

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

KIMBERLY DENNIE and KIRK LAYNE,
individually, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 3:24-cv-00454-MOC-DCK

**MEMORANDUM IN SUPPORT
OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AND RELEASE**

Hon. Max O. Cogburn, Jr.
Hon. David Keesler

INTRODUCTION

Plaintiff Kirk Layne (“Plaintiff”), on behalf of himself and a proposed class of current and former Bank of America, N.A. (“Bank of America” or “BANA”) Accountholders, respectfully submits this memorandum in support of preliminary approval of the proposed class action Settlement as embodied in the attached Settlement Agreement (“Agreement”).¹ The Settlement, comprising a common fund of \$2,000,000, provides substantial monetary relief to the Settlement Class along with significant practice changes that will continue to inure to the benefit of the Settlement Class Members and future BANA Accountholders.

The Settlement does not release Settlement Class Members’ actual-damages claims based on BANA’s denial of a claim of unauthorized transfer. Instead, Settlement Class Members release claims of statutory damages only, which are capped under the EFTA. 15 U.S.C. § 1693m(a)(2)(B).

¹ Capitalized terms are defined in the Settlement Agreement (“Agreement”), which is attached as Exhibit 1 hereto.

The package of Settlement benefits here is an outstanding recovery for the Settlement Class in a case with myriad legal risks, and the proposed Settlement easily satisfies all Fourth Circuit criteria for preliminary approval. Accordingly, Plaintiff respectfully requests that this Court enter an Order: (1) granting Preliminary Approval to the Settlement; (2) preliminarily certifying the proposed Settlement Class pursuant to Federal Rule 23(a) and 23(b)(3); (3) appointing Plaintiff Kirk Layne as Class Representative; (4) approving the Notice Program set forth in the Settlement and approving the form and content of the Notices; (5) approving and ordering the opt-out and objection procedures set forth in the Settlement; (6) staying all deadlines in the Action pending Final Approval of the Settlement; (7) appointing as Class Counsel the law firms and attorneys identified herein; and (8) entering the proposed schedule. A Proposed Order is attached hereto.

FACTUAL BACKGROUND

I. Litigation History

On May 6, 2024, Plaintiff Dennie filed a Class Action Complaint (“Complaint”) in this Court against BANA arising from its handling of electronic fund transfers disputed by Accountholders as unauthorized and/or fraudulent. ECF No. 1. The Complaint alleged claims on behalf of a nationwide class and a California subclass and alleged breach of contract, breach of the implied covenant of good faith and fair dealing, violations of the Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq.* (the “EFTA”), violations of the North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75.1-1 *et seq.*, and violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200. *Id.*

Plaintiffs Dennie and Layne filed the operative Amended Complaint on July 19, 2024. ECF No. 14. On August 19, 2024, Defendant filed a motion to dismiss under Federal Rule 12(b)(6), arguing, *inter alia*, that Plaintiffs failed to state a claim upon which relief could be granted. ECF

No. 21. The Court denied Defendant's motion to dismiss. ECF No. 29. Defendant answered the Amended Complaint on January 17, 2025. ECF No. 32.

The Parties then began written discovery, which included the exchange of Rule 26(a)(1) initial disclosures, requests for production and interrogatories, engaging in meet-and-confer conferences regarding the same, and the negotiation and entry of an ESI protocol and protective order. *See* Joint Declaration of Class Counsel, ("Joint Decl.") ¶ 4. After discussing the possibility of mediation, the Parties moved to stay the case and extend deadlines pending mediation, and the Court granted that motion on October 20, 2025. ECF Nos. 45, 46.

On November 18, 2025, the Parties engaged in an in-person mediation with a JAMS neutral, Judge Diane M. Welsh (Ret.), a respected mediator experienced in mediating class actions alleging EFTA claims. Joint Decl. ¶ 6. Judge Welsh presided over an arm's-length mediation between capable and experienced class action counsel on both sides. *Id.* With Judge Welsh's assistance, the Parties agreed to the material terms of Settlement at the conclusion of their mediation session. *Id.* On December 2, 2025, the Parties filed a Notice of Settlement with the Court. ECF No. 47.

Following mediation, a settlement agreement was agreed to and sent to all Parties for execution. Joint Decl. ¶ 7. Although Plaintiff Layne signed the prior agreement, Plaintiff Dennie did not. *Id.* Due to Plaintiff Dennie's failure to review and execute the agreement, despite repeated promises to do so, Plaintiffs' Counsel moved to withdraw as her counsel and the Parties agreed to settle this case between Plaintiff Layne, as the sole class representative, and Defendant. *Id.*

Thereafter, the Parties finalized the Agreement, which was signed on June 17, 2026. Joint Decl. ¶ 8.

