

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CASE NO. 5:15-CV-231**

GARY and ANNE CHILDRESS, THOMAS
and ADRIENNE BOLTON, STEVEN and
MORGAN LUMBLEY, RAYMOND and
JACKIE LOVE, HARRY and MARIANNE
CHAMPAGNE, and RUSSELL and MARY
BETH CHRISTE, *on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendant.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of the 19th day of July, 2017, by and between: Bank of America, N.A. (“Defendant”) and Plaintiffs Gary and Anne Childress, Thomas and Adrienne Bolton, Steven and Morgan Lumbley, Raymond and Jackie Love, Harry and Marianne Champagne, and Russell and Mary Beth Christe (collectively, “Plaintiffs”), both individually and on behalf of the Class (defined *infra*). This Agreement is intended by the Settling Parties (defined *infra*) to fully, finally, and forever resolve, discharge, and settle the Released Claims (defined *infra*), upon and subject to the terms and conditions as set forth in what follows.

RECITALS

WHEREAS, Plaintiffs are prosecuting the above-captioned litigation on their own behalf and on behalf of the Class against Defendant;

WHEREAS, Plaintiffs allege, among other things, that, since September 11, 2001, Defendant charged thousands of military servicemember family customers excessive interest on

their interest-bearing obligations, including mortgage and credit card accounts, and further tried to conceal the excess interest charges, in violation of the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. § 3901, *et seq.*, the Truth in Lending Act, 15 U.S.C. §§ 1637(b), 1638(f), and 1639f, North Carolina's Unfair and Deceptive Trade Practices Act, and common law, including breach of contract, negligence, and negligent misrepresentation, and seek an accounting and to impose a constructive trust based on the same, as alleged in Plaintiffs' Second Amended Complaint, Dkt. No. 103;

WHEREAS, Defendant denies each and all of the claims and allegations of wrongdoing made by the Plaintiffs; denies that it has violated any law or other duty; denies that it has engaged in any wrongdoing or any other act or omission that would give rise to liability or cause Plaintiffs injuries, damages, or entitlement to any relief; has asserted affirmative defenses to Plaintiffs' claims as set forth in its Answer and Affirmative Defenses to Plaintiffs' Amended Complaint, Dkt. No. 63; has contested and would continue to contest certification of a non-settlement Rule 23(b)(3) damages class and/or a Rule 23(b)(1) or Rule 23(b)(2) declaratory and injunctive relief class, Dkt. No. 70; and states that it is entering into this Agreement to avoid the further uncertainties, expense, inconvenience, delay, and distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to the Plaintiffs and the Class and avoid the risks inherent in complex litigation;

WHEREAS, Defendant has provided significant information to Plaintiffs regarding their claims and the claims of the Class through written discovery and voluntarily in advance of mediation;

WHEREAS, Plaintiffs and Defendant agree that the fact of this Agreement, any of the terms in this Agreement, any documents filed in support of this Agreement, or any statement

made in the negotiation thereof shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law, (ii) any liability or wrongdoing by Defendant, (iii) liability on any of the claims or allegations, or (iv) the propriety of certifying a litigation class in any proceeding, and shall not be used by any Person for any purpose whatsoever in the Action (defined *infra*) or any other legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of this Agreement;

WHEREAS, Plaintiffs and Defendant engaged the services of former United States District Court Judge Layn Phillips as a mediator to assist in their negotiations, and starting in January 2017, engaged in extensive settlement negotiations, which included in-person mediation sessions with Mr. Phillips in California and New York between January and March 2017, before agreeing to the terms of this arm's-length Agreement, which embodies all of the terms and conditions of the Settlement (as defined *infra*) between the Settling Parties, and which has been reached (subject to the approval of the Court) as provided below and which is intended to supersede any and all prior agreements between the Settling Parties; and

WHEREAS, Plaintiffs and Plaintiffs' Class Counsel (defined *infra*) have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Plaintiffs' Second Amended Complaint, Dkt. No. 103, the legal and factual defenses thereto and the applicable law, that it is in the best interests of the Plaintiffs and the Class to enter into this Agreement to avoid the uncertainties of litigation and to assure that the benefits set forth below are obtained for the Plaintiffs and the Class, and, further, that Plaintiffs' Class Counsel consider the Settlement set forth in this Agreement to be fair, reasonable, and adequate and in the best interests of the Plaintiffs and the Class.

AGREEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties, by and through their attorneys of record, that, subject to the approval of the Court, the Action and the Released Claims (defined *infra*), including any Unknown Claims (defined *infra*), against Defendant shall be finally and fully settled, compromised, and dismissed on the merits and with prejudice upon and subject to the terms and conditions of this Agreement, as follows:

I. DEFINITIONS

A. As used in this Agreement the following terms have the meanings specified below:

1. “Action” means *Childress, et al. v. Bank of America Corp., et al.*, Case No. 5:15-CV-231, filed in the United States District Court for the Eastern District of North Carolina.
2. “Affiliates” means entities controlling, controlled by, or under common control with a Releasee or Releasor.
3. “Authorized Recipient” means any Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution consistent with any Distribution Plan or order of the Court.
4. “Class” is defined as: All persons identified in Bank of America’s records as obligors or guarantors on an obligation or account who, at any time on or after September 11, 2001, received and/or may have been eligible to receive additional compensation related to military reduced interest rate benefits from Defendant, but excluding persons who have executed a release of the rights claimed in this action.

5. "Class Counsel" means the law firms Hagens Berman Sobol Shapiro LLP; Smith & Lowney, PLLC; and Shanahan Law Group, PLLC.
6. "Counsel for Defendant" means McGuireWoods LLP.
7. "Class Member" means a Person who falls within the definition of the Class and has not timely and validly elected to be excluded from the Class pursuant to the procedures set forth below.
8. "Court" means the United States District Court for the Eastern District of North Carolina.
9. "Day" or "Days" has the meaning ascribed to it in Federal Rule of Civil Procedure 6, and all time periods specified in this Agreement shall be computed in a manner consistent with Fed. R. Civ. P. 6. All references to days shall be interpreted to mean calendar days, unless otherwise noted.
10. "Distribution Plan" means the plan or formula of allocation of the Gross Settlement Fund whereby the Net Settlement Fund shall in the future be distributed to Authorized Recipients, to be approved by the Court in the form attached hereto as Exhibit A and made a part of this Agreement.
11. "Effective Date" means the first date by which all of the events and conditions specified in § VIII(A)(1)-(4) of this Agreement have occurred and have been met.
12. "Escrow Account" means the bank account to be established at a banking institution chartered pursuant to the National Bank Act by Class Counsel and maintained by the Escrow Agent into which the Gross Settlement Fund or portions thereof shall be deposited, pursuant to the Escrow Agreement. Such

Escrow Account is to be administered under the Court's continuing supervision and control.

13. "Escrow Agent" means the agent designated by Class Counsel, and approved by Counsel for Defendant, and any successor agent.
14. "Escrow Agreement" means the agreement to be mutually agreed to by the Settling Parties concerning the Escrow Account. The Escrow Agent shall act only in accordance with the Escrow Agreement.
15. "Exclusion/Objection Deadline" means the deadline for requesting exclusion from the Class or objecting to the Settlement, as set forth in the notice to the Class.
16. "Execution Date" means the latest date associated with a signature on a fully executed Agreement set forth on the signature pages below.
17. "Final" means, with respect to any order of the Court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes "Final" when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Agreement, an "appeal" includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining

solely to any order issued with respect to an application for attorneys' fees and expenses consistent with this Agreement shall not in any way delay or preclude the Judgment from becoming Final.

18. "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue.
19. "Incentive Award" means the amount awarded, if any, to the Representative Plaintiffs upon application as described in § VII of this Agreement.
20. "Interest Subsidy Method" means the method for determining monthly mortgage loan payment amounts described as the "Interest Subsidy Amortization Method" in the Fannie Mae Servicing Guide published May 10, 2017.
21. "Judgment" means the order of judgment and dismissal of the Action with prejudice.
22. "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth below in § VI(B)(1)-(3).
23. "Notice and Administrative Costs" means the reasonable and authorized costs and expenses of administering the Settlement, including, but not limited to, the costs of mailing notice to the Class, mailing payments to Class Members, and responding to inquiries from the Class.
24. "Settlement Notice Administrator" means the settlement administrator(s) to be selected by Class Counsel and Defendant and approved by the Court.
25. "Opt-Out" means a Person who falls within the definition of the Class who has timely and validly elected to be excluded from the Class pursuant to the procedures set forth herein. It does not include any Person whose request for

exclusion is challenged by Defendant and the challenge is not overruled by the Court or withdrawn by Defendant, any Person whose communication is not treated as a request for exclusion, and/or any Person whose request for exclusion is not valid or is otherwise void.

26. "Person(s)" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives, or assignees of any of the foregoing.
27. "Released Claims" means any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, whether class, individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, and/or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, all from the beginning of the world until the Effective Date, under the laws of any jurisdiction, which Releasers or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, arising out of or relating in any way to any act

or omission of the Releasees (or any of them) that is alleged in Plaintiffs' Action or could have been alleged in Plaintiffs' Action.

28. "Releasees" means Bank of America Corporation, Bank of America N.A., and FIA Card Services, and each and every one of their past, present, and future parents, predecessors, successors, partners, assigns, subsidiaries, affiliates, divisions, owners, shareholders (in their capacity as shareholders), officers, directors, vendors, employees, members, attorneys and legal representatives, insurers, agents (alleged or actual), heirs, executors, administrators and assigns, and related and affiliated Persons.
29. "Releasers" means the Plaintiffs and each and every Class Member, individually or together, on their own behalf and on behalf of their respective families, and each and every one of their former, present, or future agents, legal representatives, predecessors, successors, heirs, executors, administrators, insurers, and assigns.
30. "Representative Plaintiffs" mean the named Plaintiffs in the Class Action, including Gary and Anne Childress, Thomas and Adrienne Bolton, Steven and Morgan Lumbley, Raymond and Jackie Love, Harry and Marianne Champagne, and Russell and Mary Beth Christe. For purposes of this Agreement, except where otherwise noted, each family unit (e.g., Gary and Anne Childress) shall constitute a single Representative Plaintiff. For purposes of any Incentive Award, if any family unit is divorced or separated at the time the Incentive Award is to be paid, and Class Counsel is made aware of the divorce/separation, the Incentive Award allocated to that family unit will be divided equally between the two members of the family unit.

31. "Settlement" means the settlement of the Released Claims set forth herein.
32. "Settlement Amount" means the total sum of forty-one nine hundred twenty thousand three hundred seventy-four dollars and six cents (\$41,920,374.06).
33. "Settling Parties" means, collectively, Defendant and Plaintiffs (on behalf of themselves and the Class). (Defendant or Plaintiffs separately is a "Settling Party").
34. "Unknown Claims" means any and all Released Claims that a Plaintiff and/or Class Member does not know or suspect to exist in his or her favor at the time of the release of the Releasees that 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 not to object to or opt out of this Settlement.
35. As used herein, the plural of any defined terms includes the singular thereof and vice versa, except where the context requires otherwise.

II. PRELIMINARY APPROVAL ORDER, NOTICE ORDER AND SETTLEMENT HEARING

A. Reasonable Best Efforts to Effectuate This Settlement. The Settling Parties:

(a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement.

B. Certification of Class. For settlement purposes only, the Settling Parties agree to certification of the Class pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. The Settling Parties' stipulation to the certification of the Class is for purposes of the Settlement set forth in this Agreement only. Defendant's agreement to the certification of the

Class solely for the purpose of this Agreement does not, and shall not, constitute, in this or any other proceeding, an admission by Defendant of any kind or any determination that certification of a class for trial or other litigation purposes in the Action or any other separate action is, or would be, appropriate. If the Settlement is not granted Final Approval or this Agreement is otherwise terminated or rendered null and void, the certification of the Class shall be automatically vacated and shall not constitute evidence or any determination that the requirements for certification of a class for trial or other litigation purposes in this Action or any other action are satisfied; in such circumstances, Defendant reserves all rights to challenge certification of any class or subclass for trial or other litigation purposes in the Action or in any other action on all available grounds as if no class had been certified in this Action for purposes of the Settlement.

