

# **EXHIBIT B**

(Class Action Settlement Agreement  
and Release)

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

GUY BLESSINGER,<sup>1</sup>  
AUDRA NISKI,  
NELSON FERREIRA,  
individually and on behalf  
of all others similarly-situated,

Plaintiffs,

v.

CASE NO.: 8:22-cv-01029-TPB-SPF

WELLS FARGO & COMPANY,

Defendant.

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**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

Named Plaintiffs, Audra Niski and Nelson Ferreira (“Named Plaintiffs”) and Defendant, Wells Fargo & Company (“Defendant”) (collectively the “Parties”), enter into this Class Action Settlement Agreement and Release (the “Agreement”)<sup>2</sup> to resolve all claims in this Action, subject to the approval of the Court.

**I. Recitals.**

1. Named Plaintiffs initiated the Action by filing a Class Action Complaint (Dkt. No. 1) (the “Complaint”) on May 3, 2022. The Complaint asserted claims on behalf of Named Plaintiffs and a putative class against Defendant under

<sup>1</sup> The Class Action Complaint (Dkt. No. 1) was filed in this matter by Plaintiffs Niski and Ferreira, as well as Guy Blessinger. As noted in Plaintiffs’ Motion for Class Certification (Dkt. No. 40), Mr. Blessinger is neither a proposed Class Representative nor a Settlement Class Member because he signed a Mutual Arbitration Agreement with Wells Fargo. *See id.* at 1 n.1.

<sup>2</sup> Other capitalized terms are defined in Section II below.

the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), alleging that Defendant violated the notice requirements of COBRA. Named Plaintiffs seek statutory penalties pursuant to 29 U.S.C. § 1132(c)(1) and 29 C.F.R. § 2575.502c-1 and other damages for themselves and each putative class member who was sent an allegedly defective COBRA Notice. Defendant has, at all relevant times, denied Named Plaintiffs’ allegations and affirmatively asserted its compliance with the law.

2. The Parties litigated this action for several months and engaged in extensive discovery before attending a mediation conference with an experienced and nationally recognized ERISA class action mediator, Martin Scheinman. At mediation, during which both sides were represented by experienced class action counsel, the Parties reached a tentative resolution to this Action and the now enter into this Agreement, which memorializes in full the terms of the Parties’ negotiated resolution.

3. Defendant expressly denies that it has engaged in any wrongdoing, denies that the COBRA Notice at issue is deficient, and denies any violation of COBRA, ERISA, or any other law. By entering into this Agreement, Defendant does not admit or concede any fault or liability in connection with any facts or claims that have been or could have been alleged against it in this Action. Defendant denies that it has any liability whatsoever to Named Plaintiffs or any members of the Settlement Class. Defendant has entered into this Agreement in

recognition of the substantial expense, investment of time, and burden of continued litigation and the concomitant inconvenience, distraction, and disruption to its business operations.

4. Class Counsel (as defined in paragraph 8 below), who have substantial experience representing class representatives and prosecuting class actions, have investigated the law and facts relating to the claims asserted in the Complaint. Based on their experience in representing class representatives and litigating class action cases, Class Counsel conclude this Settlement is fair and reasonable and in the best interests of the Settlement Class. Class Counsel have given due consideration to the benefits of amicably resolving this case as described herein and the risks and delays associated with further litigation.

5. Subject to the approval of the Court, the Parties propose to settle this Action on the terms set forth this Agreement.

## **II. Definitions.**

As used in this Agreement, capitalized terms and phrases not otherwise defined have the meanings provided below:

6. Action: the above-captioned action, *Blessinger v. Wells Fargo & Company*, Case No. 8:22-cv-01029-TPB-SPF, United States District Court, Middle District of Florida, Tampa Division.

7. Agreement or Settlement: this Class Action Settlement Agreement and Release.

8. Class Counsel: Luis A. Cabassa and Brandon J. Hill of Wenzel Fenton Cabassa, P.A., and Marc Edelman of Morgan & Morgan, P.A.
9. Class Notice Date: the date that Notices of Settlement are initially mailed to Settlement Class Members (see paragraph 49 below).
10. Class Period: from May 3, 2018 through December 23, 2021, subject to shorter applicable state limitations periods for a claim for statutory penalties, as best determined by the Parties' counsel.
11. Class Representatives or Named Plaintiffs: Audra Niski and Nelson Ferreira.
12. COBRA: the Consolidated Omnibus Budget Reconciliation Act of 1985, including all regulations promulgated and applicable case law thereunder.
13. COBRA Coverage: continuing health and welfare coverage provided under COBRA.
14. COBRA Notice: the notice regarding the right to elect COBRA Coverage provided by or on behalf of Defendant to the Settlement Class (as defined in paragraph 32 below) in the form at issue in the Action, a copy of which is attached as an exhibit to the Motion for Class Certification at Dkt. No. 40-2.
15. Court: the United States District Court for the United States District Court, Middle District of Florida, Tampa Division.
16. Deadline to File a Settlement Claim Form: the date the Court establishes as the deadline by which Settlement Class Members must postmark a Settlement Claim Form. Unless the Court establishes a different deadline,

Settlement Class Members shall have sixty (60) days after the Notice of Settlement is mailed to submit a timely Settlement Claim Form.

