

# Exhibit F

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

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

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

**STIPULATION AND SETTLEMENT AGREEMENT AND RELEASE**

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

**RECITALS**

WHEREAS, Plaintiff Tami Bruin, a North Carolina citizen and resident, and Plaintiff Eline Barokas, a current New Jersey citizen and resident and former New York citizen and resident, filed a class action on March 17, 2021 in the United States District Court for the Southern District of New York, regarding ACH transfer fees (“ACH Transfer Fees”) for outbound or “push” transfers to external bank accounts (the “Barokas Action”). *See Bruin et al. v. Bank of America, N.A.*, S.D.N.Y. Case No. 1:21-cv-02272, ECF No. 5;

WHEREAS, on June 23, 2021, BANA moved to dismiss the class action complaint; the Court dismissed Bruin's claims but denied the motion to dismiss as to Barokas' claims under New York General Business Law, N.Y. Gen. Bus. Law § 349, *et seq.* (the "NYDPA") and the New Jersey Consumer Fraud Act, N.J.C.F.A § 56:8-1, *et seq.* (the "NJCFA"). *See* Barokas Action, ECF No. 28;

WHEREAS, after her dismissal from the Barokas Action, Bruin filed a class action on April 4, 2022 in the United States District Court for the Western District of North Carolina, asserting almost identical claims for unjust enrichment and violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75.1-1, *et seq.* (the "NCUDTPA"), as those alleged (and previously dismissed) in the Barokas Action regarding ACH Transfer Fees, defined below (the "Action"). *See Bruin v. Bank of America, N.A.*, W.D.N.C. Case No. 3:22-cv-140, ECF No. 1;

WHEREAS, on June 13, 2022, BANA moved to dismiss the class action complaint in the Action; on September 1, 2022, the Court denied BANA's motion, finding that it was premature for it to assess the viability of the class without affording Bruin the opportunity for discovery. *See* ECF No. 21;

WHEREAS, the Parties have engaged in significant discovery and participated in an arms-length mediation in good faith through which the basic terms of settlement were negotiated and agreed as to Plaintiffs' claims related to ACH Transfer Fees assessed for push transfers to the accountholders' own external accounts ("ACH First Party Fees");

WHEREAS, Bruin filed a notice of settlement on July 6, 2023 in the Action. *See* ECF No. 40. Barokas filed a notice of settlement in the Barokas Action on July 6, 2023, requesting the court in the Barokas Action stay all pending deadlines and adjourn all upcoming hearings and conferences. *See* Barokas Action, ECF No. 55;

WHEREAS, the Parties are ready and willing to make and enter into this Settlement Agreement to settle the claims of the Class Representatives and all putative class members in the Action;

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

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

NOW, THEREFORE, IT IS HEREBY AGREED, by the undersigned, on behalf of Plaintiffs, the Settlement Class, and BANA, without any admission or concession whatsoever by the Parties as to the strength or weakness of the merits of the claims and defenses asserted in the Action, that all Released Claims against BANA be fully and forever settled, compromised, released, and dismissed on the merits with prejudice on the following terms and conditions, subject to the Court's approval:

## DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

- 1.1. “Account” means any consumer checking or savings account maintained by BANA at some point during the class period.
- 1.2. “Accountholder” means any individual who is or was identified as an owner of an Account during the Class Period. It includes Current Accountholders and Past Accountholders.
- 1.3. “Action” means the above-captioned action, *Tami Bruin v. Bank of America, N.A.*, 3:22-cv-140, pending in the United States District Court for the Western District of North Carolina, Charlotte Division, including all actions consolidated thereunder or that may be consolidated thereunder in the future.
- 1.4. “ACH First Party Fees” means the unrefunded fees that a Settlement Class Member paid to BANA in connection with a push transfer of funds from his/her Account via the National Automated Clearing House Association network to his/her own external account.
- 1.5. “Attorneys’ Fees and Costs” means the attorneys’ fees and costs related to this Settlement Agreement that Class Counsel intend to seek under Section 9 of this Settlement Agreement.
- 1.6. “BANA” means Defendant Bank of America, N.A.
- 1.7. “BANA’s Counsel” or “Defendant’s Counsel” means Allison J. Schoenthal and Laura G. Brys of Goodwin Procter LLP, and Bradley Kutrow of McGuireWoods LLP.
- 1.8. “Barokas Action” means the action entitled, *Eline Barokas v. Bank of America, N.A.*, 1:21-cv-02272 in United States District Court for the Southern District of New York.

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

**1.10.** “Class Counsel” means Andrew Shamis of Shamis & Gentile, P.A.; Scott Edelsberg and Christopher Gold of Edelsberg Law, P.A.; David M. Wilkerson and Larry McDevitt of The Van Winkle Law Firm; and Jeffrey D. Kaliel and Sophia Gold of Kaliel Gold PLLC.