C. Motion for Preliminary Approval. As soon as practicable following the Execution Date, Class Counsel shall submit this Agreement (including all Exhibits) to the Court and shall apply for entry of a preliminary approval order (“Preliminary Approval Order”), requesting, *inter alia*, preliminary approval (“Preliminary Approval”) of the Settlement. The texts of the Motion for Preliminary Approval (including the Preliminary Approval Order, and Notice Plan (defined herein)) will be provided to Defendant for review. The proposed form of Notice to be used pursuant to the Notice Plan is attached here as Exhibit B.

D. Proposed Form of Notice. As part of the Motion for Preliminary Approval, Class Counsel shall submit to the Court for approval a proposed form of, method for, and schedule for dissemination of notice to the Class (the “Notice Plan”). This Notice Plan shall ask the Court to find that the proposed form of and method for dissemination of notice to the Class constitutes valid, due, and sufficient notice to the Class; constitutes the best notice practicable

under the circumstances; and complies fully with the requirements of Fed. R. Civ. P. 23.

Defendant shall be responsible for providing all notices required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

E. Motion for Final Approval and Entry of Final Judgment. Not less than thirty-five (35) Days prior to the date set by the Court to consider whether this Settlement should be finally approved, Class Counsel shall submit a motion for final approval ("Final Approval") of the Settlement by the Court. The Motion for Final Approval (including the Final Approval Order and supporting papers) shall be provided to Defendant for review at least ten (10) Days prior to the filing of the Motion for Final Approval, and Defendant will have an opportunity to comment on its contents before it is filed. Class Counsel shall seek entry of the final approval order ("Final Approval Order") and Judgment:

1. finding that the Court has personal jurisdiction over the Plaintiffs and all Class Members and that the Court has subject matter jurisdiction to approve this Settlement and Agreement;
2. certifying the Class, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), solely for purposes of this Settlement;
3. fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23, and directing its consummation pursuant to its terms and conditions;
4. declaring this Agreement and the Final Approval Order and Judgment to be binding on and to have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Released Claims maintained by or on behalf of the Releasers;

5. finding that the notice given to the Class Members pursuant to the Notice Plan (i) constituted the best notice practicable under the circumstances; (ii) constituted notice that was reasonably calculated under the circumstances to apprise Class Members of the pendency of the Action, of their right to object to or exclude themselves from the proposed Settlement as applicable, of their right to appear at the final approval hearing, and of their right to seek relief; (iii) constituted reasonable, due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) complies in all respects with the requirements of Fed. R. Civ. P. 23, due process, and any other applicable law;
6. finding that Class Counsel and the Plaintiffs adequately represented the Class Members for purposes of entering into and implementing this Agreement and Settlement;
7. directing that the claims for damages be dismissed with prejudice and, except as otherwise explicitly provided for in the Agreement, without costs;
8. discharging and releasing the Releasees from all Released Claims;
9. permanently barring and enjoining the institution and prosecution, by Releasors and/or any other Person, of any and all of the Released Claims;
10. approving the Opt-Out List (defined *infra*) and determining that the Opt-Out List is a complete list of all Persons who have timely and validly requested exclusion from the Class, and accordingly, who shall neither share in nor be bound by the Final Approval Order and Judgment;
11. determining that the Agreement and the Settlement provided for therein and any proceedings taken pursuant to it are not and should not in any event be offered or

received as evidence of a presumption, concession, acknowledgment, or an admission of liability or of any wrongdoing by Defendant or any Releasee or of the suitability of these or similar claims to class treatment for litigation, trial, or any other purpose except settlement; provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the Agreement;

12. reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation, and enforcement of this Agreement;
13. authorizing the Settling Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement as shall be consistent in all material respects with the Final Approval Order and Judgment and not limit the rights of the Settling Parties or Class Members; and
14. containing such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

Class Counsel also will request that the Court approve an application for Plaintiffs' Incentive Award and attorneys' fees and reimbursement of expenses (as described in § VII below).

F. Stay Order. Upon the date that the Court enters the Preliminary Approval Order, Plaintiffs and all Class Members shall be barred and enjoined from commencing, instituting, or continuing to prosecute any action or any proceeding of any kind (including, but not limited, to an action for actual damages, statutory damages, and/or exemplary or punitive damages) in any

court of law, arbitration tribunal, administrative forum, or other forum of any kind worldwide, based on the Released Claims.

III. RELEASES

A. Released Claims. Upon the Effective Date, pursuant to the Court's entry of the Final Approval Order and Judgment, any and all Released Claims against each and all of the Releasees shall be released and dismissed with prejudice and on the merits (without an award of costs to any party other than those provided in § VII *infra*). The Releasors (regardless of whether any such Releasor ever obtains any recovery by any means, including, without limitation, by receiving any distribution from the Net Settlement Fund) shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees.

B. No Future Actions Following Release. The Releasors shall not, after the Effective Date, seek (directly or indirectly) to commence, institute, maintain, or prosecute any suit, action, or complaint of any kind (including, but not limited to, claims for actual damages, statutory damages, and exemplary or punitive damages) against Defendant or any other Releasees (including pursuant to the Action), based on the Released Claims, in any forum worldwide, whether on his or her own behalf or as part of any putative, purported, or certified class.

C. Covenant Not to Sue. Releasors hereby covenant not to sue the Releasees with respect to any Released Claims, including Unknown Claims. Releasors shall be permanently barred and enjoined from instituting, commencing, or prosecuting any claims against the Releasees of any kind (including, but not limited to, for actual damages, statutory damages, and exemplary or punitive damages) based on the Released Claims. The Settling Parties contemplate and agree that this Agreement may be pleaded as a bar to a lawsuit, and an injunction may be

obtained preventing any action from being initiated or maintained, in any case sought to be prosecuted on behalf of any Releasors (including, but not limited to, for actual damages, statutory damages, and exemplary or punitive damages) based on the Released Claims.

D. Waiver of California Civil Code § 1542 and Similar Laws. In addition to the provisions at § III(A)–(C) *supra*, the Releasors expressly acknowledge that they are familiar with and, upon Final Approval of this Settlement, waive and release with respect to the Released Claims any and all provisions, rights, and benefits conferred (a) by Section 1542 of the Civil Code of the State of California, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO 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 DEBTOR.

(b) by any law of any and all equivalent, similar, or comparable federal or state rules, regulations, laws, or principles of law of any other jurisdiction that may be applicable herein; and/or (c) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth in the Agreement. The Releasors expressly agree that by executing this Agreement, and for the consideration received hereunder, it is their intention to release, and they are releasing, all Released Claims, including Unknown Claims. The Releasors acknowledge that they may hereafter discover claims or facts other than or different from those which they know, believe, or suspect to be true with respect to the subject matter of the Released Claims, but the Releasors expressly waive and fully, finally, and forever settle and release any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, losses, rights, demands, charges, complaints, actions, causes of action, obligations, or liabilities of any and every kind, whether class, individual, or otherwise in nature, including, without limitation, those known or unknown or capable of being known; those which are

unknown but might be discovered or discoverable based upon facts other than or different from those facts known or believed at this time; those which are foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, and/or contingent or non-contingent; and those which are accrued, unaccrued, matured or not matured, all from the beginning of the world until the Effective Date, under the laws of any jurisdiction, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, arising out of or relating in any way to any act or omission of the Releasees (or any of them) that is alleged in Plaintiffs' Action or could have been alleged in Plaintiffs' Action. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in this paragraph is contractual and not a mere recital.

E. Dismissal. Subject to Court approval, all Releasors shall be bound by this Agreement, and all of their claims shall be dismissed with prejudice and released, even if they never received actual notice of the Action or this Settlement.

IV. INJUNCTIVE RELIEF

A. **Interest Subsidy Method.** Releasees agree that they will not utilize the Interest Subsidy Method to provide military reduced interest rate benefits to mortgage customers for at least five years from the Effective Date, except Releasees may use the Interest Subsidy Method to provide military reduced interest rate benefits to mortgage customers at any point during the five years from the Effective Date (1) if required by law; (2) if required by Releasees' regulators; and/or (3) if required by Releasees' investors and Releasees have not encouraged or requested that or negotiated in favor of the investor requiring the use of the Interest Subsidy Method.

V. SETTLEMENT FUND

A. **Settlement Payment.** In full, complete, and final settlement of any and all claims for damages in the Action, Defendant shall pay by wire transfer in immediately available funds \$250,000.00 of the Settlement Amount into the Escrow Account within thirty (30) Days after the Court's entry of the Preliminary Approval Order, and the remainder of the Settlement Amount within thirty (30) Days after the Court's entry of the Final Approval Order. In the event that the foregoing dates fall on a Saturday, Sunday, or U.S. bank holiday, the payments will be made on the next business day. The Settlement Amount is an "all in" number which includes, without limitation, all monetary benefits and distributions to the Class Members, attorneys' fees and expenses, escrow fees, taxes, tax expenses, and all other costs and expenses relating to the Settlement (including, but not limited to, administration costs and expenses, notice costs and expenses, and settlement costs and expenses). Under no circumstances will the Defendant be required to pay more than the Settlement Amount pursuant to this Agreement and the Settlement set forth herein. In no event shall the Defendant be required to make any payment under this Settlement before the deadlines set forth in this Agreement.

B. Disbursements Prior to Effective Date. The Gross Settlement Fund will remain subject to the jurisdiction of the Court, until such time as it is fully distributed in compliance with the Agreement and Distribution Plan, the Escrow Agreement, and any applicable Court order. No amount may be disbursed from the Gross Settlement Fund unless and until the Effective Date, except that: (a) notice and administration costs, which may not exceed two hundred fifty thousand dollars (\$250,000.00), absent written consent of all Settling Parties, as they become due; (b) Taxes and Tax Expenses (as defined in § V(C)) may be paid from the Gross Settlement Fund as they become due; and (c) attorneys' fees and reimbursement of litigation costs and expenses ordered by the Court may be disbursed during the pendency of any appeals which may be taken from the Final Approval Order and Judgment.

C. Taxes. The Settling Parties and the Escrow Agent agree to treat the Gross Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

1. For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number,

(ii) satisfying any information reporting or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly filing applicable federal, state, and local tax returns necessary or advisable with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this paragraph) shall be consistent with the provisions of this paragraph and in all events shall reflect that all Taxes as defined in § V.C.2 below on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund.

2. The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Defendant or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all expenses and costs incurred in connection with the operation and implementation of this paragraph, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph (collectively, “Tax Expenses”).
3. In all events neither Defendant nor its counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross

Settlement Fund, the Escrow Agent shall indemnify and hold harmless Defendant and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Recipients any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Defendant nor its counsel are responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, their tax attorneys, and their accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

VI. ADMINISTRATION AND DISTRIBUTION OF GROSS SETTLEMENT FUND

A. Time to Appeal. The time to appeal from an approval of the Settlement shall commence upon the Court's entry of the Judgment regardless of whether or not an application for attorneys' fees and expenses has been submitted to the Court or resolved.

B. Distribution of Gross Settlement Fund. Upon further orders of the Court, the Escrow Agent and/or Settlement Notice Administrator, as applicable, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer the Settlement and shall oversee distribution of the Gross Settlement Fund to Authorized Recipients pursuant to the Distribution Plan. Subject to the terms of this

Agreement, the Distribution Plan and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

1. To pay the Taxes and Tax Expenses as defined *supra*;
2. To pay any Incentive Award and Fee and Expense Award (defined *infra*) that is allowed by the Court, subject to and in accordance with the Agreement;
3. To pay notice and administration costs incurred in carrying out the Settlement; and
4. To distribute the balance of the Net Settlement Fund to Authorized Recipients as allowed by the Agreement, the Distribution Plan, or order of the Court.

C. Distribution of Net Settlement Fund. Upon the Effective Date and thereafter, and in accordance with the terms of this Agreement, the Distribution Plan and such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Settlement Notice Administrator shall distribute the Net Settlement Fund to Authorized Recipients, subject to and in accordance with the following:

1. Each Authorized Recipient shall receive his or her distribution by check;
2. The Net Settlement Fund shall be distributed to Authorized Recipients substantially in accordance with the Distribution Plan. No funds from the Net Settlement Fund shall be distributed to Authorized Recipients until after the Effective Date; and
3. All Authorized Recipients shall be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Judgment with respect to all Released Claims, regardless of whether such Authorized Recipients obtain any distribution from the Gross Settlement Fund or the Net Settlement Fund.