17. Deadline to Opt Out or Object: the date the Court establishes as the deadline by which Settlement Class Members must postmark a written notice of their intent to opt out of the Settlement and by which any objections to the Settlement must be filed with the Court. Unless the Court establishes a different deadline, Settlement Class Members shall have sixty (60) days after the Notice of Settlement is mailed to opt out of or object to the Settlement.

18. Defendant: the named defendant in the Action, Wells Fargo & Company.

19. Effective Date: fourteen (14) days after the first date on which all of the following have occurred: a) Named Plaintiffs and Defendant have executed this Agreement; b) the Court has issued its Preliminary Approval Order; c) the Notices of Settlement have been provided to Settlement Class Members, and the deadlines to submit a Settlement Claim Form and to opt out or object to the Settlement have expired; d) the Court has entered a Final Approval Order approving the Settlement and Class Counsel's attorney's fees and costs; and, e) only if there are written objections timely filed before the Final Approval Hearing and those objections are not withdrawn or overruled, any period for appeals, motion for reconsideration, rehearing, certiorari or any other proceeding seeking review ("Review Proceeding") has expired without the initiation of a Review Proceeding, or if a Review Proceeding has been timely initiated, that there has occurred a full, final,

and complete disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand. If there is no written objection timely filed by a Settlement Class Member that is not withdrawn or overruled, and the events described in subparagraphs (a) through (d) above have occurred, the Effective Date shall be fourteen (14) days after entry of the Court's Final Approval Order (as defined in paragraph 22 below).

20. Final Approval Hearing: the hearing to be conducted by the Court, after the Court issues the Preliminary Approval Order, the Settlement Administrator disseminates the Notice of Settlement to the Settlement Class, and Defendant distributes the required notices under the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA"), at which time Named Plaintiffs will request (and Defendant will not oppose) the Court to finally approve the fairness, reasonableness and adequacy of the terms of this Settlement and to enter a Final Approval Order.

21. Final Approval Motion: the Named Plaintiffs' Unopposed Motion Seeking Final Approval of this Settlement.

22. Final Approval Order: the Court's order granting final approval of this Settlement on the terms provided herein, or as the same may be modified by subsequent written mutual agreement of the Parties.

23. Gross Settlement: One Million Dollars and Zero Cents (\$1,000,000.00), which is the total amount Defendant shall make available in the settlement of this Action pursuant to this Agreement.

24. Net Settlement Proceeds: the amount of money remaining after the Gross Settlement is reduced by the following amounts, none of which Defendant opposes:

- (a) Any General Release Payment of up to \$7,500.00 for each Named Plaintiff;
- (b) Any award of Class Counsel's attorneys' fees up to 30% of the total Gross Settlement (*i.e.*, \$300,000.00), plus reasonable litigation costs (up to \$10,772.94); and
- (c) Court-approved costs of the settlement administration process by the Settlement Administrator, including but not limited to distribution of the Notices of Settlement to Settlement Class Members (estimated to be \$61,000.00).

25. Notice of Settlement: the Notice of Class Action Settlement and Hearing approved by the Court in its Preliminary Approval Order, delivered by e-mail to Settlement Class Members' last known email address, if available (Email Notice), otherwise sent via first-class U.S. Mail (Short Form Notice). If the Settlement Administrator deems the Email Notice undeliverable, then Short Form Notice shall be sent to the Settlement Class Member's last known address. The proposed Long Form Notice will be posted on a website created by the Settlement Administrator. The proposed Email, Short Form and Long Form Notices will be submitted to the Court for approval as part of Named Plaintiffs' Preliminary Approval Motion.

26. Parties: The Named Plaintiffs, the putative Settlement Class, and Defendant.



27. Preliminary Approval Motion: Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

28. Preliminary Approval Order: the Court's Order preliminarily approving this Settlement on the terms herein, or as the same may be modified by subsequent written mutual agreement of the Parties.