**1.11.** “Class List” means the list of all Settlement Class Members and their email addresses (to the extent available) and last known postal addresses provided by BANA to the Settlement Administrator for the purposes of disseminating Notice. The Class List shall be designated Confidential and protected pursuant to the terms of the Stipulated Protective Order, and its usage shall be limited to administration of the Notice Plan in this Action as stated in Section 5.

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

**1.13.** “Class Period” means the time period beginning on April 4, 2018 and ending on the date on which the Court enters Preliminary Approval Order of the Settlement.

**1.14.** “Class Representatives” means Plaintiffs Tami Bruin and Eline Barokas.

**1.15.** “Court” means the United States District Court for the Western District of North Carolina, Charlotte Division.

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

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

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

**1.19.** “Fees and Costs Award” means the amount of Attorneys’ Fees and Costs, if any, awarded by the Court to Class Counsel pursuant to a motion made under Section 9 herein, which will be paid out of the Settlement Amount.

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

**1.21.** “Final Approval Order” means a final order and judgment in which the Court gives Final Approval to the Settlement and dismisses with prejudice the Class Representatives’

and Settlement Class Members' claims and enters a judgment according to the terms set forth herein.

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

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

**1.24.** “First Amended Complaint” means the operative First Amended Complaint filed concurrently with the Motion for Preliminary Approval of the Settlement, which shall be in substantially the same form as Exhibit E, and as further set forth herein in Paragraph 13.3 of this Settlement Agreement.

**1.25.** “First Party Transfers” means push transfers of funds by Accountholders from Accounts to Accountholders' own external (non-BANA) accounts.

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

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

**1.28.** “Net Settlement Fund” means the Settlement Fund, minus Court-approved Fee and Cost Award to Class Counsel, Service Award to the Class Representatives, and Settlement Administration Costs.



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

**1.30.** “Opt-Out Deadline” or “Objection Deadline” means the period that begins the day after the earliest date on which the Class Notice is first distributed, and that ends no later than forty-five (45) days before the Final Approval Hearing.

**1.31.** “Party” means each of the Plaintiffs and BANA, and “Parties” means Plaintiffs and BANA, collectively.

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

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

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

**1.35.** “Practice Change” means BANA’s agreement to not assess an ACH First Party Fee for a period of at least five (5) years from the Preliminary Approval of the Settlement.

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

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

**1.38.** “Released Claims” means any individual, class, representative, group or collective claim, liability, right, demand, suit, matter, obligation, damage, loss, action or cause of action, of every kind and description, that a Releasing Party has or may have, including assigned claims, whether known or Unknown Claims, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, accrued or un-accrued, latent or patent, contingent or non-contingent, liquidated or un-liquidated, at law or in equity, matured or un-matured, apparent or unapparent, that the Class Representatives or Settlement Class Members raised or could have raised in the Action or the Barokas Action, or which they could raise in the future, in any court, tribunal, forum, or proceeding, arising out of or relating in any way to the allegations made in the Action and the Barokas Action. The Released Claims described herein include, but are not limited to, claims or defenses concerning ACH First Party Fees, and any violation and/or alleged violation of state and/or federal law, whether common law or statutory, arising from or relating to the conduct, acts, and/or omissions concerning ACH First Party Fees.

**1.39.** “Released Parties” refers to BANA and each of its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each Person or entity acting or purporting to act for them or on their behalf, including, but not limited to, Bank of America Corporation and all of its subsidiaries and affiliates.

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

**1.41.** “Service Award” means the total of any monetary award, if any, ordered to be paid to one or more of the Class Representatives, inclusive, as set forth in Section 10 herein.

**1.42.** “Settlement” means the Agreement between the Class Representatives, on behalf of themselves and as the proposed representatives of the Settlement Class, and BANA to settle and compromise the Class Representatives’ and the Settlement Class Members’ claims in the Action, as memorialized in this Settlement Agreement and accompanying documents attached hereto.

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

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

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

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

**1.47.** “Settlement Class” means the class of Accountholders charged “ACH First Party Fees,” as described more specifically in Paragraph 3.1.

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

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

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

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

**1.52.** “Unknown Claims” means any claim arising out of or related to ACH First Party Fees that a Releasing Party does not know or suspect exists in his, her or its favor at the time of the release of the Released Claims as against the Released Parties, including without limitation those which, if known, might have affected the decision to enter into the Settlement. The Settlement is intended to extinguish all Released Claims arising out of ACH First Party Fees,

and, consistent with such intentions, the Releasing Parties shall waive their rights to the extent permitted by state law, federal law, foreign law or principle of common law, which may have the effect of limiting the release set forth above. Class Representatives, on behalf of themselves and the Releasing Parties, expressly waive and release any and all provisions, rights, and benefits conferred by California Civil Code Section 1542, and by any law of any other jurisdiction, or principle of common law, that is similar, comparable, or equivalent in effect to California Civil Code Section 1542 with respect to the release of claims. California Civil Code Section 1542 provides:

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

In making this waiver of rights, the Class Representatives, on behalf of themselves and the Releasing Parties, acknowledge that they and Settlement Class Members may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, as Class Representatives and on behalf of the Settlement Class Members, to fully, finally and forever settle and release any and all claims released hereby known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts for any potential claims arising out of or related to ACH First Party Fees. The Class Representatives, and the Settlement Class Members by

operation of the judgment, shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for, constitutes separate consideration for, and was a key element of the Settlement and was relied upon by the BANA in entering into the Settlement.