D. No Liability for Distribution of Settlement Funds. Releasees will make reasonable efforts to facilitate Class Counsel's receipt of records necessary to identify Class Members entitled to distribution from the Net Settlement Fund. Neither the Releasees nor their counsel, however, shall have any responsibility for, or liability whatsoever with respect to, the distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration, or calculation of claims; the Settlement Fund's qualification as a "qualified settlement fund" as set forth in § V(C), *supra*; the payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund; or any losses incurred in connection with any such matters. In addition to the releases set forth in § III, *supra*, the Releasors hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Class Counsel or the Settlement Notice Administrator based on the distributions made substantially in accordance with the Agreement and the Settlement contained herein, the Distribution Plan, or further orders of the Court.

E. Balance Remaining in Net Settlement Fund. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise), Class Counsel shall distribute such balance consistent with the Distribution Plan set forth in Exhibit A.

F. All Claims Satisfied by Net Settlement Fund. Each Class Member shall look solely to the Net Settlement Fund for settlement and satisfaction of all claims released herein. Except as provided by order of the Court pursuant to this Settlement Agreement, no Class Member shall have any interest in the Gross Settlement Fund, the Net Settlement Fund, or any portion thereof.

VII. INCENTIVE AWARDS, ATTORNEYS' FEES, AND REIMBURSEMENT OF EXPENSES

A. Fee and Expense Application. Class Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Gross Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of reasonable expenses incurred in connection with prosecuting the Action; plus (c) any interest on such expenses (until paid) at the same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be awarded by the Court; and (d) Incentive Awards to Class Representatives.

1. Class Counsel agree that an application for attorneys' fees will not seek an amount in excess of thirty percent (30%) of the Settlement Amount. In the event the Court awards less than the attorneys' fees sought, up to thirty percent (30%) of the Settlement Amount, the difference between the amount of fees awarded by the Court and those sought shall remain as part of the Gross Settlement Fund and shall be subject to distribution as provided in the Agreement. In the event the Court awards attorneys' fees exceeding thirty percent (30%) of the Settlement Amount, Class Counsel (i) expressly disclaim any and all right to collect the excess or any portion of the excess; (ii) agree, upon demand, to execute a release of any Person's or entity's obligation to pay such sums; and (iii) agree that the amount of attorneys' fees awarded in excess of thirty percent (30%) shall remain as part of the Gross Settlement Fund and shall be subject to distribution as provided in the Distribution Plan.
2. Class Counsel and Representative Plaintiffs agree that an application for an Incentive Award shall not exceed fifteen thousand dollars (\$15,000.00) per Representative Plaintiff for Gary and Anne Childress, Thomas and Adrienne

Bolton, Steven and Morgan Lumbley (forty-five thousand dollars (\$45,000.00) total), and shall not exceed ten thousand dollars (\$10,000.00) per Representative Plaintiff for Raymond and Jackie Love, Harry and Marianne Champagne, and Russell and Mary Beth Christe (thirty thousand dollars (\$30,000.00) total). In the event the Court awards less than the requested Incentive Award, the difference between the amount awarded by the Court and the amount sought shall remain as part of the Gross Settlement Fund and shall be subject to distribution as provided in the Agreement. In the event the Court awards an Incentive Award exceeding the amounts set forth in this paragraph, Class Counsel and the Representative Plaintiffs (i) expressly disclaim any and all right to collect the excess or any portion of the excess; (ii) agree, upon demand, to execute a release of any Person's or entity's obligation to pay such sums; and (iii) agree that the amount of the Incentive Award in excess of that set forth in this paragraph shall remain as part of the Gross Settlement Fund and shall be subject to distribution as provided in this Agreement.

B. Payment of Fee and Expense Award. Any amounts that are awarded by the Court pursuant to the paragraph above (the "Fee and Expense Award") shall be paid from the Gross Settlement Fund consistent with the provisions of this Agreement. Any Incentive Award shall be paid only after the Effective Date. Any attorneys' fees award shall be paid only after the Court enters Final Approval of the Settlement. An attorneys' fees award determined by the Court may be paid before the expiration of the appeals period for the Final Approval Order or Judgment; provided, however, that if the Final Approval Order or Judgment is reversed or vacated, or the Agreement should terminate, or be cancelled or otherwise fail to become effective

for any reason, any attorneys' fees award paid to Class Counsel before that time shall be returned as provided for in § VIII.H, *infra*.

C. Award of Fees and Expenses Not Part of Settlement. The procedure for, and the allowance or disallowance by the Court of, the Fee and Expense Application are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Judgment and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award shall constitute grounds for cancellation or termination of this Agreement. To the extent that any award of attorneys' fees or expenses is modified downward or reversed on appeal, the balance shall be returned to the Escrow Account within thirty (30) days of such modification or reversal becoming Final and not subject to further appellate review.

D. No Liability for Fees and Expenses of Class Counsel. Neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to any payment(s) to Class Counsel pursuant to this Agreement and/or to any other Person who may assert some claim thereto or any Fee and Expense Award that the Court may make in the Action, other than as set forth in this Agreement. Similarly, neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

E. Final Approval. In the event that this Agreement fails to receive Final Approval by the Court as contemplated herein or in the event that it is terminated by either of the Settling Parties under any applicable provision herein, the Settling Parties agree that neither Plaintiffs nor Class Counsel shall be permitted to introduce in evidence, at any hearing; or in support of any motion, opposition, or other pleading in the Action; or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any information provided by Defendant or the Releasees in furtherance of the performance of this Agreement.

VIII. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

A. Effective Date. The Effective Date of this Agreement shall be conditioned on the occurrence of all of the following events:

1. Defendant no longer has any right to terminate this Agreement, nor is there a possibility of termination of this Agreement, under paragraphs §§ VIII(F), VIII(G), XI(Q), or XI(U) or, if Defendant does have such right, it has given written notice to Class Counsel that it will not exercise such right;
2. The Court has finally approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Fed. R. Civ. P. 23, and has entered the Final Approval Order and Judgment;
3. The Released Claims are dismissed with prejudice pursuant to the Final Approval Order and Judgment; and
4. The expiration of appeal periods and/or resolution of all appeals:
 - a. If no appeal is taken from the Final Approval Order or Judgment, the date after the time to appeal therefrom has expired; or

- b. If any appeal is taken from the Final Approval Order or Judgment, the date after all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing *en banc*, and petitions for certiorari or any other form of review, have been finally disposed of, such that the time to appeal therefrom has expired, in a manner resulting in an affirmance without material modification of the relevant order or judgment.

B. Occurrence of Effective Date. Upon the occurrence of all of the events referenced in the above paragraph, any and all remaining interest or right of Defendant in or to the Gross Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement Fund (less any Taxes, Tax Expenses or Fee and Expense Award, and Notice and Administrative Costs paid) shall be transferred from the Escrow Agent to the Settlement Notice Administrator as successor Escrow Agent within ten (10) Days after the Effective Date or as soon thereafter as is reasonably possible and appropriate under the circumstances.

C. Failure of Effective Date to Occur. If all of the conditions specified in § VIII(A)(1)-(4) are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with § VIII(H) unless the Settling Parties mutually agree in writing to proceed with this Agreement. The effectiveness of the Settlement is expressly conditioned on the Settlement being approved by the Court and any appellate court reviewing the Settlement without this Agreement being rejected or required to be materially modified by any Court ruling or any order resulting from an appeal or other review. If the Settlement is not finally approved by the Court and any appellate court reviewing the Settlement without material modification as set forth in this Agreement, the Agreement shall terminate and cease to have any effect.

D. Exclusions. Any Class Member who wishes to opt out of the Class must do so on or before the Exclusion/Objection Deadline specified in the notice to the Class.

1. In order to become an Opt-Out, a Class Member must complete and send to the Settlement Notice Administrator a request for exclusion that is post-marked no later than the Exclusion/Objection Deadline. The request for exclusion must include any information specified in the notices. Opt-Outs may opt out of the Class only on an individual basis; so-called “mass” or “class” opt-outs shall not be allowed and shall be of no force or effect.
2. Class Counsel shall cause copies of requests for exclusion from the Class to be provided to Counsel for Defendant. No later than fourteen (14) Days after the Exclusion/Objection Deadline, Class Counsel shall provide to Counsel for Defendant a complete and final list of Opt-Outs and copies of the requests for exclusion. With the Motion for Final Approval of the Settlement, Class Counsel will file with the Court a complete list of Opt-Outs, including the name, city, and state of the person requesting exclusion (the “Opt-Out List”).
 - a. With respect to any Opt-Outs, Defendant reserves all of their legal rights and defenses, including, but not limited to, any defenses relating to whether the person qualifies as a Class Member and/or has standing to bring any claim.
 - b. Defendant may challenge the validity of any Opt-Out by providing written notice to Class Counsel with ten (10) Days after Class Counsel provides Counsel for Defendant a complete and final list of Opt-Outs and copies of the requests for exclusion. Such notice shall void the Opt-Out(s) unless Class Counsel disputes the notice in writing, in good faith, with Counsel for Defendant within five (5) Days of receipt of the notice. The Court

shall have jurisdiction to resolve any disputes regarding the validity of Opt-Outs. Any decision by Defendant not to dispute an Opt-Out shall not be a waiver, determination, or preclusive finding against the Defendant or Releasees in any proceeding.

E. Objections. Class Members who wish to object to any aspect of the Settlement must file with the Court a written statement containing their objections prior to the Exclusion/Objection Deadline. Any award or payment of attorneys' fees made to the counsel of an objector to the Settlement shall be made only by Court order and upon a showing of the benefit conferred to the Class. In determining any such award of attorneys' fees to an objector's counsel, the Court will consider the incremental value to the Class caused by any such objection. Any award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney stating under penalty of perjury that no payments shall be made to the objector based on the objector's participation in the matter other than as ordered by the Court. Any such award shall be payable from the Gross Settlement Fund. Defendant shall have no responsibility for any such payments.

F. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order, or Judgment. If the Court does not enter the Preliminary Approval Order, the Final Approval Order or the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, materially modified, or reversed, then this Agreement and the Settlement incorporated therein shall be cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to secure Final Approval of this Settlement and to

attempt to address in good faith concerns regarding the Settlement identified by the Court and any appellate court.

G. Other Orders. No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense Application, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any Settling Party. Without limiting the foregoing, Defendant shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action and the Released Claims.

H. Termination. Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled or otherwise fail to become effective for any reason; the Settlement as described herein is not finally approved by the Court; or the Final Approval Order or Judgment is reversed, materially modified, or vacated following any appeal taken therefrom, then:

1. Within five (5) days after written notification of such event is sent by Counsel for Plaintiffs to the Escrow Agent, the Gross Settlement Fund—including the Settlement Amount and all interest earned on the Settlement Fund while held in escrow excluding only (i) notice and administration costs that have either been properly disbursed or are due and owing; (ii) Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some later date; and (iii) attorneys' fees and costs that have been disbursed pursuant to Court order—will be refunded, reimbursed, and repaid by the Escrow Agent to Defendant; if said

amount or any portion thereof is not returned within such five (5) Day period, then interest shall accrue thereon at the rate of three percent (3%) per annum until the date that said amount is returned;

2. Within thirty (30) Days after written notification of such event is sent by Counsel for Defendant to Class Counsel, all attorneys' fees and costs which have been disbursed to Class Counsel pursuant to Court order shall be refunded, reimbursed, and repaid by Class Counsel to Defendants; if said amount or any portion thereof is not returned within such thirty (30) Day period, then interest shall accrue thereon at the rate of three percent (3%) per annum until the date that said amount is returned;
3. The Escrow Agent or its designee shall apply for any tax refund owed to the Gross Settlement Fund and pay the proceeds to Defendant, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund;
4. The Settling Parties shall be restored to their respective positions in the Action as of the Execution Date, with all of their respective claims and defenses preserved as they existed on that date;
5. The Settling Parties shall request the Court to vacate any order certifying the Class for purposes of the Settlement;
6. The terms and provisions of this Agreement, with the exception of this paragraph (§ VIII(H)), the termination provisions of § II(B) ("Certification of Class"), § VII(E) ("Final Approval"), § IX(B) ("Federal Rule of Evidence 408"), § IX(C) ("Use of Agreement as Evidence"), § X(G) ("Representations and Warranties"),

§ XI(B) (“Subsequent Events Impacting Administration”), § XI(G) (“Confidentiality of Settlement Negotiations”), and § XI(O) (“Return or Destruction of Confidential Materials”) (which all shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Action or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

7. Any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

IX. NO ADMISSION OF LIABILITY

A. Final and Complete Resolution. The Settling Parties intend the Settlement as described here to be a final and complete resolution of all disputes between them with respect to the Action and Released Claims, including Unknown Claims, and to compromise claims that are contested, and it shall not be deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation made in the Action.