29. Released Parties: (i) Defendant; (ii) Defendant's current and former third party COBRA administrators (including, but not limited to, Willis Tower Watson); (iii) Defendant's third party administrators and claims administrators; (iv) any entity that was involved in any way with the drafting or delivery of the COBRA Notice as defined herein; (v) Defendant's benefit plans, sponsors and fiduciaries; and (vi) for each of the entities identified in subparts (i) through (v), their affiliates, parent companies, subsidiaries, predecessors, successors, corporate family members, officers, directors, partners, employees, attorneys, agents, insurers, shareholders, representatives, trustees, principals, and assigns.

30. Settlement Claim: a request for relief under this Agreement, which is made by a Settlement Class Member who submits a Settlement Claim Form that is postmarked on or before the Deadline to File a Settlement Claim Form.

31. Settlement Claim Form: means a form in substantially the same form as that described in the Email or Short Form the Notice of Settlement or on the Settlement website.

32. Settlement Class: all participants and beneficiaries in the Wells Fargo & Company Health Plan who were sent the COBRA Notice by or on behalf of

Defendant at any time during the Class Period who did not elect COBRA Coverage, excluding individuals who entered into arbitration agreements with Defendant. The Settlement Class, consisting of approximately 50,000 members, is to be certified pursuant to Fed. R. Civ. P. 23 for settlement purposes only.

33. Settlement Class Member: any individual who is a member of the Settlement Class.

34. Settlement Account: the account, which shall be a Qualified Settlement Fund as established by Internal Revenue Service regulations, that the Settlement Administrator shall establish for purposes of administering monetary relief under this Agreement.

35. Settlement Administrator: American Legal Claims Services, LLC, a third-party settlement administrator selected and retained by the Named Plaintiffs for purposes of administering the Settlement and mailing the Settlement Claim Form and Notice of Settlement and Settlement Payments to Settlement Class Members.

### **III. Monetary Benefits to the Settlement Class.**

36. Settlement Account. Within seven (7) days of the Effective Date, the Settlement Administrator shall establish a Settlement Account, which shall be treated as a Qualified Settlement Fund, for purposes of administering monetary relief under this Agreement, and shall provide Class Counsel and Defendant's counsel with any information relating to the Settlement Account that is reasonably

necessary for Defendant to fund the Settlement Account, including but not limited to a properly executed Form W-9.

37. Funding of Settlement Account. Within fourteen (14) days of the Effective Date, and upon receipt of a properly executed Form W-9 for the Settlement Account, Defendant shall cause to be deposited the Gross Settlement amount into the Settlement Account, which sum may be paid in one or more deposits to the Settlement Account, which the Settlement Administrator shall use to make Settlement Payments to Settlement Class Members and to pay any amounts approved by the Court for Class Counsel's attorneys' fees and costs, expenses of settlement administration, and any General Release Payments (as defined in paragraph 46 below). The Gross Settlement amount shall be the maximum payment obligation of Defendant and all other Released Parties in settlement of this Action, inclusive of all settlement administration costs.

38. Payment of Settlement Claims. Each Settlement Class Member who submits a Settlement Claim will receive a check out of the Settlement Account for up to Twenty Dollars and Zero Cents (\$20.00). If the total amount that would be required to pay \$20.00 for each Settlement Claim would exceed the amount of the Net Settlement Proceeds, then each Settlement Class Member with a Settlement Claim will receive a check that constitutes an equal pro rata portion of the Net Settlement Proceeds. For the avoidance of doubt, in that scenario, each Settlement Class Member with a Settlement Claim would receive a check in an amount determined by taking the Gross Settlement amount – the cost of settlement

administration by the Settlement Administrator – Class Counsel’s fees and costs – any General Release Payments = Net Settlement Proceeds / number of Settlement Class Members with Settlement Claims = amount of checks to such Settlement Class Members. These amounts are all subject to Court approval. After Defendant pays or causes to be paid the Gross Settlement into the Settlement Account, Defendant and all other Released Parties shall have no liability as to the checks, the amount of the checks, and/or the distribution of checks to each Settlement Class Member with a Settlement Claim.

39. Manner of Distribution. The Settlement Administrator shall send checks to Settlement Class Members with Settlement Claims by first-class U.S. Mail within fourteen (14) days after the Settlement Account is funded. For purposes of this mailing, the Settlement Administrator shall use the address information that Defendant provides for each Settlement Class Member in accordance with this Agreement (see paragraph 49 below), subject to appropriate updating of addresses by the Settlement Administrator and/or Class Counsel by cross-referencing the National Change of Address Database. If any check is returned by the U.S. Postal Service with a forwarding address before the check’s expiration date, the Settlement Administrator will promptly re-mail the check to the forwarding address. If any check is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to obtain a current address for the pertinent Settlement Class Member, and the Settlement Administrator shall

re-mail the check if a current address is obtained before the check's expiration date.