**1.53.** As used herein, the plural of any defined term includes the singular thereof and *vice versa*, except where the context requires otherwise.

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

## **2. SETTLEMENT CONSIDERATION**

**2.1.** BANA shall pay the Settlement Amount in accordance with Section 6.

**2.2.** BANA shall not assess an ACH First Party Fee for a period of at least five (5) years from the Preliminary Approval Order.

**2.3.** Barokas shall file a Stipulation of Dismissal with Prejudice for the Barokas Action under Fed. R. Civ. P. 41(a).

## **3. SETTLEMENT CLASS**

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

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

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

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

#### **4. MOTION FOR PRELIMINARY APPROVAL**

**4.1. Filing of Motion for Preliminary Approval.** As soon as reasonably practicable after execution of this Settlement Agreement, Class Counsel shall provide a draft of the Motion for Preliminary Approval, which will seek to (i) certify the Settlement Class solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3); (ii) preliminarily

approve the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23; (iii) appoint Class Representatives as representatives of the Settlement Class; (iv) appoint Plaintiffs' counsel as Class Counsel; (v) approve the proposed Notice Plan and authorize the dissemination of Notice as set forth in Section 5; and (vi) approve of and appoint the Settlement Administrator, to BANA's Counsel. BANA's Counsel shall have no less than ten (10) business days to review and comment on the Motion for Preliminary Approval. No earlier than ten (10) business days after provision of the draft to BANA's Counsel, Class Counsel shall file this Settlement Agreement with the Court together with the Motion for Preliminary Approval.

**4.2. Preliminary Approval Order.** Class Counsel agrees that the proposed Preliminary Approval Order, which will be filed with the Motion for Preliminary Approval, will be in substantially the same form as Exhibit D. The Preliminary Approval Order shall (i) preliminarily approve the Settlement memorialized in this Settlement Agreement as fair, reasonable, and adequate, including the material terms of this Settlement Agreement; (ii) set a date for a Final Fairness Hearing; (iii) state that if Final Approval of the Settlement is not obtained, the Settlement is null and void, and the Parties will revert to their positions ex ante without prejudice to their rights, claims, or defenses; (iv) approve the proposed Class Notices in the forms attached hereto as Exhibits A through C, and authorize their dissemination to the Settlement Class; (v) set deadlines consistent with this Settlement Agreement for emailing and mailing of the Class Notice, the filing of objections, the filing of motions, and the filing of papers in connection with the Final Fairness Hearing; (vi) appoint and approve the Settlement Administrator; (vii) set deadlines by which Plaintiffs and Class Counsel shall file their Motion for Final Approval, which shall be at least forty-five (45) days prior to the Final Fairness



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

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

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

## 5. NOTICE PLAN

**5.1. Preparation and Production of Settlement Class List.** BANA or its agent shall compile the Class List, which shall consist of a list of all Settlement Class Members and provide such information to the Settlement Administrator within twenty-one (21) days after the Preliminary Approval Order. The Class List shall include the total amount of ACH First Party Fees for each Settlement Class Member, whether the Settlement Class Member is a Current Accountholder with BANA as of the date of the Preliminary Approval Order, as well as all known physical addresses and email addresses in BANA's possession, custody, or control, for the Settlement Class Members. The Settlement Administrator shall use this information for the sole purpose of identifying the current postal addresses and/or email addresses for the Settlement Class Members.

**5.2. Dissemination of Class Notice.** For purposes of providing Court-approved class notices and establishing that the best practicable notice has been given, Class Notice will be provided as follows:

**5.2.1.** Within forty-five (45) days after entry of the Preliminary Approval Order, for those Settlement Class Members who are Current Accountholders of BANA, and have agreed to receive electronic account statements from BANA, the Settlement Administrator shall begin the process of sending Email Notice to each such Settlement Class Member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, the Settlement Administrator shall send a Postcard Notice in the manner described below. The Email Notice shall inform Settlement Class Members how they may request a copy of the Long Form Notice.

**5.2.2.** Within forty-five (45) days after entry of the Preliminary Approval Order, for those Settlement Class Members who are Current Accountholders of BANA who have not agreed to receive account statements electronically, or who are Past Accountholders, the Settlement Administrator shall begin the process of mailing those Class Members the Postcard Notice by first-class U.S. mail, postage prepaid, to the last known or best available mailing address. The Postcard Notice shall inform Settlement Class Members how they may request a copy of the Long Form Notice.