II. The Settlement

The following is a summary of the Agreement's key terms:

A. The Settlement Class

Plaintiff proposes, for settlement purposes only, that the Court certify a Settlement Class defined as all persons who submitted a claim or dispute to Bank of America concerning an electronic fund transfer related to a debit card or automated teller machine (ATM) transaction that the person claimed was unauthorized, which Bank of America denied from May 6, 2023, to the date of Preliminary Approval. Agreement § 1.42.

B. Settlement Benefits

Counsel believes that the benefits addressed below adequately compensate the Settlement Class for the claims it is releasing and, considering the risks of continued litigation, represent an excellent result for the Settlement Class. *See* Joint Decl. ¶ 11.

1. Injunctive Relief

BANA agrees to provide prospective relief to the Settlement Class by implementing changes to the written explanation sent to Accountholders whose claims of unauthorized electronic fund transfers related to debit card and ATM transactions are denied. *See* Agreement § 2.2.

2. Settlement Class Member Payments and Plan of Allocation

BANA shall deposit the non-reversionary \$2,000,000 Settlement Fund into an Escrow Account maintained by the Settlement Administrator, less the amount of Settlement Class Member Payments to be credited to the accounts of Current Accountholders and costs of settlement administration, which are to be paid from the Settlement Fund. *Id.* §§ 1.40, 2.1. The Settlement Fund shall be used to pay any Fee Award and reimbursement of costs to Class Counsel, as well as a Service Award to the Class Representative (to be approved by the Court). *Id.* §§ 2.1, 9.1. Each

Settlement Class Member may submit a Claim Form to request a Settlement Class Member Payment in the amount of a pro rata portion of the Net Settlement Fund. *Id.* § 2.1. The value of each pro rata portion of the Net Settlement Fund will be calculated by dividing the Net Settlement Fund by the total number of Approved Claims. *Id.*

3. Claims Process and Distribution

The Settlement provides an easy claim-submission process. Claim Forms are accessible via one click in the Email Notice and on the Settlement Website, as well as available in paper format, pre-filled with a unique claim ID and the Settlement Class Member's name provided as part of the Postcard Notice with return postage prepaid. *Id.* §§ 4.1(g), (h); 1.35; *see also id.* at Exhibits B, C. The Claim Forms do not require Settlement Class Members to submit any supporting documentation. *See id.* at Exhibit A.

To receive a Settlement Class Member Payment, Settlement Class Members must submit a valid Claim Form postmarked or submitted online by the Claims Deadline. *Id.* § 1.6. The Claims Deadline will be clearly set forth in the Preliminary Approval Order, as well as in the Notices and the Claim Form, and will be no later than sixty (60) days after the Notice Date. *Id.* Within seven (7) days of the Effective Date, the Settlement Administrator will provide BANA with a chart of the payment amount for each Settlement Class Member Account. *Id.* § 2.1(h). Within thirty-five (35) days of receipt, BANA will identify the Former Accountholders for the Settlement Administrator and wire to the Settlement Administrator \$2,000,000 minus the settlement administration costs already paid and the total amount of credits to be paid to Current Accountholders. *Id.* Within fourteen (14) days of the receipt of those funds from BANA, the Settlement Administrator will mail Settlement Class Member Payments to Former Accountholders via check and BANA will credit the accounts of Current Accountholders. *Id.* § 2.1(i). Any Residual

Funds will be payable to a *cy pres* recipient proposed by Plaintiff and subject to Court approval. *Id.* § 2.1(o).

C. The Notice Program

Angeion Group, a nationally recognized and experienced class action administrator, has been retained to serve as the Settlement Administrator. *Id.* § 1.41. No later than 75 days after the entry of the Preliminary Approval Order, the Settlement Administrator will provide direct Email Notice and Postcard Notice via the e-mail addresses and mailing addresses identified in the Settlement Class List. *Id.* §§ 1.26, 4.1(b).

In the event any Email Notices and/or Postcard Notices are returned as undeliverable within 30 days after the Notice Date, the Settlement Administrator shall complete the Notice Re-Mailing Process by mailing a Postcard Notice to those Settlement Class Members whose new addresses are identified during a reasonable tracing procedure. *Id.* § 4.1(f). No later than 30 days after the Notice Date, the Settlement Administrator shall also send a second Email Notice to those Settlement Class Members who have not yet made a claim, requested to opt out, or made an objection. *Id.* § 4.1(g).