B. Federal Rule of Evidence 408. The Settling Parties agree that this Agreement, its terms, and the negotiations surrounding this Agreement shall be governed by Federal Rule of Evidence 408 and any state-law equivalents and shall not be admissible or offered or received into evidence in any suit, action, or other proceeding, except upon the written agreement of the Settling Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be

necessary to give effect to, declare, or enforce the rights of the Settling Parties with respect to any provision of this Agreement.

C. Use of Agreement as Evidence. Whether or not this Agreement becomes final or is terminated pursuant to its terms, the Settling Parties expressly agree that neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this 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 Claims, any allegation made in the Action, or any violation of any statute or law or of any wrongdoing or liability of Defendant, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other proceeding; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault, or omission of the Releasees in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement; provided, however, that the Releasees may file the term sheet, this Agreement (including the Exhibits), the Preliminary Approval Order, the Final Approval Order, and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

X. REPRESENTATIONS AND WARRANTIES

A. This Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Rule 23. Until and unless this 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, Representative Plaintiffs and Class Counsel represent and warrant to Defendant that they shall take all appropriate steps in the Class Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. This includes the obligation to (a) oppose non-meritorious objections and to defend the Agreement and the Settlement before the Court and on appeal, if any; (b) seek approval of this Agreement and of the Settlement by the Court; (c) move for the entry of the orders required to effectuate Preliminary and Final Approval; and (d) join in the entry of such other orders or revisions of orders or notices, including the orders and notices attached hereto, as are required by the Defendant, subject to Representative Plaintiffs' consent, not to be unreasonably withheld or delayed.

B. Representative Plaintiffs and Class Counsel represent and warrant that any Fee and Expense Award they may seek upon application to the Court pursuant to this Agreement shall include all attorneys' fees and litigation costs that Representative Plaintiffs, Class Counsel, and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, employees, and affiliates of Class Counsel, seek or may have any right or claim to in connection with the Action and the Released Claims.

C. Representative Plaintiffs and Class Counsel represent and warrant that other than Class Counsel, as that term is defined herein, there is no other Person having any interest in any award of attorneys' fees, expenses, or litigation costs in connection with the Action, Agreement, or Settlement.

D. Representative Plaintiffs, Class Counsel, and Defendant represent and warrant that he, she, it, or they have full authorization and capacity to enter into this Agreement and to carry out the obligations provided for herein. Each Person executing this Agreement on behalf of a Settling Party, entity, or other Person(s) covenants, warrants, and represents that he, she, or it has been fully authorized to do so by that Settling Party, entity, or other Person(s).

Representative Plaintiffs, Class Counsel, and Defendant represent and warrant that he, she, it, or they intend to be bound fully by the terms of this Agreement.

E. Representative Plaintiffs and Class Counsel represent and warrant that they have not, nor will they, unless expressly authorized to do so by the terms of this Agreement, (a) attempt to void this Agreement in any way; (b) Opt-Out of the Settlement under this Agreement; (c) solicit or encourage in any fashion a member of the Class to Opt-Out; or (d) solicit or encourage in any fashion any effort by any Person to object to the Settlement under this Agreement.

F. Class Counsel represent and warrant that they (a) have no current client with a claim against the Defendant or any of the Releasees of the type alleged in the Action that has not already been filed and served on Defendant and (b) have no present intention to seek out or solicit former or current borrowers with obligations with Defendant, to pursue individual or class claims against the Defendant with respect to matters within the scope of the Release, or which in any way involve a claim related to the provision of military reduced interest rate benefits to customers. The Settling Parties understand and agree that nothing in this paragraph imposes or shall be construed to prohibit or restrict Class Counsel from representing persons who seek representation for such claims subsequent to the date of this Agreement.

G. Representative Plaintiffs and Class Counsel represent and warrant that they will not use or seek to use (a) any confidentially designated discovery obtained from Defendant in the Action and/or (b) the fact or content of the Settlement in this Action in connection with any other claim, action, or litigation against any Releasee (excepting only actions to enforce or construe this Agreement).

H. Until and unless this 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, Defendant represents and acknowledges to Representative Plaintiffs that it will not oppose the Settlement, Preliminary Approval, and/or Final Approval, provided that the Preliminary Approval Order and Final Approval Order sought by Plaintiffs and Class Counsel are in the forms to which Defendant has agreed.

I. If any Person breaches the terms of any of the representations and warranties in this section, the Court shall retain jurisdiction over this matter to entertain actions by a Settling Party against such Person for breach and/or any Settling Party's request for a remedy for such breach.

J. Class Counsel represent and warrant to Defendant that they have the authority to execute this Agreement on behalf of Plaintiffs and themselves, and thereby to bind Plaintiffs and themselves, to all terms and conditions of this Agreement, and, subject to Court approval, to bind all Class Members to the terms and conditions of this Agreement.

XI. MISCELLANEOUS PROVISIONS

A. Voluntary Settlement. The Settling Parties agree that the Settlement Amount and the other terms of the Settlement as described herein were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

B. Subsequent Events Impacting Administration. In the event that there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then such matters shall be dealt with as agreed upon by the Settling Parties, and failing agreement, as shall be ordered by the Court.

C. Claims in Connection with Administration. No Person shall have any claim against the Plaintiffs, Defendant, Counsel for Defendant, the Settlement Notice Administrator, or the Releasees or their agents based on administration of the Settlement substantially in accordance with the terms of the Agreement or any order of the Court or any appellate court.

D. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiffs and Class Counsel shall be binding upon all Class Members.

E. Authorization to Enter Settlement Agreement. The undersigned representatives of Defendant represent that they are fully authorized to enter into and to execute this Agreement and any modifications or amendments to the Agreement on behalf of Defendant. Class Counsel, on behalf of Plaintiffs and the Class, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of the Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.

F. Notices. All notices and responses to notices under this Agreement shall be in writing. Each such notice or response shall be given either by (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) FedEx or similar overnight

courier; and, if directed to any Class Member, shall be addressed to Class Counsel at their addresses set forth below, and if directed to Defendant, shall be addressed to Counsel for Defendant at the addresses set forth below or such other addresses as Class Counsel or Defendant may designate, from time to time, by giving notice to all Settling Parties hereto in the manner described in this paragraph. Copies of all notices under this Agreement may, at the notifying party's option, be transmitted by email to the appropriate parties. Providing a copy by email shall only be in addition to, and not a substitute for, the formal mechanisms provided for in (a), (b), or (c) of this paragraph.

If directed to the Plaintiffs or any Class Member, address notice to:

Steve W. Berman (*Pro Hac Vice*)
Shayne C. Stevenson (*Pro Hac Vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101

Knoll D. Lowney (*Pro Hac Vice*)
SMITH & LOWNEY, PLLC
2317 E. John Street
Seattle, WA 98112

Kieran J. Shanahan, NCSB# 13329
Brandon S. Neuman, NCSB# 33590
Christopher S. Battles, NCSB# 42682
SHANAHAN LAW GROUP, PLLC
128 E. Hargett Street, Third Floor
Raleigh, NC 27601

Class Counsel

If directed to Defendant, address notice to:

Bryan A. Fratkin (*Pro Hac Vice*)
McGuireWoods LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219

Myra H. Chapman (*Pro Hac Vice*)
McGuireWoods LLP

Court Square Building
310 Fourth Street, N.E., Suite 300
Post Office Box 1288
Charlottesville, VA 22902

Mark E. Anderson, NCSB# 15764
McGuireWoods LLP
2600 Two Hanover Square
Raleigh, NC 27601

Counsel for Defendant

G. Confidentiality of Settlement Negotiations. The Settling Parties and their counsel shall keep strictly confidential and not disclose to any third party any non-public information regarding the Settling Parties' negotiation of this Settlement and/or this Agreement. For the sake of clarity, information contained within this Agreement shall be considered public, as well as any information requested by the Court in the approval process and other such information necessary to implement this Settlement, provided such information is filed (and is not under seal) and/or is not considered to be confidential materials under the Settling Parties' protective order in this case.

H. No Conflict Intended; Headings. Any inconsistency between this Agreement and the exhibits attached hereto shall be resolved in favor of this Agreement. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

I. No Party Deemed to Be the Drafter. None of the Settling Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, rule of interpretation, or construction that would or might cause any provision to be construed against the drafter hereof.

J. Choice of Law. This Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of North Carolina, and the

rights and obligations of the Settling Parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of North Carolina without giving effect to that state's choice of law principles.

K. Amendment; Waiver. This Agreement shall not be modified in any respect except by a writing executed by Defendant and Class Counsel, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

L. Execution in Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Settling Parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

M. Integrated Agreement. This Agreement constitutes the entire agreement between the Settling Parties with respect to the Settlement. This Agreement supersedes all prior negotiations and agreements and may not be modified or amended except by a writing signed by the Settling Parties and their respective counsel. The Settling Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each Settling Party or believed by such party to be true. Each Settling Party therefore

expressly assumes the risk of the facts or law turning out to be different, and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

N. Attorneys' Fees and Costs. Except as otherwise expressly provided in this Agreement, each party shall bear its own costs and attorneys' fees.

O. Return or Destruction of Confidential Materials. The Settling Parties agree to continue to comply with the Protective Order entered in this Action at the conclusion of the case. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Agreement.

P. Intended Beneficiaries. No provision of this Agreement shall provide any rights to, or be enforceable by, any Person that is not one of the Plaintiffs, a Class Member, Defendant, one of the Releasees, Class Counsel, or Counsel for Defendant, except that this Agreement will be binding upon and inure to the benefit of the successors and assigns of the Settling Parties. No Plaintiff, Class Member, or Class Counsel may assign or otherwise convey any right to enforce any provision of this Agreement.

Q. Termination by Defendant. This Agreement shall be terminable at the option of Defendant if more than five percent (5%) of the Class successfully opts out of the Settlement. Defendant shall exercise the option by the later of twenty (20) days after the events giving rise to the termination right or Final Approval.

R. Press Release. Representative Plaintiffs and Class Counsel shall not (a) issue, or otherwise cause to be issued, any press release or advertisement, concerning the Class Action and/or the facts and circumstances that were the subject of, or disclosed in discovery in, the Class Action, excepting only such documents created and disbursed as part of the Class notice; or (b)

seek media interviews concerning: (i) the Action; (ii) the facts and circumstances that were the subject of, or disclosed in discovery in the Action; and/or (iii) the Settlement of the Action, excepting only that such statements may be made to individual Class Members in one-on-one communications or as part of the Class notice. Under no circumstance shall Representative Plaintiffs or Class Counsel disclose to any third party (1) any confidentially designated discovery obtained from Defendant in the Action and/or (2) any non-public information regarding the Settling Parties' negotiation of this Settlement and/or this Agreement, except as may be otherwise permitted in this Agreement. Specifically, this paragraph does not alter the scope of any confidentiality provisions or provisions regarding the use of non-public information set forth in this Agreement.

S. Regular Course of Business. The Settling Parties agree that nothing in this Agreement shall be construed to prohibit communications between Defendant and the Releasees, on the one hand, and Class Members, on the other hand, in the regular course of business.

T. Tax Consequences. No representations or advice regarding the tax consequences of this Agreement have been made by any Settling Party. The Settling Parties further understand and agree that each Settling Party, each Class Member, each of Class Counsel, and each of Plaintiffs shall be responsible for his, her, its, or their own taxes, if any, resulting from this Agreement and any payments made pursuant to this Agreement.

U. Bankruptcy Proceedings.

1. The Settling Parties agree that any Class Member who is in active bankruptcy proceedings or previously was a party to bankruptcy proceedings during the period of time covered in the Class definition may only participate in the Settlement subject to applicable bankruptcy law and procedures. Defendant is

under no obligation to notify any bankruptcy court that has, had, or may have jurisdiction over such Class Member's bankruptcy proceedings or any trustee or examiner appointed in such Class Member's bankruptcy proceedings of this Agreement or the benefits conferred by the Agreement and the Settlement.

2. The Settling Parties agree that any disputes concerning the rights of the bankruptcy estate to the proceeds of any payment under the Settlement or Incentive Award shall be adjudicated by the Bankruptcy Court. The Settlement Administrator shall follow any direction of the Bankruptcy Court with respect to the proceeds of any payment or Incentive Award. In the event the Bankruptcy Court issues any order or orders that do more than adjudicate the proceeds of any payment or Incentive Award, and such order or orders are material in Defendant's judgment exercised in good faith, Defendant shall have the right to terminate this Agreement.