**5.2.3.** The Settlement Administrator shall obtain updates, if any, to the addresses contained therein to any of the following using (i) information reasonably available from a Lexis-Nexis or alternative persons search performed as to each Settlement Class Member, (ii) information reasonably available from

the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“Postal Service”), or (iii) such additional efforts as the Settlement Administrator reasonably believes are appropriate to identify updated addresses, if any, for each Settlement Class Member and/or as the Court may direct. The resulting list shall be the Class List.

**5.2.4.** The Settlement Administrator shall format the Class Notice(s) and otherwise administer the Notice Plan in a reasonable manner to minimize costs.

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

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

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

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

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

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

**5.4. CAFA Notice.** The Settlement Administrator shall send CAFA Notice to the United States Attorney General and appropriate state Attorneys General in accordance with 28 U.S.C. § 1715(a) no later than ten (10) days after this Settlement Agreement is filed with the Court.

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

**6.1. Payments to Settlement Administrator.** Within five (5) business days following BANA advising the Settlement Administrator of the number of Current Accountholders, Past Accountholders, and the breakdown of those Settlement Class Members that shall receive Email Notice and Postcard Notice, the Settlement Administrator shall provide an estimate of the Settlement Administration Costs to BANA and Class Counsel. BANA will pay all Settlement Administration Costs within thirty (30) days following its receipt of an invoice from the Settlement Administrator, but not until BANA has received a properly completed W-9 Form from the Settlement Administrator. All Settlement Administration Costs shall be paid out of the Settlement Amount. The Settlement Amount represents the total extent of BANA's monetary obligations under this Settlement and includes all sums to be paid under this Settlement Agreement as the consideration to eligible Settlement Class Members, including Service Award(s), if any, the Fee and Cost Award, if any, and any Settlement Administration Costs.

**6.2. Escrow Account.** Within twenty (20) business days after the date of entry of the Final Approval Order, the Settlement Administrator shall establish and BANA shall fund an escrow account with funds sufficient for the payment of the remainder of the Settlement Amount, less any funds previously provided to the Settlement Administrator for the Settlement Administration Costs, as set forth in Paragraph 6.1. BANA (a) shall have the right to impose any reasonable terms and conditions on the operation and maintenance of the fund, and of any funds

that it pays in connection with the Settlement, that it deems appropriate to take advantage of the Qualified Settlement Fund (“QSF”) provisions of the tax code or to protect the moneys from intentional or unintentional diversion, expenditure, forfeiture, escheat, or other dispersion that is inconsistent with the express terms of the Settlement, and (b) shall inform Class Counsel of any such terms and conditions. In the event that BANA desires to have the Settlement Administrator enter into an agreement or undertaking to take advantage of the QSF provisions of the tax code or to protect the moneys in accordance with this paragraph, or to obtain any order from the Court in connection with this paragraph, the Class Representatives agree not to object to such requested agreement or order other than on the grounds that the terms or relief sought, in whole or in part, is inconsistent with the express terms of the Settlement. BANA shall pay no portion of the Settlement Amount until it has received a properly completed W-9 Form from the Settlement Administrator.

**6.3. Application of Settlement Amount.** The Settlement Amount shall be applied as follows:

To pay all Settlement Administration Expenses; to pay any other Court-approved fees and expenses; to distribute the Net Settlement Fund to Settlement Class Members; to pay the Fee and Cost Award; and to pay the Service Award.

**6.4. No Other Payments from BANA.** As set forth above, BANA shall be responsible for paying the total Settlement Amount. BANA shall have no responsibility for any other costs, including, as further detailed in this Settlement Agreement, any Attorneys’ Fees and Costs, including any taxes or tax-related costs relating to the Settlement Amount, but all such fees, expenses, and costs shall be paid out of the Settlement Amount as approved by the Court. The Class Representatives and Settlement Class Members shall look solely to the Settlement Amount as full, final, and complete satisfaction of all Released Claims. Except as set forth

herein, BANA shall have no obligation under this Settlement Agreement or the Settlement to pay or cause to be paid any amount of money, and BANA shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, taxes, or damages whatsoever alleged or incurred by Class Representatives, by any Settlement Class Member, or by any Releasing Parties, including but not limited to their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Class Representatives and Settlement Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

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

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

**6.6.1. Purpose and Use.** The Settlement Amount shall be used only in the manner and for the purposes set forth in this Settlement. No portion of the Settlement Amount shall be disbursed except as expressly set forth herein. The Settlement Amount shall be used only for payments to Settlement Class Members, Settlement Administration Costs, Attorneys' Fees and Costs (described in Section 9), and the Service Award(s) (described in Section 10).