The Settlement Administrator will also establish and maintain the Settlement Website, which will include the Long Form Notice, the Claim Form (including the ability to file Claim Forms online), the Agreement, the Preliminary Approval Order, Plaintiff's Application for Fees and Costs and for Service Award, and the date of the Final Approval Hearing. *Id.* § 4.1(h). The Settlement Administrator shall also maintain a toll-free telephone system containing recorded answers to frequently asked questions as agreed to by the Parties and the ability to reach a live operator, including to request a copy of the Claim Form or the Long Form Notice. *Id.* § 4.1(i). The Long Form Notice includes: a) a description of the case, Settlement Class Members' legal rights

and options, answers to frequently asked questions, the Agreement and the Settlement benefits, contact information for Counsel, and the attorneys' fees and costs Class Counsel intends to request and the Service Award to be sought by Plaintiff; b) instructions on how to opt out of or object to the Settlement; and c) information about the Final Approval Hearing. *Id.* at Ex. D.

D. Settlement Releases

The Agreement includes a narrow release by Settlement Class Members of the Released Claims that reasonably arise out of or relate to the claims alleged in the Action regarding BANA's improper denial of a claim for reimbursement of unauthorized electronic fund transfers. *Id.* §§ 1.36, 3.1. Except with respect to Plaintiff Layne, the Released Claims exclude any claims for actual damages based on or related to BANA's denial of a claim of unauthorized electronic transfer(s). *Id.* § 1.36.

BANA agrees to pay \$1,774.43 to Plaintiff Layne in exchange for a general release of his claims. *Id.* § 2.1(b). Plaintiff's General Release and waiver of rights under California Code Section 1542 relate to Plaintiff's individual claims. *Id.* §§ 3.3; 1.31, 1.48.

E. Opt-Outs and Objections

The Notices inform Settlement Class Members of when and how they may opt out or object to the Settlement. *Id.* Exs. B–D. The Notices also inform Settlement Class Members of their right to object to Class Counsel's application for attorneys' fees, costs, and Service Award. *Id.* Objections must include information identified in the Agreement, including information about the objector, their counsel, and previous objections they or counsel have made to ensure that any objections are made for a proper purpose. *Id.* § 5.2.

F. Attorneys' Fees and Costs and Service Award

Class Counsel will request attorneys' fees of up to one-third of the Settlement Fund, reimbursement of expenses, and a \$5,000 Service Award to Plaintiff for serving as Class Representative, with each request subject to Court approval. *Id.* § 9. BANA agrees not to oppose these requests. *Id.*

LEGAL STANDARD

Federal Rule of Civil Procedure 23 requires court approval of class action settlements. Fed. R. Civ. P. 23(e). "The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations." *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). Accordingly, the Court may approve a settlement only upon a finding that the settlement is fair and adequate. *See id.* The relevant factors in determining "fairness" are "that the settlement was reached as a result of good-faith bargaining at arm's length, without collusion, on the basis of (1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel." *Id.* at 159. Adequacy is assessed through "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Id.* at 159.

ARGUMENT

I. The Court Should Approve the Settlement.

After hard-fought litigation, the Parties have reached a settlement that provides substantial compensation to Settlement Class Members and significant prospective relief for BANA Accountholders. The Settlement was the result of months of arm's-length negotiations by experienced counsel for Plaintiff and BANA and represents an outstanding result for the Class.

Under Rule 23, a settlement must be “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The Fourth Circuit has bifurcated the preliminary approval analysis into “consideration of the fairness of settlement negotiations and the adequacy of the consideration to the class.” *Gaston v. LexisNexis Risk Sols. Inc.*, No. 5:16-cv-00009, 2021 WL 244807, at *5 (W.D.N.C. Jan. 25, 2021) (citing *In re Jiffy Lube Secs. Litig.*, 927 F.2d at 158–59). Rule 23(e) also lists core considerations for settlement approval: (1) whether class representatives and class counsel have adequately represented the class, (2) whether the proposal was negotiated at arm's length, (3) whether the relief provided for the class is adequate, and (4) whether the proposal treats Settlement Class Members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

The *Jiffy Lube* standards “almost completely overlap” with the Rule 23(e)(2) factors, “rendering the analysis the same.” *Herrera v. Charlotte Sch. of Law, LLC*, 818 F. App'x 165, 176 n.4 (4th Cir. 2020) (citing *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, 952 F.3d 471, 474 n.8 (4th Cir. 2020)). At the preliminary approval stage, “the Court need only find that the settlement is within ‘the range of possible approval.’” *Gaston*, 2021 WL 244807, at *5 (quoting *Scott v. Family Dollar Stores, Inc.*, No. 3:08-cv-00540, 2018 WL 1321048, at *3 (W.D.N.C. Mar. 14, 2018)).

This Settlement, reached after years of litigation by sophisticated counsel and providing significant monetary and prospective relief, fits comfortably within that range.

A. The Settlement is Fair.

Each relevant fairness factor weighs in favor of preliminary approval. *See Jiffy Lube*, 927 F.2d at 158–59.