V. Class Member Obligations. Under no circumstances shall the Settlement or Agreement or any release herein be deemed to alter, amend, or change the terms and conditions of any account or loan to which any Class Member is or was a party, or to provide a defense to any such loan, nor shall the Settlement or the Agreement or the Release be deemed to have any effect in any bankruptcy case, in any foreclosure proceeding, or in any other action involving a Class Member hereto, nor shall the Settlement Agreement create or be construed as evidence of any violation of law or contract. In the event this Agreement is so construed as to a particular Class Member, it can be declared by Defendant to be null and void as to that Class Member only (and in such latter event, the Release as to that Class Member shall also be void).

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.

DATED: July 19, 2017.

PLAINTIFFS

By:

Gary Childress

Date: _____

Anne Childress

Date: _____

Thomas Bolton

Date: _____

Adrienne Bolton

Date: _____

Steven Lumbley

Date: _____

Morgan Lumbley

Date: _____

Raymond Love

Date: _____

Jackie Love

Date: _____

Harry Champagne

Date: _____

Marianne Champagne

Date: _____

Russell Christe

Date: _____

Mary Beth Christe


Date: _____

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.


DATED: June __, 2017.

PLAINTIFFS

By:


Gary Childress

Date: 6/28/17


Anne Childress

Date: 6/28/17

Thomas Bolton

Date: _____

Adrienne Bolton

Date: _____

Steven Lumbley

Date: _____

Morgan Lumbley

Date: _____

Raymond Love

Date: _____

Jackie Love

Date: _____

Harry Champagne

Date: _____

Marianne Champagne

Date: _____

Russell Christe

Date: _____

Mary Beth Christe

Date: _____

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have entered into this Agreement as of the date first below written, and have executed this Settlement Agreement on the date indicated below each respective signature.

DATED: June __, 2017.

PLAINTIFFS

By:

Gary Childress

Date: _____

Thomas Bolton

Date: 30 June 2017

Anne Childress

Date: _____

Adrienne Bolton

Date: 6/30/17

Steven Lumbley

Date: _____

Morgan Lumbley

Date: _____

Raymond Love

Date: _____

Jackie Love

Date: _____

Harry Champagne

Date: _____

Marianne Champagne

Date: _____

Russell Christe

Date: _____

Mary Beth Christe

Date: _____

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DATED: June __, 2017.

PLAINTIFFS

By:

Gary Childress

Date: _____

Anne Childress

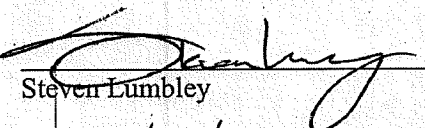
Date: _____

Thomas Bolton

Date: _____

Adrienne Bolton

Date: _____



Steven Lumbley

Date: 6/29/2017

Morgan Lumbley

Date: _____

Raymond Love

Date: _____

Jackie Love

Date: _____

Harry Champagne

Date: _____

Marianne Champagne

Date: _____

Russell Christe

Date: _____

Mary Beth Christe

Date: _____

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DATED: June ___, 2017.

PLAINTIFFS

By:

Gary Childress

Date: _____

Anne Childress

Date: _____

Thomas Bolton

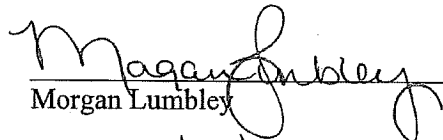
Date: _____

Adrienne Bolton

Date: _____

Steven Lumbley

Date: _____


Morgan Lumbley

Date: 6/29/2017

Raymond Love

Date: _____

Jackie Love

Date: _____

Harry Champagne

Date: _____

Marianne Champagne

Date: _____

Russell Christe

Date: _____

Mary Beth Christe

Date: _____

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DATED: June __, 2017.

PLAINTIFFS

By:

Gary Childress

Date: _____

Anne Childress

Date: _____

Thomas Bolton

Date: _____

Adrienne Bolton

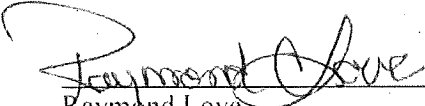
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Steven Lumbley

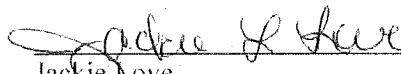
Date: _____

Morgan Lumbley

Date: _____


Raymond Love

Date: 7-3-17


Jackie Love

Date: 7-3-17

Harry Champagne

Date: _____

Marianne Champagne

Date: _____

Russell Christe

Date: _____

Mary Beth Christe

Date: _____

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DATED: June __, 2017.

PLAINTIFFS

By:

Gary Childress

Date: _____

Anne Childress

Date: _____

Thomas Bolton

Date: _____

Adrienne Bolton

Date: _____

Steven Lumbley

Date: _____

Morgan Lumbley

Date: _____

Raymond Love

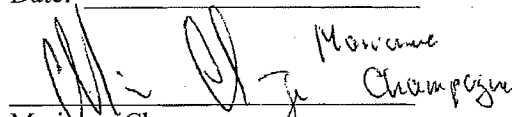
Date: _____

Jackie Love

Date: _____


Harry Champagne

Date: 30 June 2017


Marianne Champagne

Date: 30 June 2017

Russell Christe

Date: _____

Mary Beth Christe

Date: _____

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DATED: June __, 2017.

PLAINTIFFS

By:

Gary Childress

Date: _____

Thomas Bolton

Date: _____

Steven Lumbley

Date: _____

Raymond Love

Date: _____

Harry Champagne

Date: _____

Russell L. Christe
Russell Christe

Date: 6/28/2017

Anne Childress

Date: _____

Adrienne Bolton

Date: _____

Morgan Lumbley

Date: _____

Jackie Love

Date: _____

Marianne Champagne

Date: _____

Mary Beth Christe

Date: _____

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PLAINTIFFS

By:

Gary Childress

Date: _____

Anne Childress

Date: _____

Thomas Bolton

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Adrienne Bolton

Date: _____

Steven Lumbley

Date: _____

Morgan Lumbley

Date: _____

Raymond Love

Date: _____

Jackie Love

Date: _____

Harry Champagne

Date: _____

Marianne Champagne

Date: _____

Russell Christie

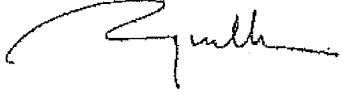
Date: _____

Mary Beth Christie

Date: _____

M. B. Christie
7/5/2017

BANK OF AMERICA, N.A.

By:  _____
Title: Thong M. Nguyen
President, Retail Banking
Date: July 18, 2017

By: _____

Steve W. Berman
Shayne C. Stevenson
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kieran@shanahanlawgroup.com
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cbattles@shanahanlawgroup.com
Local Rule 83.1 Counsel

Attorneys for Plaintiffs

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Charlottesville, VA 22902
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Facsimile: (434) 980-2222
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Facsimile: (919) 755-6699
manderson@mcguirewoods.com

Counsel for Defendants

EXHIBIT A

DISTRIBUTION PLAN

The following Distribution Plan is designed to distribute the Gross Settlement Fund and Net Settlement Fund. All defined terms used here shall have the same meaning given to them in the Settlement Agreement.

1. Distribution Plan for Gross Settlement Fund:

The Gross Settlement Fund of forty-one million nine hundred twenty thousand three hundred seventy-four dollars and six cents (\$41,920,374.06) shall be used to pay court-awarded attorneys' fees and costs, incentive awards, all settlement administration costs (including notice costs, escrow and settlement administration services, distribution costs, etc.), and taxes and tax expenses. Three hundred ten thousand dollars (\$310,000), an amount deemed reasonably likely to sufficiently pay settlement administration costs, shall be available from the Gross Settlement Fund to be held in escrow to pay settlement administration costs. The remainder of the Gross Settlement Fund, less the payments and debits set forth in this paragraph, shall constitute the Net Settlement Fund.

2. Distribution Plan for Net Settlement Fund:

a. Settlement Groups. The Settling Parties have identified and assigned the complete set of class members ("Authorized Recipients") into four groups, based upon (a) the years that the Authorized Recipients' account(s) were open and/or reviewed to determine whether the accountholder was eligible for a refund related to the provision of military reduced interest rate benefits; (b) the type(s) of accounts; (c) whether the accountholder received a prior refund payment from the Defendant related to military reduced interest rate benefits; (d) whether the accountholder also received an additional payment of the greater of three times the refund or five hundred dollars (\$500) (*i.e.*, whether the account was "Adjusted"); and (e) for mortgage accounts, the method by which the Defendant applied military reduced interest rate benefits to the account.

Groups 1-3. The majority of Authorized Recipients who belong to Groups 1-3 have previously received payments from Defendant that reflect refunds of interest overcharges and compound interest. For Groups 2 and 3, these prior payments also included an additional payment of the greater of three times the refund or five hundred dollars (\$500). However, certain members of these groups did not receive or successfully deposit previous remediation payments. Payments to account holders who did not receive or successfully deposit previous remediation payments will be made as part of this settlement as described below.

Group 1. 2006-2013 Non-Adjusted Accounts: Borrowers on all accounts, primarily credit card accounts, that were reviewed for the period 2006-2013¹ and

¹ In some cases, the accounts in Group 1 were reviewed through 2012 (certain non-credit card, non-mortgage accounts) or 2014 (mortgage accounts and certain other non-credit card, non-mortgage accounts).

who received or were owed a refund payment but did not receive an additional payment of the greater of three times the refund or five hundred dollars (\$500).

Group 2. 2006-2013 Adjusted Non-Mortgage Accounts: Borrowers on non-mortgage accounts that were reviewed for the period 2006 to 2013² and who received or were owed a refund payment that included an additional payment of the greater of three times the refund or five hundred dollars (\$500).

Group 3. 2006-2014 Adjusted Mortgages: (A) Borrowers on mortgage accounts that were reviewed for the period 2006 to 2014 and who received or were owed a refund payment that included an additional payment of the greater of three times the refund or five hundred dollars (\$500); and/or (B) Borrowers who received military reduced interest rate benefits on their mortgage accounts via the Interest Subsidy Method for some period of time between September 11, 2001 and the date of the Settlement.

Group 4. 2001-2005 Credit Cards and Mortgages: Borrowers on credit card and mortgage accounts identified by Defendant at the time of the Settlement as having received military reduced interest rate benefits for some period of time between September 11, 2001 and December 31, 2005. These accounts did not receive refund payments related to military reduced interest rate benefits from Defendant as part of a previous remediation effort.

b. Distribution of Net Settlement Fund:

Step One: The first fifteen million four hundred twenty thousand three hundred seventy-four dollars and six cents (\$15,420,374.06) of the Net Settlement Fund will be paid to Authorized Recipients in Groups 1 through 3 who did not receive or successfully deposit previous remediation payments.³ These "Step One Payments" will be made to such Authorized Recipients in the same amount previously calculated to reflect an interest refund and compound interest. For payments made to borrowers in Groups 2 and 3, the payment will also include any

² Certain non-credit card, non-mortgage accounts in Group 2 were reviewed through 2014.

³ Defendant will continue to service these Authorized Recipients' accounts until the Court orders Final Approval of the Settlement as follows:

- (1) If a borrower contacts Defendant and requests that it reissue an unreceived/undeposited previous remediation payment, Defendant will reissue that payment to the borrower pursuant to usual business procedures; and
- (2) If and when the Court orders Final Approval of the Settlement, Defendant will continue to service any account to which it has reissued a check pursuant to this footnote within and including the previous ninety (90) days, even if that account would otherwise be eligible for a reissued payment under Step One. All other accounts, including any account to which Defendant last issued a check pursuant to Step One more than ninety (90) days before the Court's order, will be subject to this Distribution Plan, as described herein.

During the Step One process, Defendant will be reimbursed for any Step One payments that it made directly to servicemembers under this footnote and/or payments that cannot be reissued to servicemembers due to escheatment occurring between May 23, 2017, and the date of this Settlement Agreement.

previously-calculated amount reflecting the greater of three times the refund or five hundred dollars (\$500). Step One Payment checks shall be automatically voided one hundred fifteen (115) days after issuance.