**6.6.2. Settlement Class Member Payments.**

**6.6.2.1. Amounts of Settlement Class Member Payment.** Settlement Class Members are entitled to payment by distributing the



proceeds from the Net Settlement Fund to the Settlement Class Members on a proportionate basis based on the total amount of ACH First Party Fees that were assessed to the Accounts of all Settlement Class Members during the Class Period. Each Settlement Class Member will receive a share of the Net Settlement Fund proportionate to the total amount of ACH First Party Fees that were assessed to his or her Accounts during the Class Period. Each Settlement Class Member shall receive a minimum payment of \$2.00.

**6.6.3. Timing of Payments.** The Settlement Amount shall be distributed by the Settlement Administrator to Settlement Class Members only after the Effective Date and after: (i) all timely objections have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (ii) all matters with respect to Class Counsel's Attorneys' Fees and Costs Application discussed at Section 9 herein, have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (iii) all Settlement Administration Expenses incurred as of that date have been paid.

**6.6.3.1.** Within seven (7) days after the Effective Date, BANA shall determine whether the Class List needs to be updated with respect to which Settlement Class Members are Current Accountholders with BANA as of the Effective Date, and if necessary, will provide an updated Class List to the Settlement Administrator. The

Settlement Administrator will use the Class List to determine which Settlement Class Members are to receive their Settlement Class Member Payment via a credit to their BANA Account.

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

**6.6.3.3.** Within forty-five (45) days after the Effective Date, BANA shall directly deposit the Settlement Class Member Payments to those Settlement Class Members who are Current Accountholders with

BANA as of the Effective Date into the Account from which the ACH First Party Fee was paid.

**6.6.3.4.** Within thirty (30) days after the Effective Date, the Settlement Administrator shall mail payment notices and Settlement Class Member Payments, in the form of checks, as determined in the payment allocation for Settlement Class Members described herein who are Past Accountholders as of the Effective Date. Within ninety (90) days of the Effective Date, checks and payment notices shall also be issued to Settlement Class Members whom BANA was unable to complete an Account Credit.

**6.6.3.5.** Payment pursuant to this Settlement Agreement shall be deemed final and conclusive as against all Settlement Class Members. If any Settlement Check is returned as undeliverable, the Settlement Administrator will attempt to notify the Settlement Class Member, including by attempting to obtain a new mailing address as practical in the same manner as set forth in Paragraph 5.2.3 (with any costs incurred treated as Settlement Administration Expenses). If, after a second attempt, such Settlement Check is again returned as undeliverable, no further efforts need to be taken by the Settlement Administrator. All Settlement Class Members who do not cash their checks within 180 days otherwise shall be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Final Judgment and Order of Dismissal

to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.

**6.6.4.** Each Settlement payment notice shall state: “This payment is tendered to you as a class member in *Bruin, et al. v. Bank of America, N.A.*, 3:22-cv-140 (W.D.N.C.) in consideration for your release from liability of Defendant and other Released Parties as set forth in the Settlement Agreement and Release.” Except as provided in Paragraph 6.7, the payment notices accompanying the Settlement checks shall notify the recipients that the checks must be cashed within one hundred and eighty (180) days from the date on the check and that 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 Amount or to any further recourse against the Parties.

**6.6.5.** For a jointly held Account, a single check, payable to all Accountholders named on the Account, jointly, and mailed to the first Accountholder listed on the Account.

**6.6.6.** The Settlement Administrator will make reasonable efforts to locate the proper address for any check returned undeliverable and will re-mail it once to the updated address or, in the case of a jointly held Account, and

in the Settlement Administrator's discretion, to an Accountholder other than the one listed first.

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

**6.8. Jurisdiction Over Payments.** All proceedings with respect to the notice, administration and processing of payments and the determination of all controversies relating thereto shall be subject to the jurisdiction of the Court.

## **7. TERMINATION OF THE SETTLEMENT**

**7.1.** This Settlement is contingent upon Court approval. If the Court fails to grant final approval of the Settlement in any material respect, the Settlement will be subject to termination by any Party. Notwithstanding this paragraph, the Court's determination as to the Attorneys' Fees and Costs Application and/or any plan of distribution, or any determination on appeal from

any such order, shall not provide grounds for termination of this Settlement Agreement or Settlement.

**7.2.** Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of June 30, 2023. BANA retains all rights regarding any defenses on the statute of limitations that it had as of June 30, 2023. Further, the Parties agree that BANA reserves and preserves all of its defenses and claims related to the Action, including the First Amended Complaint, and the Barokas Action, which it may assert if this Settlement Agreement is terminated, and that BANA shall have sixty (60) days from the date of termination of the Settlement Agreement to file its response to the First Amended Complaint. Further, in such circumstances, the Parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming the Action and the Barokas Action.