40. Reversion of Any Leftover Amount From Net Settlement Proceeds. If there is any amount of the Net Settlement Proceeds leftover after subtracting the total value of the checks that the Settlement Administrator mails out for Settlement Claims, such leftover amount will revert as directed by Defendant. The Settlement Administrator shall pay such leftover amount out of the Settlement Account, as Defendant directs, within fourteen (14) days after the date when the Settlement Administrator mails checks for Settlement Claims.

41. Deadline for Cashing Checks. Each Settlement Class Member with a Settlement Claim shall have sixty (60) days from the date that appears on the face of the check issued to them to negotiate the check. If any funds remain in the Settlement Account after each Settlement Class Member's 60-day deadline for negotiating their settlement checks has passed, the Settlement Administrator shall retain such funds in the Settlement Account for a period of ten (10) days to allow for the processing and payment of any checks that may still be in the bank's check clearing process. Thereafter, the Settlement Administrator shall close out the Settlement Account by issuing a check for any remaining balance as a *cy pres* award to be paid to Bay Area Legal Services (or any other *cy pres* recipient that the Court may approve). The Parties have selected Bay Area Legal Services, a 501(c)(3) non-profit legal aid organization, and will ask the Court to approve it as the *cy pres* recipient.

42. Payments Not Considered Wages. The Parties agree that the checks to Settlement Class Members with Settlement Claims are not wages and shall not be treated as such for tax purposes. The Settlement Administrator shall arrange for the preparation and filing of any tax reports, forms, and returns required to be filed, prepared or disseminated by the Settlement Account, and will send Class Counsel copies of any such filings and receipts of payment in a timely manner. Neither the Parties nor their respective counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Settlement Account. If any tax liability exists, it is the responsibility of each Settlement Class Member only.

**IV. Attorneys' Fees and Costs; Costs of Administration; and General Release Payments.**

43. Unopposed Motion for Attorneys' Fees and Costs. At least thirty (30) days prior to the Deadline to Opt Out or Object, Named Plaintiffs will file a motion seeking an order from the Court awarding Class Counsel their reasonable attorneys' fees in the sum total of Thirty Percent (30%) of the Gross Settlement (\$300,000.00) and, in addition, out-of-pocket costs incurred in this Action totaling approximately Ten Thousand Seven Hundred Seventy-Two Dollars and Ninety-Four Cents (\$10,772.94) that, upon approval, will be paid from the Settlement Account. Defendant agrees that it will not oppose Named Plaintiffs' application for Class Counsel's attorneys' fees and costs, up to 30% of the Gross Settlement, plus reasonable costs up to \$10,772.94. The Parties agree that attorneys' fees and costs were negotiated separately and only after they agreed on

the Gross Settlement amount. The Settlement Administrator shall make Named Plaintiffs' Motion for Attorneys' Fees and Costs and any attachments available on the Settlement website as soon as practicable after the motion is filed. The procedure for and the allowance or disallowance of any application for fees and costs are matters separate and apart from the Settlement. Any order or proceeding relating to fees and costs, or any appeal from any order relating thereto, or any reversal or modification thereof, shall have no effect on the Settlement, and shall not operate to, or be grounds to, terminate or cancel the Agreement or to affect or delay the finality of the Final Approval Order or any Judgment.

44. Payment of Approved Attorneys' Fees and Costs. Within seven (7) days of the Settlement Account being funded, the Settlement Administrator shall pay attorneys' fees and costs to Class Counsel, pursuant to the terms of the Court order granting such award, by wire transfer or check from the Settlement Account as directed by Class Counsel to the trust account of Wenzel Fenton Cabassa, P.A.

45. Cost of Administration. The Parties agree that all costs of administration shall be paid out of the Settlement Account and not separately by Defendant or Class Counsel. It is estimated the cost of notice for administration will be approximately Sixty-One Thousand Dollars and Zero Cents (\$61,000.00).

46. General Release Payments. At the same time Named Plaintiffs file a motion for Class Counsel's attorneys' fees and costs, each of the Named Plaintiffs may also seek approval of a general release payment (the "General Release Payments") of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00).

In the event these requests for General Release Payments are approved by the Court, the Settlement Administrator shall issue checks from the Settlement Account made payable to the Named Plaintiffs when the Settlement Administrator pays Class Counsel's attorneys' fees and costs. Defendant agrees not to oppose Named Plaintiffs' requests for the General Release Payments. The procedure for and the allowance or disallowance of any General Release Payment are matters separate and apart from the Settlement. Any order or proceeding relating to the General Release Payments, or any appeal from any order relating thereto, or any reversal or modification thereof, shall have no effect on the Settlement, and shall not operate to, or be grounds to, terminate or cancel the Agreement or to affect or delay the finality of the Final Approval Order or any Judgment.