First, the proposed settlement was reached after active, hard-fought litigation. Class Counsel filed an initial complaint in May 2024, followed by an Amended Complaint in July 2024. Plaintiff’s claims were tested by BANA’s motion to dismiss, which was thoroughly briefed and litigated by both sides and duly considered by this Court, which denied the motion.

Second, the Settlement follows considerable discovery by both sides. The Parties have exchanged numerous sets of written discovery in the form of interrogatories and requests for production of documents. The Parties also negotiated, and the Court entered, a stipulated protective order and ESI protocol. BANA produced substantial discovery—including thousands of pages of internal documents—which Class Counsel reviewed and analyzed in evaluating Plaintiff’s claims and the strengths of BANA’s defenses. This extensive discovery gave both sides “additional insight to evaluate the merits” of the case and has “laid the groundwork for the arm’s-length negotiations that resulted in the settlement.” *Gaston*, 2021 WL 244807, at *6.

Third, the circumstances of the Parties’ settlement negotiations demonstrate that the Settlement resulted from a fair, arm’s length process that was often contentious. The Parties began discussing the possibility of mediation and filed a joint motion to stay the case pending mediation in October 2025. Joint Decl. ¶ 5. On November 18, 2025, the Parties participated in a full-day mediation session with a JAMS neutral, Judge Diane M. Welsh (Ret.), a respected mediator

experienced in mediating class actions alleging EFTA claims. *Id.* ¶ 6. With her assistance, the Parties agreed to the material terms of Settlement at the conclusion of their mediation session. *Id.*

Finally, counsel for both sides have significant experience in consumer class-action litigation involving breach of contract and EFTA actions against financial institutions. Class Counsel have brought that experience to bear in litigating and settling this case. *See* Joint Decl. ¶¶ 9–15, Exs. A–D; *see also* Fed. R. Civ. P. 23(e)(2)(A). Class Counsel collectively have decades of experience litigating consumer class actions against financial institutions and have litigated and settled class actions involving the handling of electronic fund transfers disputed by members as unauthorized and/or fraudulent, as well as overdraft fees, non-sufficient fund fees, and other types of wrongful fees. *See* Joint Decl. ¶¶ 9–10. Counsel “may be evaluated by their affiliation with well-regarded law firms with strong experience in the relative field,” and by any measure, Class Counsel satisfies this prong. *See In re Neustar, Inc. Securities Litig.*, No. 1:14cv885, 2015 WL 5674798, at *11 (E.D. Va. Sept. 23, 2015) (quoting *In re Am. Capital S’holder Derivative Litig.*, No. 11-2424-PJM, 2013 WL 3322294, at *4 (D. Md. June 28, 2013)). Based on their experience, Class Counsel endorse the Settlement as fair and adequate. Joint Decl. ¶ 11. Counsel’s “endorse[ment of] the settlement as fair and adequate under the circumstances . . . should be afforded due consideration in determining whether a class settlement is fair and adequate.” *Gaston*, 2021 WL 244807, at *6.

B. The Settlement Provides Substantial Relief to Class Members.

The substantial relief provided by the Settlement favors approval. Under the Settlement, BANA will provide a Settlement Fund of \$2 million, which alone represents a significant portion of the estimated classwide damages, assuming that Plaintiff would have prevailed on every issue at class certification and trial. Joint Decl. ¶ 16. Although the recovery for each Settlement Class Member will depend on the number of Approved Claims, the Settlement Fund is approximately

four times the maximum class recovery of statutory damages for a violation of EFTA if successfully proved in litigation. Equally important, this Settlement does not release any Settlement Class Members' claims for actual damages based on BANA's alleged improper denial of claims. Joint Decl. ¶ 17. Instead, the Agreement reflects a settlement of statutory damages claims, which do not require proof of actual damages, but are capped under the EFTA. *See* 15 U.S.C. § 1693m(a)(2)(A)–(B).

The substantial amount offered in this Settlement is also an excellent recovery when compared with the limited universe of similar EFTA class action settlements that have received approval. *See, e.g., Almon v. Conduent Bus. Servs., LLC*, No. 5:19-cv-01075-XR, ECF No. 110 (W.D. Tex. Nov. 1, 2024) (granting final approval to class action settlement that certified three classes—each relating to a different alleged violation of the EFTA—in exchange for a \$1,200,000 cash fund); *Shelby v. Two Jinns, Inc.*, No. CV 15-03794-AB (GJSx), 2017 WL 6347090 (C.D. Cal. Aug. 2, 2017) (approving \$475,000 common fund for EFTA violations). The reasonableness of the \$2 million common fund is also strongly supported by the fact that statutory damages under the EFTA for class actions are capped at \$500,000. *See* 15 U.S.C. § 1693m(a)(2)(B)(ii). Moreover, unlike many prior settlements that provided only monetary relief, this Settlement also secures meaningful prospective relief: BANA has agreed to implement changes to the written explanation sent to Accountholders whose claims of unauthorized electronic fund transfers related to debit card and ATM transactions are denied—changes that will benefit Settlement Class Members (and other BANA customers) for years to come.