**7.3.** Except as otherwise expressly provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, nor approved, or the Effective Date fails to occur for any reason, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Amount previously paid by or on behalf of BANA, together with any interest earned thereon (and, if applicable, re-payment of any Attorneys' Fees and Costs Award, if any, with respect to such income) shall be returned to BANA within ten (10) business days from the date of the event causing such termination. The Parties further agree that any Settlement Administration Costs that have been paid prior to termination shall be split evenly between the Parties.

## 8. PROCEDURES FOR OPT-OUTS AND OBJECTIONS

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

8.1.1. A proposed Settlement Class Member may request to be excluded from the Settlement Class by sending a written, printed request for exclusion, addressed to “Exclusion Requests: Bank of America ACH First Party Fee Class Action” at the Settlement Administrator’s address as shown in the Class Notice. The proposed Settlement Class Member’s opt-out request must contain his or her original signature, current postal address, and a specific affirmative statement that the proposed Settlement Class Member wishes to be excluded from the Settlement Class. Opt-Out requests must be postmarked no later than forty-five (45) days prior to the Final Approval Hearing (the Opt-Out Deadline).

8.1.2. No Party hereto or its counsel shall directly, or indirectly, solicit or encourage any Person to request exclusion from the Settlement Class.

8.1.3. Persons who purport to opt-out of the Settlement Class as a group, aggregate, or class involving more than one purported class member shall **not** be considered to have validly opted out.

8.1.4. **List of Successful Opt-Outs.** Not later than seven (7) days after the Opt-Out Deadline, the Settlement Administrator shall provide Class Counsel

and BANA's Counsel a complete list of the Successful Opt-Outs, together with all opt-out requests.

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

**8.2. Objections from Settlement Class Members.**

**8.2.1.** Any Settlement Class Member who does not opt-out but instead wishes to object to the Settlement or any matters described in the Class Notice may do so by filing with the Court a notice of his or her intention to object.

**8.2.2.** Each Settlement Class Member desiring to object to the Settlement Agreement or to the attorneys' fees, costs and expenses, shall submit a timely written notice of his or her objection. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member in this Action, including evidence that the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the



objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing or assisting the objector, if any; (v) the identity of all counsel representing the objector who will appear at the Final Fairness Hearing, if any; (vi) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection, if any; (vii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation), if any; (ix) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action settlement within the last three (3) years; (x) a list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last 3 years; and (xi) a list, by case name, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court by the date certain as ordered by the Court in the Preliminary Approval Order forty-five days before the Final Approval Hearing and served concurrently therewith upon Class Counsel and BANA's Counsel.

**8.2.3.** If the objection is made by or through an attorney, the written objection must also include: (1) the identity and number of the Settlement Class Members represented by objector's counsel; (2) the number of such represented Settlement Class Members who have opted out of the Settlement Class; and (3) the number of such represented Settlement Class Members who have remained in the Settlement Class and have not objected. If the attorney intends to seek fees and expenses from anyone other than the objectors he or she represents, the attorney shall also file with the Court and serve upon Class Counsel and BANA's Counsel, not later than fifteen (15) days before the Final Fairness Hearing or as the Court may otherwise direct, a document containing the following: (i) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (ii) a statement regarding whether the fees being sought were calculated on the basis of a lodestar, contingency, or other method; (iii) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (iv) the attorney's hourly rate.

**8.2.4.** Any Settlement Class Member who fails to comply with the requirements for objecting set forth herein shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Action. The exclusive means for any challenge to the Settlement Agreement shall

be through the provisions set forth herein. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final Approval Order and Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

- 8.2.5.** The Settling Parties shall file their responses to Objections, if any, to the settlement no later than ten (10) days prior to the Final Fairness Hearing.
- 8.2.6.** By filing an objection, objectors and their counsel submit to the jurisdiction of the Court for all purposes, including but not limited to subpoenas and discovery.
- 8.2.7.** Objectors must also make themselves available for deposition by counsel for the Parties between the time the objection is filed and a date no later than five (5) days before the Final Fairness Hearing, and the objection must include the dates when the objector is available for deposition.
- 8.2.8.** Any Settlement Class Member who, within forty-five (45) prior to the Final Approval Hearing (the Objection Deadline), files and serves a written objection satisfying the requirements of this section may appear at the Fairness Hearing, either in person or through personal counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of the Settlement. Settlement Class members, or their attorneys, intending to make an appearance at the Final Fairness Hearing must deliver to Class Counsel and BANA's Counsel and have file-marked by the Court, no later than forty-five (45) days before the

Final Fairness Hearing or as the Court otherwise may direct, a Notice of Intent to Appear. The Notice of Intent to Appear must: (i) state how much time the Settlement Class Member anticipates needing to present the objection; (ii) identify, by name, address, and telephone number all witnesses the Settlement Class Member proposes to have testify; (iii) summarize in detail the anticipated testimony of all such witnesses; (iv) identify all exhibits the Settlement Class Member intends to offer in support of the objection; and (v) attach complete copies of all such exhibits.