**V. Release of Claims.**

47. Class Release. On the Effective Date, and in consideration of the benefits provided by this Agreement, the sufficiency of which has been determined by the Court and is hereby acknowledged by the Parties, Named Plaintiffs Audra Niski and Nelson Ferreira and all Settlement Class Members, and each of the foregoing's attorneys, agents, spouses, children, beneficiaries, heirs, assigns and dependents, who have not opted out of the Settlement Class, shall fully and forever release, waive, acquit, and discharge each of the Released Parties from any and all claims that have been or could have been brought in this Action with respect to the COBRA Notice sent to each Settlement Class Member at issue in the Named Plaintiffs' Complaint. No individual claims by class members for benefits under



ERISA are subject to this waiver except to the extent the claim for benefits or disputed benefits relate to the alleged failure to receive a proper COBRA Notice. Settlement Class Members (except for Named Plaintiffs) are not subject to the general release described in paragraph 48 below.

48. Named Plaintiffs' General Release: In further consideration of the promise made by Defendant in this Agreement, Named Plaintiffs Audra Niski and Nelson Ferreira release and forever discharge the Released Parties from any and all claims that Named Plaintiffs could have or did assert in this Action, including any and all claims under federal, state or local laws, statutes, regulations, or ordinances, or federal or state common law. Named Plaintiffs intend this Agreement to bar each and every claim, demand, and cause of action described in this paragraph. Excepted from the release contained in this paragraph are any claims or rights that cannot be waived by law. Named Plaintiffs are waiving their rights to any monetary recovery should any agency or third party pursue any claims on their behalf. Named Plaintiffs hereby represent that, other than the Action, they have not filed or instituted, or directed any person or agency to file or institute on their behalf, any complaints, lawsuits, actions, causes of action, administrative charges, claims, controversies, demands, grievances or proceedings against any Released Party, in any forum and that they have not assigned or transferred any interest in any claim or cause of action against Defendant or any Released Party to any person or entity.

**VI. Notice of Settlement and Right to Opt Out or Object.**

49. Notice to Settlement Class Members. The Settlement Administrator shall utilize the Court-approved Email, Short Form and Long Forms of the Notice of Settlement, and Settlement Claim Form, which will be the only forms utilized by the Settlement Administrator. The Settlement Administrator shall also provide the Parties with a list of all documents that will be available to Settlement Class Members on the Settlement Administrator's website. Within ten (10) days after issuance of the Preliminary Approval Order, Defendant shall provide (or cause to be provided) a list of the full names and last known physical mailing addresses, as well as last known email addresses if known, of each Settlement Class Member to the Settlement Administrator. Moreover, within ten (10) days after receiving the list from Defendant (*i.e.*, on the Class Notice Date), the Settlement Administrator shall email the Notice of Settlement to all Settlement Class Members for whom an email address is available, and otherwise shall send the Short Form Notice to Settlement Class Members via first-class U.S. Mail. The Settlement Administrator shall also make the Long Form Notice of Settlement available on its website at the time when the Notice of Settlement is mailed to the Settlement Class Members.

50. Manner of Distributing Notice. For purposes of distributing the Notice of Settlement, the Settlement Administrator shall use the information Defendant provides for each Settlement Class Member in accordance with paragraph 49 of this Agreement, subject to appropriate updating by the Settlement Administrator or Class Counsel of addresses by cross-referencing the National

Change of Address Database. If any Email Notice is deemed undeliverable by the Settlement Administrator, the Settlement Administrator will promptly mail the Short Form Notice to the physical address provided. If the Short Form Notice is returned with a forwarding address, the Settlement Administrator shall mail the Short Form Notice to the updated address. If the Short Form Notice is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to obtain a valid address for the pertinent Settlement Class Member and mail the Notice to the updated address.

51. Settlement Telephone Number. Beginning on the Class Notice Date, or as soon thereafter as practicable, the Settlement Administrator shall establish a toll-free telephone number with an interactive voice response (“IVR”) system that Settlement Class Members may call to obtain further information about the Settlement. The Settlement Administrator shall maintain the telephone number until one hundred (100) days after the Effective Date, at which point it shall be discontinued. Defendant shall have no responsibility for responding to Settlement Class Member inquiries whether written, electronic, or via telephone.

