agreement.

14. **Class Representatives Service Awards.** The Court further finds that a service award for each of the Class Representatives in the amount of \$_____ to each Class Representative is fair and reasonable, and the Court approves of the service award in this amount.

The Court directs the Settlement Administrator to disburse this award to the Class Representatives as provided in the Settlement Agreement.

15. **Use of Order.** Neither this Order, the fact that a settlement was reached and filed, the Agreement, nor any related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of BANA, the Class Representatives, or the Settlement Class Members. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any negotiations relating to it in any way be used in this Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, to argue that BANA is liable for the actions alleged in the Complaint or that a class can or should be certified for any reason, except for purposes of settlement. The only exception to this provision shall be that the Parties may refer to the settlement, Settlement Agreement and any Orders of Court in order to take actions in furtherance of the Settlement.

16. **Continuing Jurisdiction.** Without affecting the finality of this Judgment in any way, the Court hereby specifically retains exclusive jurisdiction over the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purpose, including to ensure compliance with the Protective Order entered in this Action.

17. **Termination of Settlement.** In the event that the Settlement does not become effective in accordance with the terms of the Agreement, or the Agreement is terminated pursuant to Section 13 of the Agreement, the Parties shall be restored to their respective positions in the Action prior to the execution of the Agreement, the certification of the Settlement Class shall be

automatically vacated, and this Judgment shall be rendered null and void (except Paragraph 15 of this Order shall remain in effect) to the extent provided by and in accordance with the Agreement and shall be vacated and, in any such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

18. **Implementation of the Agreement.** The Parties are hereby authorized to implement the terms of the Agreement.

19. **Reasonable Extensions.** Without further order of this Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement.

20. **Class Notice List.** Within 30 days after the Effective Date, BANA, with the assistance of the Settlement Administrator, shall file with this Court, *ex parte* and under seal (in order to protect the names, addresses and other personal information of Class Members), a list of the names and addresses of all Members of the Class to whom Notice was sent, along with a list of all Class Members who excluded themselves from the Settlement pursuant to the opt-out provisions provided herein.

21. **Final Accounting.** The Settlement Administrator will provide to Class Counsel, and Class Counsel will file with the Court, a final accounting within 120 days after the Distribution Date, as defined in the Agreement, in the event there is no second distribution, or within 100 days after the second distribution in the event of a second distribution. The final accounting will include a summary of all distributions from the Settlement Fund.

22. **Entry of Final Judgment.** There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is hereby directed.

23. **Action Closed.** All claims against the Defendant are hereby dismissed with prejudice. This case shall remain open for administrative matters only. The District Court Clerk is hereby directed to close the Action.

IT IS SO ORDERED.

BY THE COURT:

Juan R. Sánchez, J.