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

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

**9.1.** Class Counsel will move for approval of an award of Attorneys' Fees and reimbursement of the expenses of this Action at least thirty (30) days prior to the Opt-Out and Objection Deadline, which motion shall be separate and apart from the Motion for Preliminary Approval and the Motion for Final Approval. The Motion for Attorneys' Fees and Costs shall include a proposed order on said Motion.

**9.2.** BANA agrees that Class Counsel shall be entitled to an award of reasonable Attorneys' Fees, to be determined by the Court.

**9.3.** BANA agrees not to object to Class Counsel's request for attorneys' fees not to exceed one-third (1/3) of the Settlement Amount. Based upon the total Settlement Amount of \$8,000,000, BANA will not object to a request for Attorneys' Fees of up to \$2,666,667. However, BANA reserves its rights to object or oppose any request for Attorneys' Fees by Class Counsel over and above that amount.

**9.4.** In addition, Class Counsel may request reimbursement of expenses and costs in prosecuting this matter. BANA expressly reserves its rights to object or oppose the amount sought by Class Counsel. Any Court-approved Costs and Fees shall be deducted from the Settlement Amount.

**9.5.** The Attorneys' Fees and Costs Award shall be paid from the Settlement Amount, with no further obligation by BANA.

**9.6.** As stated above, any Attorneys' Fees and Costs Award shall be paid into the account for distribution to Class Counsel in accordance with this Agreement within five (5) business days after the Effective Date.

**9.7.** If the award of Attorneys' Fees is reduced or reversed on appeal, Class Counsel shall make all necessary refunds and repayments into the Settlement Amount no later than thirty (30) days after the Court notifies Class Counsel. Such refunds shall be distributed by the Settlement Administrator to the Settlement Class in the manner provided by the Final Approval Order.

## **10. SERVICE AWARD TO CLASS REPRESENTATIVES**

**10.1. Application for Service Award.** Class Counsel shall apply to the Court for a service award to be paid from the Settlement Amount to the Class Representatives for serving as class representative in support of the Settlement at least thirty (30) days prior to the Opt-Out Deadline, which motion shall be separate and apart from the Motion for Preliminary Approval and the Motion for Final Approval. BANA will not oppose a request of \$5,000 to each Class Representative. In total, this amounts to a total “Service Award” for both Class Representatives of \$10,000.

**10.2. No Additional Obligation by BANA.** BANA shall have no other responsibility for or liability with respect to the payment of a service award to the Class Representatives beyond the amount stated above for resolution of the Released Claims herein.

**10.3. Source of Payment.** A Service Award in the amount approved by the Court shall be paid by the Settlement Administrator through distribution from the Settlement Amount as set forth above.

**10.4.** If a Service Award is reduced or reversed on appeal, Class Representatives shall make all necessary refunds and repayments into the Settlement Amount no later than thirty (30) days after the Court notifies Class Counsel. Such refunds shall be distributed by the Settlement Administrator to the Settlement Class in the manner provided by the Final Approval Order.

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

**10.5. Final Fairness Hearing.** The Parties will jointly request that the Court hold the Final Fairness Hearing to consider approval of the settlement of the Action as provided for herein approximately one hundred and sixty-five (165) days after Preliminary Approval but in no event fewer than ninety (90) days after the CAFA Notice is served. At least forty-five (45) days

before the Final Fairness Hearing, Class Counsel shall provide a draft of the motion for entry of the Final Approval Order to BANA's Counsel for review and comment. Class Counsel shall file motion for entry of the Final Approval Order no less than thirty (30) days before the Final Fairness Hearing. The Parties agree that the Final Approval Order constitutes a final judgment dismissing the Action with prejudice.

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

**10.7. Dismissal of Barokas Action.** Within five (5) business days of the filing of the First Amended Complaint in the Action, Barokas shall file a Stipulation of Dismissal with Prejudice under Fed. R. Civ. P. 41(a)(1)(A)(ii) in the Barokas Action, in the form annexed hereto as Exhibit F.

## **11. RELEASE OF CLAIMS**

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

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

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

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

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



### 13. MISCELLANEOUS PROVISIONS

**13.1. Non-Disparagement:** The Class Representatives, Class Counsel, BANA, and BANA's Counsel shall not issue, or otherwise cause to be issued, any press release, advertisement, or Internet posting related to this Settlement, including that which (i) disparages the Class Representatives, Class Counsel, BANA, or BANA's Counsel with respect to any matters or issues alleged or asserted in the Action or relating to this Settlement; or (ii) includes evidence or information protected from disclosure by the Protective Order in the Action.