Courts assess the adequacy of relief provided under a settlement based on four factors: (1) the costs, risks, and delay of trial and appeal, (2) the effectiveness of the proposed method of distributing relief to the class, (3) the terms of the proposed award of attorney's fees, and (4) the

existence of other agreements reached by the Parties outside the settlement. Fed. R. Civ. P. 23(e)(2)(C); *see also Jiffy Lube*, 927 F.2d at 159. Each factor strongly supports approval here.

1. Costs, risks and delay of trial and appeal

Plaintiff believes his claims are strong based on both the alleged facts and court decisions involving similar claims challenging financial institutions' error resolution procedures like those at issue here. *See, e.g., Garcia v. Navy Federal Credit Union*, No. 23-cv-2017-MMA-BLM, 2025 WL 1100898, at *19 (S.D. Cal. Apr. 14, 2025) (denying defendant's motion for summary judgment as to whether defendant complied with the EFTA's reasonable investigation provision); *Nguyen v. Wescom Central Credit Union*, No. SACV 22-01520-CJC (JDEX), 2023 WL 9019022, at *4 (C.D. Cal. Nov. 15, 2023) ("Summary judgment is inappropriate on Plaintiff's EFTA claim because a reasonable jury could determine that Defendant's investigation of Plaintiff's claim was not reasonable."); *see also Sparkman v. Comerica Bank*, No. 23-CV-02028-DMR, 2023 WL 5020269, at *10 (N.D. Cal. Aug. 4, 2023) (denying motion to dismiss based on allegations of insufficient form letters denying fraud claims and facts showing transactions were unauthorized).

Nevertheless, maintaining these claims through trial and appeal would entail significant risk, uncertainty, and costs for both sides. "[I]n the case of a class action ... the total recovery" for statutory damages under the EFTA "shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the defendant[.]" 15 U.S.C. § 1693m(a)(2)(B)(ii). Thus, even if Plaintiff's EFTA claims were to prevail at trial, they would provide a limited ground for recovery of putative class damages. And, while Plaintiff believes in the merits of his claim, he appreciates the validity of BANA's arguments that predominance and other issues may affect certification of such claims. Each of these considerations factored into the Parties' decision to settle and each weigh in favor of settlement here.

Moreover, although Plaintiff prevailed on BANA's motion to dismiss, the risks of prosecuting a class action through trial cannot be disregarded. Plaintiff's claims would need to survive additional motion practice and Plaintiff would have to succeed in certifying a class. Joint Decl. ¶ 18. Undoubtedly, there are risks involved in pursuing this case as a class action, especially given that "the type of fraud that generates these claims on a broad scale is a new phenomenon." *Nelipa v. TD Bank, N.A.*, No. 21-CV-1092, 2024 WL 3017141 at *8 (E.D.N.Y. June 17, 2024). This risk is especially acute regarding claims for actual damages, which BANA argued could never be certified due to a lack of predominance on the elements of breach and damages. Joint Decl. ¶ 19. Thus, the delay in continuing to litigate this case also favors approval of the Settlement.

To that end, significant time and additional costs would be required for the Parties and the Court to, for instance, complete discovery, brief and rule on class certification, participate in pre-trial proceedings, and brief and rule on summary judgment. *Id.* And the Parties could appeal the Court's class certification and summary judgment decisions as well as any verdict at trial, which could take years to resolve and could result in reversal on appeal. *Id.* Plainly, litigation "would likely continue for many years, especially given that EFTA law is not well settled." *Granados v. OnPoint Community Credit Union*, 2025 WL 1640204, at *7 (D. Or. June 10, 2025). Given that the Settlement provides immediate compensation for the Settlement Class now, in light of the risks and delay of receiving any relief at all, these considerations support approval of the Settlement.

2. Effectiveness of the proposed method of distributing relief to the Class

The Settlement provides an easy claim-submission process; Claim Forms are available online or in paper form and they do not require Settlement Class Members to submit any supporting documentation. The Settlement Fund will be distributed to Settlement Class Members by check or account credit. Under the terms of the Settlement, BANA will credit the accounts of Settlement

Class Members who are current Accountholders as of the date of Final Approval. Agreement § 2.1(i). For those Settlement Class Members who are Former Accountholders, the Settlement Administrator will mail them a check. *Id.* Any remaining funds will be distributed to a *cy pres* recipient to be approved by the Court. *Id.* 2.1(o).