52. Settlement Website. Beginning on the Class Notice Date, or as soon as thereafter as practicable, the Settlement Administrator shall establish an active website (the “Settlement Website”) from which Settlement Class Members can download relevant forms such as the Complaint, the long form Notice of Settlement, this Agreement, and ECF-filed (*i.e.*, publicly-available) copies of the pleadings in support of approval of the Settlement, Named Plaintiffs’ motion for

Class Counsel's attorneys' fees and costs, Named Plaintiffs' motion for General Release Payments, and papers reflecting costs of administration. The Settlement Administrator shall maintain the Settlement Website until one hundred (100) days after the Effective Date, at which point it shall be discontinued.

53. Right to Opt Out. Settlement Class Members who wish to exclude themselves from the Settlement must submit a written statement requesting exclusion from the Settlement ("opt-out request"). Such opt-out request must affirmatively state that the individual wishes to opt out of the Settlement, state the case name and number, contain the name, address, telephone number, and email address of the Settlement Class Member requesting exclusion, and be personally signed by that Settlement Class Member. The opt-out request must be sent by U.S. Mail to the Settlement Administrator (at the address provided in the Notice of Settlement), and must be postmarked on or before the Deadline to Opt Out or Object. The Settlement Administrator shall provide the Parties' counsel (as specified below) with copies of all opt-out requests received to date within five (5) business days after the Deadline to Opt Out or Object, and provide any additional opt-out requests within ten (10) business days after the Deadline to Opt Out or Object. Any Settlement Class Member who timely requests exclusion from the Settlement will not be entitled to any Settlement Payment and will not be bound by this Settlement or have any right to object, appeal or comment thereon. No opt-out request may be made on behalf of a group of Settlement Class Members. Each

opt-out request must be individually signed by the Settlement Class Member who is opting out of the Settlement.

54. Objections. Any Settlement Class Member who does not opt out and wishes to object to the Settlement must file a timely written statement of objection (“objection”) with the Clerk of Court, and mail a copy of that objection to the Settlement Administrator (at the address provided in the Notice of Settlement), filed with the Court and postmarked no later than the Deadline to Opt Out or Object. The Settlement Administrator shall provide the Parties’ counsel (as specified below) with copies of all objections received to date within five (5) business days after the Deadline to Opt Out or Object, and provide any additional objections within ten (10) business days after the Deadline to Opt Out or Object. The objection must state the case name and number; state with specificity the grounds for the objection; state whether it applies to only the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; provide the name, address, telephone number, and email address of the Settlement Class Member making the objection; and indicate whether the Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel. In addition, the objection must be personally signed by the Settlement Class Member and, if represented by counsel, then also by counsel. Any Settlement Class Member who fails to timely object to the Settlement in the manner specified above shall be deemed to have waived any objections to the Settlement and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement.

## **VII. Settlement Approval.**

55. Preliminary Approval Motion. Class Counsel shall be responsible for drafting the first drafts of this Agreement, the Preliminary Approval Motion, plus all related exhibits/notices for Defendant's counsel's review. The Parties agree to collaborate in good faith in the preparation and finalization of the Preliminary Approval Motion. The Preliminary Approval Motion will request that the Court (a) enter an agreed-upon Preliminary Approval Order; (b) certify the Settlement Class for Settlement purposes only; (c) appoint Named Plaintiffs as the named Class Representatives and Named Plaintiffs' counsel as Class Counsel for Settlement purposes; (d) authorize distribution of the Notice of Settlement to the Settlement Class Members; (e) set a Deadline to Opt Out or Object; and (f) set a date for a Final Approval Hearing, to occur at least ninety (90) days after the Court's Preliminary Approval Order.

56. CAFA Notices. Defendant shall submit the notices required under CAFA, to the applicable state and federal officials within ten (10) days of the filing of the Preliminary Approval Motion.

57. Final Approval Motion. At least fourteen (14) days before the Final Approval Hearing, or on the date set by the Court (if different), Named Plaintiffs shall file a Final Approval Motion. Class Counsel shall be responsible for drafting the first drafts of the Final Approval Motion and proposed Final Approval Order and will coordinate finalizing the motion and proposed order with input from Defendant. The Parties agree to collaborate in good faith in the preparation and

finalization of the Final Approval Motion and Final Approval Order. Prior to finalizing the Final Approval Motion, the Settlement Administrator shall provide Class Counsel and Defendant's counsel with a report listing the names and addresses of all Settlement Class Members to whom the Settlement Administrator mailed a Notice of Settlement, and indicating which Settlement Class Members submitted a timely opt-out request, if any, and which Settlement Class Members submitted a timely objection, if any (as well as copies of any such opt-out requests or objections).