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

**13.3. First Amended Complaint:** Prior to, or concurrent with the filing of the Motion for Preliminary Approval, Plaintiffs shall file a First Amended Complaint, substantially in the form of Exhibit E attached hereto, which shall become the operative complaint in the Action,

adding Class Representative, Eline Barokas, as plaintiff and as a proposed Class Representative, and limiting the claims to ACH First Party Fees, and which shall not substantively change the complaint in any way except as set forth herein. Except as provided in Section 7.2 above, the Parties agree that no answer or response to the First Amended Complaint by BANA is required, and that BANA shall not be regarded as having admitted any allegations asserted against it.

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

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

**13.6. No Assignments.** The Class Representatives and Class Counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any Released Claim except as set forth herein, and that there are no Persons having any interest in any award of attorneys' fees, expenses, or litigation costs in connection with the Action. Class Counsel agrees to indemnify and hold BANA and its counsel harmless as to (a) any breach of the representation and warranty

contained in the prior sentence; and (b) any claim by any other Person against BANA or its counsel for such an award of attorneys' fees, expenses, or litigation costs.

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

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

**If to Class Representatives:**

Larry McDevitt (NC Bar No. 5032)  
David M. Wilkerson (NC Bar No.  
35742)  
The Van Winkle Law Firm  
11 North Market Street  
Asheville, NC 28801  
(828)258-2991  
dwilkerson@vwlawfirm.com  
lmcdevitt@vwlawfirm.com

Jeffrey D. Kaniel (*pro hac vice*)  
Sophia Gold (*pro hac vice*)  
KALIEL GOLD PLLC  
1100 15<sup>th</sup> St. NW, 4<sup>th</sup> Floor

**If to Defendants:**

Bradley Kutrow (NC Bar No. 13851)  
MCGUIREWOODS LLP  
201 N. Tryon Street, Suite 3000  
Charlotte, NC 28202  
Telephone: (704) 343-2000  
Fax: (704) 343-2300  
bkutrow@mcguirewoods.com

GOODWIN PROCTER LLP  
Allison J. Schoenthal (*pro hac vice*)  
Chenxi Jiao (*pro hac vice*)  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018

Washington, D.C. 20005  
(202) 350-4783  
jkaliel@kalielpllc.com  
sgold@kalielpllc.com

(212) 813-8800  
aschoenthal@goodwinlaw.com  
cjiao@goodwinlaw.com

GOODWIN PROCTER LLP  
Laura G. Brys (*pro hac vice*)  
601 South Figueroa Street, Suite 4100  
Los Angeles, CA 90017  
(213) 426-2584  
lbrys@goodwinlaw.com

**13.9. Entire and Voluntary Agreement.**

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

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

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

**13.11. Settlement Agreement Controls Over Exhibits.** All exhibits attached to this Settlement Agreement are hereby incorporated into this Settlement Agreement as though fully set forth herein. If there is any conflict between the terms of the Settlement Agreement and the attached exhibits, the Settlement Agreement shall control.

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

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

**13.14. Computation of Time.** Except as expressly set forth herein, in computing any period of time prescribed or allowed by this Settlement Agreement, the provisions of Federal Rule of Civil Procedure 6 shall govern.

**13.15. Continuing Jurisdiction and Exclusive Venue.** Each of the Parties, each Settlement Class Member, and each of the Releasing Parties that are otherwise subject to the jurisdiction of a United States court hereby irrevocably submits to the exclusive jurisdiction and venue of the United States District Court for the Western District of North Carolina for any suit,

action, proceeding, case, controversy, or dispute arising from or related to this Settlement Agreement and/or Exhibits hereto and the negotiation, performance, or breach of same.

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

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

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

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

**13.20. Counterparts.** This Settlement Agreement may be executed in two or more counterparts and by facsimile or email of PDF, both of which shall be deemed an original. Original signatures are not required. All executed counterparts shall be deemed to be one and the

same instrument. Counsel for the Parties shall exchange among themselves signed counterparts.  
A complete set of executed Counterparts shall be filed with the Court.

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

APPROVED BY PLAINTIFFS AND CLASS COUNSEL

  
\_\_\_\_\_  
Tami Bruin

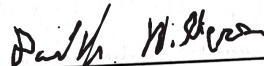
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Eline Barokas

Date: 09 / 08 / 2023

*Sophia Gold*  
\_\_\_\_\_  
Jeffrey D. Kaliel  
Sophia Gold  
KALIEL GOLD PLLC

Date: 09 / 08 / 2023

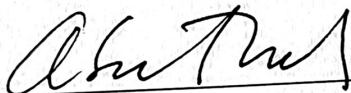
  
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David Wilkerson  
Larry McDevitt  
The Van Winkle Law Firm

Date: 09 / 08 / 2023

APPROVED BY DEFENDANT AND COUNSEL FOR DEFENDANT

*James Ciccone*  
\_\_\_\_\_  
On behalf of Bank of America, N.A.

Date: September 5, 2023

  
\_\_\_\_\_  
Allison J. Schoenthal  
GOODWIN PROCTER LLP

Date: 9/5/2023