These straightforward methods are an effective means of distributing relief. *See, e.g., Carmen v. Health Carousel, LLC*, No. 1:20-CV-313, 2025 WL 892586, at *12 (S.D. Ohio Mar. 24, 2025) (distribution method of making payments via direct deposit to bank accounts on file for class members was effective); *Abercrombie v. TD Bank, N.A.*, No. 21-61376-CV, 2022 WL 18779705, at *6 (S.D. Fla. Dec. 9, 2022) (proposed method of direct deposit or mailed checks was appropriate).

3. Terms of the proposed award of attorney's fees

Pursuant to the Agreement, Plaintiff intends to seek up to one-third of the Settlement Fund, or \$666,666.67, in attorneys' fees. Agreement ¶ 9.1. Plaintiff will move for approval of a fee award at least 21 days before the opt-out and objection deadline. Although that fee application is not yet before this Court, a fee award of one-third of the settlement fund is reasonable. "Within the Fourth Circuit, contingent fees of roughly 33% are common." *Earls v. Forga Contracting, Inc.*, No. 1:19-CV-00190-MR-WCM, 2020 WL 3063921, at *4 (W.D.N.C. June 9, 2020); *see also Kelly v. The Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 WL 434473, at *3 (D. Md. January 28, 2020) ("Contingent fees of up to one-third are common.").

4. Existence of other agreements

Courts also consider whether there are additional agreements between the Parties outside of the settlement agreement that could cast doubt on the fairness or adequacy of the settlement.

See Fed. R. Civ. P. 23(e)(2)(C)(iv). There is no such issue here, as the Settlement constitutes “the entire agreement of the Parties relative to the subject matter hereof.” Agreement § 13.5.

C. The Settlement Treats Class Members Equitably.

Each Settlement Class Member is treated equitably relative to all other members of the Settlement Class, as each Settlement Class Member with an Approved Claim will receive a *pro rata* portion of the Net Settlement Fund. Agreement § 2.1. “In general, courts have approved settlements that provide for recovery to class members on a *pro rata* basis.” *Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 770 (D. Md. 2022) (collecting cases). Moreover, the scope of the Release applies uniformly to Settlement Class Members and, except for the named Plaintiff, does not impact Settlement Class Members’ rights to individually pursue claims for actual damages. Agreement § 1.36. Additionally, as noted above, all current and future BANA Accountholders will benefit from the practice changes required by the Settlement.

II. The Court Should Certify the Settlement Class.

“Where a class-wide settlement is presented for approval,” the Court must make a provisional determination “that the proposed settlement class satisfies the prerequisites set forth in Fed. R. Civ. P. 23(a) and at least one of the subsections of Fed. R. Civ. P. 23(b).” *Brent v. Advanced Med. Mgmt., LLC*, No. CV JKB-23-3254, 2024 WL 3161745, at *2 (D. Md. June 25, 2024). Because those requirements are satisfied for the reasons below, Plaintiff respectfully requests that the Court certify the proposed Settlement Class of all persons who submitted a claim or dispute to Bank of America concerning an electronic fund transfer related to a debit card or automated teller machine (ATM) transaction that the person claimed was unauthorized, which Bank of America denied from May 6, 2023, to the date of Preliminary Approval.

A. The Proposed Class is Ascertainable.

Under Rule 23, a class definition must be sufficiently definite so that “a court can readily identify the class members in reference to objective criteria.” *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014). This ascertainability requirement is easily satisfied in this case, as the members of the Settlement Class are identifiable based on objective criteria applied to BANA’s well-maintained records covering every potential transaction and class member during the class period.

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

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

1. Numerosity

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

2. Commonality

Rule 23(a)(2)'s requirement that there are "questions of law or fact common to the class" is also satisfied. A common question is "one that can be resolved for each class member in a single hearing," and does not turn on the "individual circumstances of each class member." *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006) (quotation omitted). The question must be "capable of classwide resolution" such that "determination of its truth or falsity will resolve an issue that is central" to each class member's claims "in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Rule 23(a) does not require commonality of all issues; rather, "even a single common question will do." *Id.* at 359 (quotation omitted).

Here, all Settlement Class Members suffered the same statutory injury. Their claims depend on the same contention: that BANA violated the EFTA by, among other things: (a) improperly denying their claims of unauthorized electronic fund transfer(s), (b) failing to provide sufficient explanation regarding the bases for the denial(s), and (c) failing to provide, upon request by an Accountholder, documents relied on in making the determination(s). The commonality requirement is readily satisfied.

3. Typicality

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

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

4. Adequacy of Representation

The adequacy inquiry “serves to uncover conflicts of interest between named Parties and the class they seek to represent.” *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). For a conflict of interest to defeat class certification, that conflict “must be fundamental,” “must go to the heart of the litigation,” and “must be more than merely speculative or hypothetical.” *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 430–31 (4th Cir. 2003) (quoting 6 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 18:14 (4th ed. 2002)).