58. Right to Terminate Settlement. The Parties shall each have the right to unilaterally terminate this Agreement by providing written notice of their election to do so within ten (10) days after any of the following have occurred: (a) the Court refuses to certify the Settlement Class as defined herein; (b) the Court refuses to grant preliminary approval of the Settlement after the Parties have attempted to re-submit the Preliminary Approval Motion at least one time addressing any issues raised by the Court as to the first Preliminary Approval Motion and/or this Agreement; (c) the Court refuses to grant final approval of the Settlement (or if the Final Approval Order agreed to by the Parties is materially modified in a manner unacceptable to either Party); or (d) any objection(s) are timely made, and, as a result of said objection(s), the Final Approval Order is reversed, or if the Final Approval Order is materially modified in a manner unacceptable to either Party by the U.S. Court of Appeals for the Eleventh Circuit or the U.S. Supreme Court.

59. The above notwithstanding, the Parties agree that should any of the conditions set forth in paragraph 58 occur, the Parties will, within the above-indicated period, meet and confer by telephone in a good-faith attempt to reach agreement on a settlement of this Action.

60. In addition, Defendant shall have the right unilaterally to terminate this Agreement by providing written notice to Class Counsel of its election to do so within fifteen (15) business days after the Deadline to Opt Out or Object if a total of one percent (1%) or more of the total Settlement Class Members request exclusion from the Settlement by submitting timely opt-out requests.

61. Termination of Settlement. If the Settlement is terminated pursuant to paragraph 58 or 60 of this Agreement, the Parties will return to the *status quo ante*, and the Action shall proceed as if this Settlement had never been negotiated. Specifically, the Parties agree that:

- (a) the Settlement proposed herein shall be of no further force and effect;
- (b) the agreements and definitions in this Agreement concerning the certification of the Settlement Class will not be used as evidence or argument to support class certification or the definition of any class in this Action or any further litigation, and Defendant will retain all rights to oppose the certification of any class in this Action and any further litigation, which shall survive the termination of the Settlement; and
- (c) this Agreement and all negotiations, proceedings and statements relating thereto, and any amendment thereof, shall be null and void and shall be without prejudice to the Parties or the Released Parties, and each Party and Released Party shall be restored to his, her or its respective position as it existed prior to the execution of this Agreement.



62. Settlement Modification. The Parties may agree by written stipulation of counsel to reasonable modifications of the timetables set forth in this Agreement or to modifications to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court, without the need to formally amend this Agreement.

63. Dismissal with Prejudice: Within five (5) days after the Effective Date, Named Plaintiffs and Defendant agree to stipulate to the dismissal with prejudice of the Action. Named Plaintiffs and Defendant agree they will request that the Court retain jurisdiction to enforce the Agreement until one hundred (100) days after the Effective Date.

### **VIII. Other Provisions.**

64. Mediation; Dispute Resolution. If the Parties disagree upon the terms of this Agreement or as to any matter concerning the administration of this Settlement, the Parties and the relevant Released Parties agree to use their best efforts to amicably resolve the dispute and to participate in mediation before an agreed upon mediator prior to seeking relief from the Court.

65. Authority. The signatories below represent that they are fully authorized to enter into this Agreement. All Settlement Class Members who do not opt out are bound by the signature of the Named Plaintiffs as to any settlement and/or judgment.

66. No Press Release or Publicity. Neither the Parties nor their counsel will issue any press releases or otherwise comment to the press concerning the Settlement.

67. No Admission/ No Waiver. The Settlement shall not be deemed to be an admission of any liability or wrongdoing by Defendant or any Released Party in any manner, nor shall it be construed as such, but rather it is understood that Defendant is settling this matter to, among other reasons, avoid the cost of protracted litigation. Neither this Agreement, nor any document or account relating to this Settlement shall be construed as, offered or admitted into evidence as, or be deemed to be evidence for any purpose adverse to Defendant or any Released Party, except for purposes of settling this Action or enforcing settlement of this Action. Defendant enters into this Agreement solely on the facts and circumstances particular to the matters covered by this Agreement. This Agreement shall not be deemed as an admission by, waiver of, or used as estoppel against, the rights of Defendant to assert that the claims set forth in this Action or any other proceeding are otherwise inappropriate for class certification under Rule 23 in the absence of the Settlement. To the extent this Settlement is not approved, Defendant does not waive, but rather expressly reserves all rights to challenge any and all claims and allegations asserted by Named Plaintiffs (whether procedural or substantive) should the Action proceed.

68. Best Reasonable Efforts and Mutual Full Cooperation. The Parties agree to fully cooperate with one another to accomplish the terms of this

Agreement, including, but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this Settlement. The Parties will use their best reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary as ordered by the Court, or otherwise, to effectuate this Agreement and to secure the Court's approval of the Settlement.