Reminder Notice: Approximately forty-five (45) days after the issuance date of a check, a reminder notice will be sent by the Settlement Notice Administrator to Authorized Recipients who have not cashed their checks. The reminder notice shall inform the Authorized Recipient of the following: (i) the check that was previously mailed to the Authorized Recipient; (ii) the deadline for cashing the check; (iii) if the Authorized Recipient no longer possesses the check, the Authorized Recipient can request a reissuance of the check if the Authorized Recipient timely notifies the Settlement Notice Administrator; and (iv) if the check is not timely cashed, the proceeds will be added back to the remaining Net Settlement Fund to establish an "Award Pool." The Settlement Notice Administrator shall honor check reissuance requests from Authorized Recipients up until the original one hundred fifteen (115) day void date. Reissued checks will be valid for ninety (90) days from the reissue date. Reissued checks that go uncashed will be added back into the remaining Net Settlement Fund proceeds at Step Five below.

Step Two. After the original one hundred fifteen (115) day voiding period of the Step One Payments has passed, the value of voided Step One Payments, less the value of any reissued Step One payment checks, shall be added back to the remaining Net Settlement Fund to establish an "Award Pool."

Step Three. The Award Pool will be distributed among Groups 1-4 in the percentages negotiated by the Settling Parties:

	Negotiated Percentage of Award Pool:
Group 1	19
Group 2	16
Group 3	8
Group 4	57

Step Four: Each Group's portion of the Award Pool will be distributed equally among the members of that Group, such that equal shares are apportioned to each borrower's account. If there are multiple Authorized Recipients on a single account, the portion of the Award Pool allocated to that account will be split equally among borrowers on the account. Award checks will become void after one hundred eighty (180) days.

Reminder Notice: Approximately ninety (90) days after the issuance date of a check, a reminder notice will be sent by the Settlement Notice Administrator to Class Members who have not cashed their checks. The reminder notice shall inform the Authorized Recipient of the

following: (i) the check that was previously mailed to the Authorized Recipient; (ii) the deadline for cashing the check; (iii) if the Authorized Recipient no longer possesses the check, the Authorized Recipient can request a reissuance of the check if the Authorized Recipient timely notifies the Settlement Notice Administrator; and (iv) if the check is not timely cashed, the amount of the check will be redistributed as set forth in Step Five below.

The Settlement Notice Administrator shall honor check reissuance requests from Authorized Recipients up until the original one eighty days (180) day void date. Reissued checks will be valid for ninety (90) days from the reissue date.

Step Five: After the voiding periods in Step Four have expired, the remaining value of the Award Pool and any other remaining Net Settlement Fund proceeds will be distributed as follows:

First, to pay any remaining costs of settlement administration. Then, any remaining settlement proceeds shall be equally distributed to Authorized Recipients who cashed a settlement check, if economically feasible, or else distributed as *cy pres* to not-for-profit organization(s) providing services to military servicemembers and veterans, which may include organizations providing not-for-profit financial services. Such *cy pres* recipients shall be mutually agreed upon by the Settling Parties and reported to the Court. Any recipient of such funds shall be required to provide the Settling Parties and the court with annual reports, and a final report, on the project(s) or service(s) funded by the *cy pres* award. If it is economically feasible to do a class-wide distribution in Step Five, then the value of any uncashed checks from that distribution will be distributed to *cy pres* as described in this paragraph.

c. Class Data. Defendant is responsible for providing sufficient data in processed, readily useable form, *e.g.*, in Excel spreadsheets, to identify all Authorized Recipients for each of the above Groups 1-4 and effectuate the Settlement. For Authorized Recipients receiving Step One Payments, this information shall include the amount of the previously-issued payments.

d. No Claims Process. All payments shall be paid to Authorized Recipients, without claims process. The Settling Parties shall use a mailing protocol that maximizes the likelihood that Settlement payments are received and successfully deposited.

EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

GARY and ANNE CHILDRESS, THOMAS
and ADRIENNE BOLTON, STEVEN and
MORGAN LUMBLEY, RAYMOND and
JACKIE LOVE, HARRY and MARIANNE
CHAMPAIGN, and RUSSELL and MARY
BETH CHRISTE, *on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

BANK OF AMERICA, N.A.

Defendant.

CASE NO. 5:15-CV-231

DECLARATION OF ALAN VASQUEZ
REGARDING DISSEMINATION OF
CLASS NOTICE

1 I, Alan Vasquez, hereby declare and state as follows:

2 **INTRODUCTION**

3 1. I am a Vice President of Legal Notification Services at KCC Class Action Services
4 ("KCC") company. In my role, I oversee KCC in-house design and implementation of legal notice
5 plans to reach class members in class action litigation.

6 2. The in-house advertising division has specialized in designing, developing and
7 implementing legal notification plans for more than 30 years. As such, we are familiar with, and
8 guided by, Constitutional due process provisions, rules of states and local jurisdictions, and the
9 relevant case law relating to legal notification. Media plans designed and implemented by our
10 group have included both domestic and international newspapers and magazines, Internet-based
11 banners, notices and websites, wire service, radio, television, point of purchase displays and direct
12 mail. As V.P. of Legal Notification Services, I oversee the advertising group's activities as they
13 relate to these notice services.

14 3. I have been involved in the development and implementation of media plans for
15 class action notification for more than ten years. Prior to my engagement with KCC, I spent eight
16 years with another nationally recognized claims administrator serving in a similar capacity. For
17 several years, courts have accepted my expert testimony regarding our firm's quantitative and
18 qualitative evaluation of judicially approved notice plans. I have also testified in person and was
19 acknowledged as an expert in Larson v. Sprint Nextel Corp., No. 07-cv-5325 (D. N.J.). Media
20 campaigns for which I have been directly responsible include, but are not limited to, Pappas v.
21 Naked Juice, No. 11-cv-08276-JAK (C.D. Cal.), Mattel, Inc., Toy Lead Paint Prods. Liab. Litig.,
22 No. 07-ML-01897 (S.D. Cal.), Pecover, et al. v. Electronic Arts Inc., No. 08-cv-02820 (N.D. Cal.),
23 New Motor Vehicles Canadian Export Antitrust Litig., No. MDL 03-1532 (D. Me.), and SRAM
24 Antitrust Litig., No. 07-MD-01819 (N.D. Cal.). A more comprehensive list of notable matters for
25 which I have been personally responsible for the notice planning and implementation services is
26 attached as Exhibit 1. I have also spoken as faculty on various CLE panels related to class action
27 notice and industry trends.

1 4. I submit this declaration at the request of Class Counsel in order to describe the
2 proposed notice plan and notice services in the above-captioned litigation.

3 5. I have personal knowledge of the matters set forth in this declaration and, if called
4 as a witness, could and would testify competently thereto.

5 **I. Litigation Background**

6 6. Plaintiffs allege, among other things, that, since September 11, 2001, Defendant
7 charged thousands of military customers excessive interest on their interest-bearing obligations,
8 including mortgage and credit card accounts, and further tried to conceal the excess interest
9 charges, in violation of the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. §§ 3901, *et*
10 *seq.*, the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1637(b), 1638(f), and 1639f, North
11 Carolina's Unfair and Deceptive Trade Practices Act ("UDTPA"), and common law, including
12 breach of contract, negligence, and negligent misrepresentation, and seek an accounting and to
13 impose a constructive trust based on the same, as alleged in Plaintiffs' Second Amended
14 Complaint, Dkt. No. 103.

15 7. Defendant denies each and all of the claims and allegations of wrongdoing made by
16 the Plaintiffs and states that it is entering into this Agreement to avoid the further uncertainties,
17 expense, inconvenience, delay, and distraction of burdensome and protracted litigation, and thereby
18 to put to rest this controversy with respect to the Plaintiffs and the Class and avoid the risks
19 inherent in complex litigation.

20 **II. Objective**

21 8. The objective of the proposed notice plan is to provide the best notice practicable to
22 the defined class, consistent with the requirements set forth in Rule 23 of the Federal Rules of Civil
23 Procedure and all applicable state laws and court rules. The methods and tools that will be used to
24 disseminate notice in this case have been employed in many other court-approved notice plans.

25 **III. Class Definition**

26 9. The Class is made up of Bank of America previous and current military customers
27 who were allegedly charged excessive interest on their interest-bearing obligations, including
28

1 mortgage and credit card accounts. Specifically, the "Class" references the definitions in the
2 Settlement Agreement and refers to:

3 "All persons identified in Bank of America's records as obligors or guarantors on an
4 obligation or account who, at any time on or after September 11, 2001, received
5 and/or may have been eligible to receive additional compensation related to military
6 reduced interest rate benefits from Defendant, but excluding persons who have
7 executed a release of the rights claimed in this action."

8 **IV. Class Size**

9 10. Based on information provided by counsel, KCC is informed that the class is
10 estimated to be approximately 125,000 to 130,000 individuals.

11 **V. The Notice Plan**

12 11. **Direct Notice.** Counsel has informed KCC that direct notice contact information
13 will be available for all potential class members. Whenever reasonable and practicable, direct
14 notice is the preferred form of notice to class members. In fact, it is only vehicle for notice
15 identified in the statute. Specifically, Rule 23 (b)(3) states:

16 "For any class certified under Rule 23(b)(3), the court must direct to class
17 members the best notice that is practicable under the circumstances, including
18 individual notice to all members who can be identified through reasonable effort."

19 12. The foundation of the Notice plan will be to disseminate the short-form Notice to
20 the class members via USPS First-class mail to each deliverable address provided. Using the
21 estimate that approximately 15% of notices will be returned undeliverable and search services will
22 find new addresses for approximately 50% of those returned; KCC estimates over 90% of the Class
23 will receive direct notice. This percentage is consistent with many Court approved notice plans as
24 well as the reach guidelines described on the Federal Judicial Center's website for class action
25 notice at www.fjc.gov. The short-form notice will provide a toll free phone number and website
26 address from which class members can obtain a long-form notice and other information about the
27 settlement.
28

1 13. **Website.** KCC will establish a case-dedicated website which will be a source of
2 reliable and accurate information for class members and the general public. The direct notice will
3 direct individuals to the settlement website for more detailed information about the case and the
4 class members' due process rights in the litigation. Once at the settlement website, class members
5 would have the opportunity to view the class notice, court documents, and frequently asked
6 questions.

7 14. **Telephone Services.** In addition to the case website, KCC will establish and
8 maintain a toll-free telephone number where class members and the general public can call in,
9 listen to an interactive voice recording with information about the settlements and request a notice
10 packet.

11 **VI. Notice Content**

12 15. KCC believes that both the Long-form Notice and Short-form Notice are drafted in
13 the "plain language" format preferred by federal courts and provide the information required by
14 Rule 23. Specifically, the long and short form versions of the notice include the following
15 elements required under Rule 23 (b)(3):

- 16 i. the nature of the action;
- 17 ii. the definition of the class certified;
- 18 iii. the class claims, issues, or defenses;
- 19 iv. that a class member may enter an appearance through an attorney if the
20 member so desires;
- 21 v. that the court will exclude from the class any member who requests
22 exclusion;
- 23 vi. the time and manner for requesting exclusion; and
- 24 vii. the binding effect of a class judgment on members under Rule 23(c)(3).

25 16. A draft of the Long-form version of the Class Notice is attached as Exhibit 2. A
26 draft of the Short-form version of the Class Notice is attached as Exhibit 3.

1 17. Because the proposed settlement does not require a claims process, the notice's
2 purpose is limited in this case. A class member who chooses to ignore the notice will still obtain
3 full benefits under the settlement.

4 **VII. Summary**

5 18. The recommended plan is centered on direct notice to approximately 90% of the
6 settlement class members. Direct notice will be supplemented by leveraging a case-specific
7 website, and toll-free telephone support line. In addition, the distribution plan uses reminder
8 mailings and adopts a long check-voiding period to maximize the net settlement value that actually
9 reaches class members.

10 19. The objective of the proposed notice plan described above is to provide the best
11 notice practicable, consistent with the requirements set forth in Rule 23 and other applicable State
12 statutes, to reach a large percentage of the potential class while meeting or exceeding the
13 requirements of due process and all applicable state laws and court rules. Many courts have held
14 that notice plans estimated to reach a minimum of 70% of the settlement class are adequate and
15 sufficient and thus comply with Fed. R. Civ. P. 23. The Notice Plan being contemplated here will
16 greatly exceed this standard of reach using the most preferred method of notice delivery, direct
17 notice. The plan not only provides direct notice to the majority of class members, but also provides
18 additional channels for class members to obtain information about the case and exercise their due
19 process rights. It is my opinion the plan being contemplated is the best notice practicable under the
20 circumstances.

21
22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct.