There is no such conflict here. As discussed above, the proposed Class Representative asserts the same claims based on the same alleged conduct as the absent Settlement Class Members. There is likewise no conflict between the Settlement Class Members, as they are all compensated based on the same pro rata calculation. *See* Agreement § 2.1. Moreover, the proposed Class Representative and absent Settlement Class Members who are current or future Accountholders will benefit from the remedial measures BANA has agreed to as part of the Settlement.

Class Counsel also satisfies the adequacy requirement. Class Counsel has effectively handled numerous consumer protection and complex class actions, including in the financial services industry. Class Counsel are qualified, experienced, and able to conduct this litigation and will adequately represent the Settlement Class. *See* Joint Decl. ¶¶ 20–22.

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

1. Predominance

The first requirement under Rule 23(b)(3) is that questions of law or fact common to Settlement Class Members predominate over questions affecting only individual members. Fed. R. Civ. P. 23(b)(3). This inquiry tests whether the proposed class is “sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997); *see also Gunnells*, 348 F.3d at 428.

Here, Plaintiff seeks to remedy a common set of legal grievances: namely, whether BANA, in investigating Accountholders’ fraud claims, failed to provide Accountholders with written explanations and documents relied upon in reaching their conclusions, allegedly in violation of the EFTA. The common questions of the legality of these practices predominate over questions—if any—affecting only individual Settlement Class Members, providing a common link between all Settlement Class Members and BANA. *See Jeffreys v. Comm’n’s Workers of Am., AFL-CIO*, 212 F.R.D. 320, 323 (E.D. Va. 2003) (finding predominance satisfied where “[t]he question in each individual controversy” would be resolved according to the same legal inquiry); *Talbott v. GC Servs. Ltd. P’Ship*, 191 F.R.D. 99, 105-06 (W.D. Va. 2000) (finding predominance satisfied based on the “standardized nature” of defendant’s conduct). “The fact that damages will differ from class member to class member does not defeat the finding of predominance because liability is common to the class.” *Jeffreys*, 212 F.R.D. at 323.

2. Superiority

Finally, the Court must determine whether a class action is superior to other methods of adjudication for the fair and efficient adjudication of the controversy. *See* Fed. R. Civ. P. 23(b)(3). The factors considered are: (1) individual class members’ interest in controlling individual cases;

(2) the existence of related litigation; (3) the desirability of concentrating the litigation in one forum; and (4) manageability. *Droste v. Vert Capital Corp.*, No. 3:14-cv-467, 2015 WL 1526432, at *8 (E.D. Va. April 2, 2015). In settlement cases, courts need not consider the last factor. *Amchem Prods.*, 521 U.S. at 593. Here, a class action is superior to individual suits.

First, individual suits are unlikely here, because the probable recovery (even of full damages) is relatively small per Settlement Class Member, particularly compared to the expense of litigation. See *In re NeuStar, Inc.*, 2015 WL 5674798, at *8 (finding superiority satisfied where individual actions were “unlikely due to the size of probable recovery and expense of individual litigation). Where the “policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights,” *Amchem*, 521 U.S. at 617, a suit like this is well suited for class action litigation. Second, counsel is not aware of any pending individual litigation against BANA regarding the practices at issue in this Action. Joint Decl. ¶ 21. And third, judicial economy favors resolving this case as a class before this Court rather than requiring individual plaintiffs to file separate lawsuits. *In re NeuStar, Inc.*, 2015 WL 5674798, at *9. A class action is a superior method of adjudication.

III. The Court Should Appoint Plaintiff as Class Representative and His Counsel as Class Counsel for Settlement Purposes.

Plaintiff Kirk Layne requests that the Court designate him as Class Representative. As detailed above, Plaintiff will fairly and adequately represent and protect the interests of the Settlement Class.

Plaintiff also seeks to appoint David M. Wilkerson of Wilkerson Justus PLLC; Sophia Gold of Kaliel Gold PLLC; Edwin E. Elliott of Shamis & Gentile, P.A.; and Scott Edelsberg and Adam

Schwartzbaum of Edelsberg Law, P.A. as Class Counsel for the Settlement Class. In appointing Class Counsel pursuant to Rule 23(g), the Court must consider: (a) the work counsel has done in identifying or investigating potential claims in the action; (b) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (c) counsel's knowledge of the applicable law; and (d) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Class Counsel is experienced and knowledgeable in complex consumer class action litigation and well-equipped to vigorously and efficiently represent the Class. *See* Joint Decl. ¶ 22. Moreover, Class Counsel has expended a substantial amount of time investigating BANA's handling of unauthorized electronic fund transfers disputed by members and researching the viability of Plaintiff's claims. *Id.* Accordingly, the Court should appoint Class Counsel for the purpose of settlement.