69. Communications with Settlement Class Members. The Parties and their respective counsel shall not discourage any Settlement Class Member from participating in this Settlement or lobby or encourage any Settlement Class Member to opt out of the Settlement or object to the Settlement.

70. Binding Effect on Successors and Assigns. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

71. Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, arm's length negotiations between the Parties, and that this Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or Party's counsel participated in the drafting of this Agreement.

72. Entire Agreement. This Agreement and the attached exhibits, incorporated herein by reference, constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior negotiations, communications, and agreements between the Parties, and may not be amended,

or any of their provisions waived, except by a writing executed by all Parties hereto. The 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 all terms and conditions of the Agreement and to exercise their commercially reasonable best efforts to accomplish the foregoing terms and conditions of the Agreement. The Parties intend this Agreement to be a final and complete resolution of all disputes between them, relating to or arising out of the subject matter of the Action. Accordingly, the Parties agree that the terms of the Agreement represent a good-faith settlement, reached voluntarily based upon adequate information and after consultation with experienced counsel. The Parties confirm Class Counsel's attorneys' fees and costs were not discussed until all other terms were reached.

73. Governing Law. This Agreement shall be governed by the laws of the State of Florida without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

74. Venue. The Parties hereby agree that any action brought upon the enforcement of this Agreement shall be commenced or filed in the United States District Court for the Middle District of Florida, Tampa Division.

75. Effect of Paragraph Titles Captions and Headings. Paragraph titles, captions, and headings in this Agreement are inserted as a matter of convenience and for reference purposes only, and in no way define, limit, extend, or describe

the scope of this Agreement or any provision in it. Apart from those provisions expressly designated as Recitals, each term of this Agreement is contractual and is not merely a recital.

76. Notices. Unless otherwise specifically provided in this Agreement, any notices or communications to Named Plaintiffs or Defendant relating to this Settlement should be sent to their respective counsel in writing, and will be deemed to have been duly given as of the third business day after mailing by U.S. registered or certified mail, return receipt requested or as of the date of delivery confirmation by Federal Express, United Parcel Service or equivalent express carrier, as follows:

**Named Plaintiffs' Counsel:**

Luis A. Cabassa, Esq.  
Brandon J. Hill, Esq.  
Wenzel Fenton Cabassa, P.A.  
1110 N. Florida Ave., Suite 300  
Tampa, FL 33602

Marc Edelman  
Morgan & Morgan, P.A.  
201 N. Franklin Street, Suite 700  
Tampa, FL 33602

**Defendant's Counsel:**

Edward J. Meehan, Esq.  
Mark C. Nielsen, Esq.  
Paul J. Rinefierd, Esq.  
Groom Law Group, Chartered  
1701 Pennsylvania Avenue, NW  
Suite 1200  
Washington, D.C. 20006

77. Counterparts. This Agreement may be executed in one or more counterparts. All executed copies of this Agreement and photocopies thereof

(including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

78. Settlement Class Signatories. The Parties agree that because the Settlement Class Members are so numerous, it is impossible and impracticable to have each Settlement Class Member execute this Agreement. Therefore, the Notice of Settlement will advise all Settlement Class Members of the binding nature of the Agreement and will have the same force and effect as if executed by each Settlement Class Member.

79. Authority of Court. The administration and implementation of the Settlement as embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Agreement, including, but not limited to, enforcement of the releases contained in paragraphs 47 and 48 of this Agreement. The Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Agreement.

80. Execution. The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on Effective Date, as defined in this Agreement, and if it has been executed by all Parties.

***[Remainder of this page left blank; signatures on next page]***

**AUDRA NISKI**

*Audra Niski*  
\_\_\_\_\_

DATE: 07 / 14 / 2023  
\_\_\_\_\_

**NELSON FERREIRA**

\_\_\_\_\_

DATE: \_\_\_\_\_

**WELLS FARGO & COMPANY**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**AUDRA NISKI**

\_\_\_\_\_

DATE: \_\_\_\_\_

**NELSON FERREIRA**

*Nelson Ferreira*  
\_\_\_\_\_

DATE: 07 / 14 / 2023  
\_\_\_\_\_

**WELLS FARGO & COMPANY**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



**AUDRA NISKI**

\_\_\_\_\_

DATE: \_\_\_\_\_

**NELSON FERREIRA**

\_\_\_\_\_

DATE: \_\_\_\_\_

**WELLS FARGO & COMPANY**

DocuSigned by:  
*Louise Bushby*  
BY: \_\_\_\_\_  
C7693A4FF9C1420...

TITLE: Head of Total Rewards

DATE: 7/18/2023