24 Executed on this 18th day of July, 2017, at San Rafael, California.

25
26 

27 ALAN VASQUEZ
28

Exhibit – 1



EXHIBIT - 1

Notice Plans Designed and Implemented by Alan Vasquez

Automotive

Automobile Antitrust Cases I and II , No. JCCP 4298 and 4303 (San Francisco Sup. Ct., CA)
New Motor Vehicles Canadian Export Antitrust Litigation , No. MDL 03-1532 (Dist. Court of Maine) & New Motor Vehicles Canadian Export
Antitrust Litigation, No. 2:03-MD-1532-DBH (Dist. Court of Maine)
In Re: Automotive Parts Antitrust Litigation, Master File No. 12-md-02311 (E.D. MI, Southern Division)

Entertainment

Herbert et al. v. Endemol USA, Inc. et al. , Case No. 2:07-cv-03537-JHN-VBKx (C.D. Cal.)
Couch v. Telescope Inc., et al, Case No. 2:07-cv-03916-JHN-VBKx (C.D. Cal.)
McDonald v. RealNetworks, Inc. , No. 816666 (Orange County Sup. Ct., CA)
Pecover et al. v. Electronic Arts Inc. , No. 08-cv-02820 CW (N.D. Cal.)
In re NCAA Student-Athlete Name & Likeness Licensing Litigation, Case No. 4:09-cv-1967 CW (NC) (N.D. Cal.)
Higgins v. Universal City Studios, LLC, Case No. BC499180 (Los Angeles County Superior Ct.)

Environment

Koepf et al. v. Hanjin Shipping, Co. et al., No. CGC-07-469379 (San Francisco County Sup. Ct., CA)
Loretz et al. v. Regal Stone Limited et al., No. 07-5800-SC (N.D. Cal.)
Tarantino et al. v. Regal Stone et al., No. CGC-07-469379 (San Francisco County Sup. Ct., CA)

Government

McKesson Governmental Entities Average Wholesale Price Litigation, No. 1:08-cv-10843-PBS (D. Mass.)

Technology

SRAM Antitrust Litigation, No. 4:07-MD-01819-CW (N.D. Cal)

Telecommunications

White v. Cellco Partnership , No. RG04-137699 (Alameda County Sup. Ct., CA)
In re Universal Service Fund Telephone Billing Practices Litig., MDL No. 1468 (D. Kan.)
Ardon v. City of Los Angeles, Case No. BC363959 (Los Angeles County Sup. Ct.)

Consumer Products

Natalie Pappas v. Naked Juice Co. of Glendora, Inc. Case No. LA CV 11-08276-JAK (C.D. Cal)
Barbara Marciano v. Schell & Kampeter, Inc. et al No. 12-cv-02708-SJF-AKT (E.D. NY)
Mattel, Inc., Toy Lead Paint Products Liability Litigation, No. 2:07-ML-01897-DSF-AJW (S.D. Cal.)
Gallucci v. Boiron, Inc. et al., No. 11-cv-2039-JAH (NLSx)
Nigh v. Humphreys Pharmacal, Incorporated et al., Case No. 3:12-cv-02714-MMA-DHB
In re: Bayer Corp. Combination Aspirin Products Marketing and Sales Practices Litigation, No. 09-MD-2023
In Re: Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation, Civil Litigation No. 4:08-md-01907-ERW
Eliason v. Gentek Building Products, Inc., and Associated Materials, Inc. , No. 1:10-cv-02093 (N.D. Ohio)
Hart v. Louisiana-Pacific Corporation , No. 2:08-cv-00047 (E.D.N.C.)
In re Optical Disk Drive Antitrust Litigation, Case No. 3:10-MD-2143-RS MDL (N.D. CA)

Debt Collection Practices

Adams, et al., v. AllianceOne Receivables Management, Inc. (Case No. 08-CV-0248)
Pepper v. Midland Credit Management, Inc. and Encore Capital Group, Inc., No. 37-2011-00088752 (San Diego Sup. Ct. Ca)

Exhibit – 2

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

If you are or were a military customer of Bank of America who received or may have been eligible to receive additional compensation related to military reduced interest rate benefits on your account,

You May Be Eligible For Payment from a Class Action Settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A nearly \$42 million Settlement has been reached in a class action lawsuit alleging, among other things, that, since September 11, 2001, Bank of America charged thousands of military customers excessive interest on their interest-bearing obligations, including mortgage and credit card accounts, and further tried to conceal the excess interest charges, in violation of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901, et seq., the Truth in Lending Act, 15 U.S.C. §§ 1637(b), 1638(f), and 1639f, North Carolina's Unfair and Deceptive Trade Practices Act, and common law, including breach of contract, negligence, and negligent misrepresentation.
- Bank of America denies each and all of the claims and allegations of wrongdoing made by the Plaintiffs.
- The Settlement provides payments to identified military customers who allegedly were charged excessive interest on their interest-bearing obligations.
- The Settling Parties have identified and assigned the complete set of class members into four groups, explained in further detail in this notice.
- Your legal rights will be affected whether you act or do not act. Please read this notice carefully.

Summary of Your Legal Rights and Options in this Settlement	
Get a Payment Automatically	The Settling Parties have identified the complete set of class members. If you have been identified as a class member, you do not need to do anything to receive a payment. You will be mailed a check if the Court approves the Settlement and it becomes final.
Exclude Yourself	You will receive no benefit from the Settlement. This option allows you to retain your right participate in other lawsuits against Bank of America for the claims in this case.
Object	Write to the Court if you do not approve of the Settlement.
Go to a Hearing	You may ask to speak in Court about the fairness of the Settlement.
Do Nothing	You will receive payment if identified by the Settling Parties as a class member and give up your right to participate in other litigation against Bank of America about the claims made in this case.

- These options and the deadlines to exercise them are further detailed in this notice.
- The Court and Judge assigned to this case still have to decide whether to give final approval of the Settlement. If the Court grants final approval and any appeals are resolved, payments will be issued to those who qualify.

**QUESTIONS? Call 1-888-XXX-XXXX or visit
WWW.BANKOFAMERICAMILITARYSETTLEMENT.COM**

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QUESTIONS? Call 1-888-XXX-XXXX or visit
WWW.BANKOFAMERICAMILITARYSETTLEMENT.COM

Basic Information

1. Why am I receiving this notice?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This notice explains the litigation, the Settlement, and your legal rights.

Judge Terrence W. Boyle of the United States District Court for the Eastern District of North Carolina is overseeing this case. This litigation is known as *Childress v. Bank of America, N.A.*, Case No. 5:15-CV-231. The people who initiated the litigation are called the "Plaintiffs." Bank of America, N.A. is the "Defendant."

2. What is this litigation about?

Plaintiffs allege, among other things, that, since September 11, 2001, Bank of America charged thousands of military customers excessive interest on their interest-bearing obligations, including mortgage and credit card accounts, and further tried to conceal the excess interest charges, in violation of the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901, et seq., the Truth in Lending Act, 15 U.S.C. §§ 1637(b), 1638(f), and 1639f, North Carolina's Unfair and Deceptive Trade Practices Act, and common law, including breach of contract, negligence, and negligent misrepresentation, and seek an accounting and to impose a constructive trust based on the same, as alleged in Plaintiffs' Second Amended Complaint.

The filed Complaints in the lawsuit can be viewed at www.BankofAmericaMilitarySettlement.com. The Complaints include all allegations and claims asserted against Bank of America. Bank of America denies each and all of the claims and allegations of wrongdoing made by the Plaintiffs and denies that it has violated any law or other duty.

3. Why is this a class action?

A class action lawsuit allows a large number of people, with a common complaint in a matter, to sue collectively while being represented by a few members of the group called "Named Plaintiffs" or "Class Representatives."

In this case, a group of military customers of Bank of America has brought the suit on behalf of themselves and any other people with similar claims. Together, all the individuals with similar claims (with the exception of those who request exclusion) are referred to as members of the "Settlement Class."

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or Bank of America. The parties have agreed to a Settlement.

By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class members receive the benefits described in this notice. The proposed Settlement does not mean that any law was broken or that Bank of America did anything wrong. Bank of America denies all claims and allegations made in this case.

Class Representatives and their lawyers think the proposed Settlement is best for everyone who may be affected by the alleged excess interest charges.

QUESTIONS? Call 1-888-XXX-XXXX or visit
WWW.BANKOFAMERICAMILITARYSETTLEMENT.COM

The Settlement

5. Who is included in the Settlement?

The "Settlement Class" is defined as:

All persons identified in Bank of America's records as obligors or guarantors on an obligation or account who, at any time on or after September 11, 2001, received and/or may have been eligible to receive additional compensation related to military reduced interest rate benefits from Defendant, but excluding persons who have executed a release of the rights claimed in this action.

6. How do I determine whether I am part of the Settlement?

If you are not sure whether you are in the Settlement Class, or have any other questions about the Settlement, visit the Settlement website at www.BankofAmericaMilitarySettlement.com or call the toll free number, 1-888-XXX-XXXX. You may also send questions to the Settlement Administrator at info@_____.com or by writing to Bank of America _____ Settlement, P.O. Box _____, [city], [state], [zipcode].

The Settlement Benefits

7. What does the Settlement provide?

The Gross Settlement Fund of forty-one nine hundred twenty thousand three hundred seventy-four dollars and six cents (\$41,920,374.06) shall be used to pay court-awarded attorneys' fees and costs, incentive awards, all settlement administration costs (including notice costs, escrow and settlement administration services, distribution costs, etc.), and taxes and taxes expenses. Three hundred ten thousand dollars (\$310,000), an amount deemed reasonably likely to sufficiently pay settlement administration costs, shall be available from the Gross Settlement Fund to be held in escrow to pay settlement administration costs. The remainder of the Gross Settlement Fund, less the payments and debits set forth in this paragraph, shall constitute the Net Settlement Fund.

For distribution of the Net Settlement Fund, the Settling Parties have identified and assigned the complete set of class members ("Authorized Recipients") into four groups, based upon (a) the years that the Authorized Recipients' account(s) were open and/or reviewed to determine whether the accountholder was eligible for a refund related to the provision of military reduced interest rate benefits; (b) the type(s) of accounts; (c) whether the accountholder received a prior refund payment from the Defendant related to military reduced interest rate benefits; (d) whether the accountholder also received an additional payment of the greater of three times the refund or five hundred dollars (\$500) (i.e., whether the account was "Adjusted"); and (e) for mortgage accounts, the method by which the Defendant applied military reduced interest rate benefits to the account.

The majority of Authorized Recipients who belong to Groups 1-3 have previously received payments from Defendant that reflect refunds of interest overcharges and compound interest. For Groups 2 and 3, these prior payments also included an additional payment of the greater of three times the refund or five hundred dollars (\$500). However, certain members of these groups did not receive or successfully deposit previous remediation payments. Payments to account holders who did not receive or successfully deposit previous remediation payments will be made as part of this settlement as described below.

The groups are defined as follows:

- **Group 1. 2006-2013 Non-Adjusted Accounts:** Borrowers on all accounts, primarily credit card accounts, that were reviewed for the period 2006-2013 and who received or were owed a refund payment but did not receive an additional payment of the greater of three times the refund or five hundred dollars (\$500).

QUESTIONS? Call 1-888-XXX-XXXX or visit
WWW.BANKOFAMERICAMILITARYSETTLEMENT.COM

- **Group 2. 2006-2013 Adjusted Non-Mortgage Accounts:** Borrowers on non-mortgage accounts that were reviewed for the period 2006 to 2013 and who received or were owed a refund payment that included an additional payment of the greater of three times the refund or five hundred dollars (\$500).
- **Group 3. 2006-2014 Adjusted Mortgages:** (A) Borrowers on mortgage accounts that were reviewed for the period 2006 to 2014 and who received or were owed a refund payment that included an additional payment of the greater of three times the refund or five hundred dollars (\$500); and/or (B) Borrowers who received military reduced interest rate benefits on their mortgage accounts via the interest subsidy method for some period of time between September 11, 2001 and the date of the Settlement.
- **Group 4. 2001-2005 Credit Cards and Mortgages:** Borrowers on credit card and mortgage accounts identified by Defendant at the time of the Settlement as having received military reduced interest rate benefits for some period of time between September 11, 2001 and December 31, 2005. These accounts did not receive refund payments related to military reduced interest rate benefits from Defendant as part of a previous remediation effort.

8. How can I determine what my payment will be?

If you are eligible to receive payment from the Settlement, the amount will be based upon the criteria described for each group defined in Section 7 above.