IV. The Court Should Approve the Notice Program and Appoint Angeion Group as Settlement Administrator.

The Parties' proposed Notice Program will be overseen by Angeion Group, a reputable administrator with deep experience in the field. The Notice Program conforms with Rule 23 and due process, which require counsel to provide "the best notice practicable under the circumstances." *Neal v. Wal-Mart Stores, Inc.*, No. 3:17CV00022KDBDCK, 2020 WL 6157779, at *1 (W.D.N.C. Oct. 19, 2020). Notice is sufficient if it "describes the action and the plaintiffs' rights" and "apprise[s] interested parties of the pendency of the action and afford[s] them an opportunity to present their objections." *Hege v. Aegon USA, LLC*, 780 F. Supp. 2d 416, 429-30 (D.S.C. 2011).

The proposed Email Notice, Postcard Notice, and Long Form Notice track the Federal Judicial Center’s illustrative “model” notices posted at www.fjc.gov, and each provides sufficient information to satisfy due process. Specifically, the Notices clearly and conspicuously describe, among other things: who is a Settlement Class Member; the factual background of the litigation and the Parties; Settlement Class Members’ legal rights, including to participate, opt out, or object, and deadlines for each option; the benefits and details of the relief agreed to; the requested percentage of the Settlement that Class Counsel will seek in attorneys’ fees and the Service Award amount; and how to contact the Settlement Administrator. *See* Agreement Exs. B–D. Each Notice also directs Settlement Class Members to a Settlement Website where they can obtain all relevant information and copies of key documents. *See* Agreement Exs. B–D.

Additionally, the Long Form Notice uses a “frequently asked questions” format and includes answers to questions such as, “How do I know if I’m a Member of the Settlement Class?”; “If I am a Settlement Class Member, What Are My Options?”; and “If I Do Not Exclude Myself from the Settlement, What Claims Am I Giving Up?” *See* Agreement Ex. D. This format constitutes adequate notice. *See* 4 Newberg on Class Actions § 11:53, at p. 167 (4th ed. 2013) (“[N]otice is adequate if it may be understood by the average class member.”).

Further ensuring that Settlement Class Members are adequately informed of their rights, the Settlement Administrator will maintain a toll-free number and a Settlement Website where Settlement Class Members can obtain further information and copies of key documents. *See* Agreement § 4.1.

In sum, the proposed Notice Program is informative, practical, reasonably designed to reach as many Settlement Class members as possible, and comparable to other notice campaigns approved in this Circuit. *See, e.g., Neal*, 2020 WL 6157779, at *2 (approving notice consisting of

email, postcards, and settlement website); *Mcintyre v. Chelsea Therapeutics Int’l, LTD.*, No. 3:12-CV-213-MOC-DCK, 2016 WL 3095225, at *2 (W.D.N.C. June 1, 2016) (approving notice consisting of postcards and settlement website).

V. Proposed Schedule of Events

In connection with Preliminary Approval, the Court should also set the Final Approval Hearing date and time. Other deadlines in the approval process, including the deadlines for opting out from or objecting to the Settlement, will be determined based on the original Final Approval Hearing date. Class Counsel propose the following schedule:

Event	Date
Deadline for commencing emailing and mailing of the Notice to Settlement Class Members and posting the Notice and Claim Form on the Settlement Website (the “Notice Date”)	No later than 75 days after entry of the Preliminary Approval Order
Deadline for Plaintiff to file application for attorneys’ fees and expenses and Service Award	At least 21 days before the Objection/Exclusion Deadline
Deadline for submitting exclusion requests or objections (the “Objection/Exclusion Deadline”)	No later than 45 days after the Notice Date (up to 120 days after entry of the Preliminary Approval Order)
Deadline for submitting Claim Forms	Postmarked or submitted online no later than 60 days after the Notice Date (up to 135 days after entry of the Preliminary Approval Order)
Deadline for Plaintiff to file his Motion for Final Approval and any response to any timely and valid objections	14 days before the Final Approval Hearing
Deadline for Settlement Administrator to submit Declaration Identifying Opt Outs and Confirming Compliance with Notice Plan	At least 10 days before Final Approval Hearing.
Final Approval Hearing	At least 5 months after entry of the Preliminary Approval Order

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court: (1) grant Preliminary Approval to the Settlement; (2) preliminarily certify the proposed Settlement Class pursuant to Federal Rule 23(a) and 23(b)(3); (3) appoint Plaintiff Kirk Layne as Class Representative; (4) approve the Notice Program set forth in the Settlement and the form and content of the Notices; (5) approve and order the opt-out and objection procedures set forth in the Settlement; (6) stay all deadlines in the Action pending Final Approval of the Settlement; (7) appoint as Class Counsel the law firms and attorneys identified herein; and (8) enter the proposed schedule.

Dated: June 19, 2026

Respectfully submitted,

s/ David M. Wilkerson

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