At this time, it is not possible to accurately calculate a Settlement Class member's payment from the Net Settlement Fund. More detailed information regarding how the payments for each group will be calculated can be found in the distribution section of the Settlement Agreement posted at the case website www.BankofAmericaMilitarySettlement.com.

9. How can I determine when I will receive payment?

The Settling Parties shall use a mailing protocol that maximizes the likelihood that Settlement payments are received and successfully deposited.

Settlement Class members who are entitled to payments will receive their payments by mailed check. Payments will be issued only after the Court grants final approval to the Settlement and after any appeals are resolved. If there are appeals, resolving them can take time. It is prudent to check with the case website often for updates regarding the status of the Settlement.

10. What rights am I giving up to remain a class member and receive payment?

Unless a class member submits a request to be excluded from the Settlement, they are bound by the terms of the agreement and cannot be part of any other lawsuit brought against Bank of America for the same issues in this case. The Settlement Agreement is available at www.BankofAmericaMilitarySettlement.com and describes what rights you will give up if you remain a participant in the Settlement.

How To Receive a Payment

11. What do I have to do to receive payment?

If you have been identified by the Settling Parties as a class member entitled to payment, you do not have to take any action to receive the payment. Payments will be issued as described in Section 9 above.

**QUESTIONS? Call 1-888-XXX-XXXX or visit
WWW.BANKOFAMERICAMILITARYSETTLEMENT.COM**

Excluding Yourself From The Settlement

12. What do I do if I do not want to participate in the Settlement?

If you do not want to receive payment from the Settlement and retain your right to participate in other lawsuits against Bank of America for the same legal issues in this case, then you must take steps to request exclusion from the Settlement. Sometimes this action is referred to as “opting-out” of the Settlement Class.

To request exclusion from the Settlement, you must send a letter or other written document by mail to the Settlement Administrator. Your request must include the following information:

1. Your name, address, telephone number, and claim identification number;
2. A statement that you wish to be excluded from the Settlement, including the case name and number; and
3. Your signature.

You must mail your request, postmarked no later than _____, 2017, to _____ Administrator, P.O. _____, [city], [state], [zipcode]. You cannot request exclusion by phone, by email, or through the case website.

13. If I do not request exclusion, can I sue Bank of America for the same claims later?

No, you cannot. Unless you request exclusion from the Settlement, you give up the right to sue Bank of America for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class in order to try to maintain your own lawsuit.

14. If I exclude myself, can I still receive payment?

No, you will not receive a payment if you request exclusion from the Settlement.

The Lawyers Representing You

15. Do I have a lawyer in this case?

The Court has appointed a number of lawyers to represent all Settlement Class members as “Class Counsel” They include:

Steve W. Berman, Esq. Shayne C. Stevenson, Esq. HAGENS BERMAN SOBOL SHAPIRO LLP 1918 Eighth Avenue, Suite 3300 Seattle, WA 98101	Knoll D. Lowney, Esq. SMITH & LOWNEY, PLLC 2317 E. John Street Seattle, Washington 98112	Kieran J. Shanahan, Esq. Brandon S. Neuman, Esq. Christopher S. Battles, Esq. SHANAHAN LAW GROUP, PLLC 128 E. Hargett Street, Third Floor Raleigh, North Carolina 27601
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You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

16. How will the lawyers receive payment for their services?

Class Counsel may submit an application or applications for distributions from the Gross Settlement Fund for: (a) an award of attorneys’ fees; plus (b) reimbursement of expenses incurred in connection with prosecuting the Action; plus (c) any interest on such expenses (until paid) at the same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be awarded by the Court; and (d) Incentive Awards to Class Representatives.

QUESTIONS? Call 1-888-XXX-XXXX or visit
WWW.BANKOFAMERICAMILITARYSETTLEMENT.COM

Class Counsel agree that an application for attorneys' fees will not seek an amount in excess of thirty percent (30%) of the Settlement Amount. The amount of attorneys' fees awarded will be determined by the Court.

Class Counsel and Named Plaintiffs agree that an application for an Incentive Award to the six families of Named Plaintiffs shall not exceed fifteen thousand dollars (\$15,000.00) per family named in the original Complaint, ten thousand dollars (\$10,000.00) per family first named in the Second Amended Complaint, and seventy five thousand dollars (\$75,000) in total.

Objecting To The Settlement

17. How do I inform the Court if I do not approve of the Settlement?

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for fees and expenses, and/or the payments to the twelve Class Representatives. To object, you must submit a letter that includes the following:

- Your name, address, and telephone number;
- A statement saying that you object to the Settlement in *Childress v. Bank of America, N.A.*, Case No. 5:15-CV-231;
- The reasons you are objecting to the Settlement with supporting documentation if applicable; and
- Your signature.

Class members who wish to object to any aspect of the Settlement must file with the Court a written statement containing their objections prior to the Exclusion/Objection Deadline. Any award or payment of attorneys' fees made to the counsel of an objector to the Settlement shall be made only by Court order and upon a showing of the benefit conferred to the Class. In determining any such award of attorneys' fees to an objector's counsel, the Court will consider the incremental value to the Class caused by any such objection. Any award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney stating under penalty of perjury that no payments shall be made to the objector based on the objector's participation in the matter other than as ordered by the Court. Any such award shall be payable from the Gross Settlement Fund. Defendant shall have no responsibility for any such payments.

You must mail your objection to each of the following three addresses, and must be postmarked by _____, 2017:

Clerk of the Court U.S. District Court for the Eastern District of North Carolina	[Class Counsel]	[Defense Counsel]
--	-----------------	-------------------

18. What is the difference between objecting to the Settlement and requesting Exclusion?

Objecting is notifying the Court that you do not like something about the Settlement. You can only object to the Settlement if you are a class member. Requesting exclusion from the Settlement is notifying the Court that you do not want to remain a class member. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

QUESTIONS? Call 1-888-XXX-XXXX or visit
WWW.BANKOFAMERICAMILITARYSETTLEMENT.COM

The Final Approval Hearing

19. When and where will the Court decide whether to grant final approval of the Settlement?

The Court has scheduled a Final Approval Hearing on _____, 2017 at ____:____.m. in Courtroom ____ of the _____ United States Courthouse located at [street address], [floor/room], [city], [state], [zipcode]. The hearing date and time is subject to change. Updates to the date and time will be posted to the case website at www.BankofAmericaMilitarySettlement.com.

At the hearing, the Court will consider granting final approval of the Settlement based on whether it is fair, reasonable, and adequate. The Court may also consider requests by Class Counsel for attorneys' fees and expenses related to the litigation and administration of the Settlement. If there are objections, the Court will consider them at the hearing, as well.

After the hearing, a decision will be made whether to grant final approval of the Settlement, but it is not known at this time how long it will take for the Court to decide. Class members should visit the case website at www.BankofAmericaMilitarySettlement.com to stay updated about the current case status.

20. Do I have to attend the Hearing?

Attending the hearing is not required, but you are welcome to attend at your own expense.

If you filed an objection, you do not need to attend the hearing to discuss its validity. As long the objection was filed in accordance with the guidelines described within this notice and on the case website at www.BankofAmericaMilitarySettlement.com, the Court will give it consideration.

You may also pay your own lawyer to attend the hearing, but it is not required.

21. May I ask to speak at the Hearing?

You have the option to request to speak at the Final Approval Hearing, but you must send a letter informing the Court of your intention to appear and speak. The letter for your Notice of Intention to Appear must include the following:

- Your name, address, and telephone number;
- A statement identifying the letter as your "Notice of Intention to Appear" at the Final Approval Hearing for *Childress v. Bank of America, N.A.*, Case No. 5:15-CV-231;
- The reasons you intend to appear along with any supporting documentation or evidence; and
- Your signature.

You must send copies of your Notice of Intention to Appear, postmarked no later than _____, 2017, to all three addresses listed in question 17 above. **Please note, you may not speak at the hearing if you file a valid request for exclusion from the Settlement.**

Getting More Information

22. How do I get more information?

This notice is a summary of the proposed Settlement. More detail regarding the terms of the Settlement can be found in the Settlement Agreement posted at the case website at www.BankofAmericaMilitarySettlement.com. You may also contact the Settlement Administrator with questions via toll-free number at 1-888-XXX-XXXX or by mail at P.O. Box _____, [city], [state], [zipcode].

QUESTIONS? Call 1-888-XXX-XXXX or visit
WWW.BANKOFAMERICAMILITARYSETTLEMENT.COM

Exhibit – 3

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

If you are or were a military customer of Bank of America who received or may have been eligible to receive additional compensation related to military reduced interest rate benefits on your account,

You May Be Eligible For Payment from a Class Action Settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

A nearly \$42 million Settlement has been reached in a class action lawsuit alleging, among other things, that, since September 11, 2001, Bank of America charged thousands of military customers excessive interest on their interest-bearing obligations, including mortgage and credit card accounts. Bank of America denies each and all of the claims and allegations of wrongdoing made by the Plaintiffs. The Settlement provides payments to identified military customers who allegedly were charged excessive interest on their interest-bearing obligations.

Your legal rights will be affected whether you act or do not act. Please read this notice carefully.

How do you receive payment? If you have received this notice, you do not need to do anything to receive a settlement payment. You will be mailed a check if the Court approves the Settlement and it becomes final.

What is this litigation about? Plaintiffs allege, among other things, that, since September 11, 2001, Bank of America charged thousands of military customers' excessive interest on their interest-bearing obligations, including mortgage and credit card accounts, and further tried to conceal the excess interest charges.

Who is included in the Settlement? If you received this notice, you are in the Settlement Class. The "Settlement Class" is defined as: All persons identified in Bank of America's records as obligors or guarantors on an obligation or account who, at any time on or after September 11, 2001, received and/or may have been eligible to receive additional compensation related to military reduced interest rate benefits from Defendant, but excluding persons who have executed a release of the rights claimed in this action.

If you have other questions about the Settlement, visit the Settlement website at www.BankofAmericaMilitarySettlement.com or call the toll free number, 1-888-XXX-XXXX. You may also send questions to the Settlement Administrator at info@_____.com or by writing to Bank of America Military Settlement, P.O. Box _____, [city], [state], [zipcode].

What does the Settlement provide? The Gross Settlement Fund of forty-one million nine hundred twenty thousand three hundred seventy-four dollars and six cents (\$41,920,374.06) shall be used to pay court-awarded attorneys' fees and costs, incentive awards, all settlement administration costs (including notice costs, escrow and settlement administration services, distribution costs, etc.), and taxes and expenses.

The remainder of the Gross Settlement Fund shall constitute the Net Settlement Fund and will be distributed to class members. For more detailed information about how the Net Settlement Fund will be distributed, please visit the case website to review the full-length Notice and Settlement Agreement.

How can I determine what my payment will be? At this time, it is not possible to accurately calculate a Settlement Class member's payment from the Net Settlement Fund. More detailed information regarding how the payments for each group will be calculated can be found in the distribution section of the Settlement Agreement posted at the case website www.BankofAmericaMilitarySettlement.com.

What are my Legal Rights and Options in this Settlement?

- **If you do nothing, you will receive a settlement payment as a class member.** You will give up your right to participate in other litigation against Bank of America about the claims made in this case.
- **Request Exclusion.** You will receive no benefit from the Settlement. This option allows you to retain your right participate in other lawsuits against Bank of America for the claims in this case.
- **Object.** If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for fees and expenses, and/or the payments to the twelve Class Representatives.
- **Go to a Hearing.** You have the option to request to speak at the Final Approval Hearing, but you must send a letter informing the Court of your intention to appear and speak.

Detailed instructions regarding how to exercise your legal rights and options can be found at the case website www.BankofAmericaMilitarySettlement.com or by calling the toll free number, 1-888-XXX-XXXX.

Final Approval Hearing. The Court has scheduled a Final Approval Hearing on _____, 2017 at ____:____.m. in Courtroom ____ of the _____ United States Courthouse located at [street address], [floor/room], [city], [state], [zipcode]. The hearing date and time is subject to change. Updates to the date and time will be posted to the case website at www.BankofAmericaMilitarySettlement.com.

At the hearing, the Court will consider granting final approval of the Settlement based on whether it is fair, reasonable, and adequate. The Court may also consider requests by Class Counsel for attorneys' fees and expenses related to the litigation and administration of the Settlement. If there are objections, the Court will consider them at the hearing, as well.

1-888-XXX-XXX

WWW.BANKOFAMERICAMILITARYSETTLEMENT.COM