

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

RICHARD SWIFT,

Plaintiff,

v.

Case No. 3:14-cv-1539-J-20PDB

BANK OF AMERICA CORPORATION,
NB HOLDINGS CORPORATION and
FIA CARD SERVICES, N.A.,

Defendants.

STIPLULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement, dated April 19, 2016 (“**Stipulation**”), embodies a settlement (“**Settlement**”) made and entered into by the following Settling Parties: (i) Plaintiff Richard Swift, on behalf of himself and the Class, as defined below (“**Plaintiff**”) and (ii) Defendants Bank of America Corporation, NB Holdings Corporation and FIA Card Services, N.A. (“**Defendants**” or “**Bank of America**”) (collectively, the “**Settling Parties**”), through their respective counsel, which resolves the above-referenced class action litigation pending in the United States District Court for the Middle District of Florida (“**Action**”). This Stipulation is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof and subject to the approval of the Court.

I. THE LITIGATION

On December 31, 2014 a Class Action Complaint (“**Complaint**”) was filed in the United States District Court for the Middle District of Florida (“**Court**”) on behalf of a putative class of

“[a]ll persons within the United States who, between February 1, 2013 and the present, received a non-emergency call from Bank of America Corporation, NB Holdings Corporation, or FIA Card Services, N.A., or any of their affiliates or subsidiaries, to a cellular telephone through the use of an automatic telephone-dialing system, and who did not provide prior express consent to receive such calls.” The Complaint alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), and sought certification of the putative class, as defined in the Complaint, statutory damages, injunctive relief, and an award of attorneys’ fees and costs on behalf of Plaintiff and the Class.

On March 10, 2015, Defendants filed a Motion to Dismiss or, in the Alternative, Stay This Action (Doc. 16). On April 3, 2015, Plaintiff filed his Response to Defendants’ Alternative Motions to Dismiss or Stay (Doc. 25), and on June 18, 2015, the Court denied Defendants’ Motion to Dismiss (Doc. 26). On July 2, 2015, Defendants filed their Answer to Class Action Complaint (Doc. 27). On August 27, 2015, Plaintiff served discovery requests on Defendants, and on October 1, 2015, Defendants served their responses and objections. On January 29, 2016, a mediation was held between the parties before mediator Peter Woodin at the offices of JAMS in New York, New York. While the mediation held on that day did not result in an agreement, subsequently, and as a result of the efforts of the mediator, the parties reached an agreement in principle of the claims of the putative Class on February 2, 2016.

The forthcoming deadlines in this Action include: discovery deadline on March 17, 2016; expert disclosure deadline on June 15, 2016; motion for class certification deadline on July 15, 2016; dispositive motion deadline on September 30, 2016; pre-trial conference on January 25, 2017, and trial term commencing March 6, 2017 (Doc. 31). The approval of this settlement by the Court will alleviate the further expenditure of efforts and resources by the parties and their

respective counsel and provide meaningful relief for the class, as detailed below, without the need for further litigation.

II. CLAIMS OF PLAINTIFF AND BENEFITS OF SETTLEMENT

This litigation is a class action brought by Plaintiff on behalf of himself and the Class against Defendants for allegedly violating the TCPA by contacting the cellular telephones of approximately 30,000 Class Members with whom Defendants did not and do not have a business relationship. The contacts were made between February 1, 2013 and the present and were placed using an autodialer. Defendants deny all of Plaintiff's allegations.

Plaintiff brought this Action in good faith and believes that the claims asserted in the Action have merit and that the evidence developed to date supports the claims alleged. However, Plaintiff recognizes and acknowledges the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeals. Further, Plaintiff has taken into account the uncertain outcome and risk of any litigation, especially in complex cases such as this Action, as well as the difficulties and delays inherent in such litigation. Plaintiff is also mindful of possible defenses to the TCPA violations asserted in the Action, as well as the risks in pursuing class certification in this case. Plaintiff believes that the Settlement set forth in the Stipulation confers substantial benefits upon the Class. Based on their evaluation, Plaintiff and his Counsel have determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiff and the Class, and that the Settlement is fair, reasonable and adequate.

III. DEFENDANTS' DENIAL OF WRONGDOING AND LIABILITY

Defendants have denied and continue to deny each and all of the claims and contentions alleged in this Action. Defendants have expressly denied and continue to deny all charges of

wrongdoing or liability against them arising out of any of the conduct, acts or omissions alleged, or that could have been alleged, in this Action. Nonetheless, Defendants have concluded that further litigation of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiff (for himself and the Class) and Defendants, through their respective counsel-of-record, that, subject to the approval of the Court, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, this Action and the Released Claims shall be finally and fully compromised, settled and released, and the Action shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Stipulation, as follows.

1. Definitions

As used in the Stipulation, the following terms have the meanings specified below:

1.1 “Class” or “Class Members” means all persons who, between February 1, 2013 through the date of the execution of the Stipulation, received an auto-dialed and/or pre-recorded call or text message to their cellular telephone from Defendants about a Bank of America account (including, but not limited to, a mortgage, credit card, or auto loan account) other than their own Bank of America accounts and who did not provide prior express consent to receive such calls or text messages.

1.2 “Class Counsel” means Jonathan Cohen, Rachel Soffin and John Yanchunis of the law firm of Morgan & Morgan Complex Litigation Group.

1.3 “Class Period” means the period from February 1, 2013 through the effective date of the settlement.

1.4 “Defendants” means Bank of America Corporation, NB Holdings Corporation and FIA Card Services, N.A.

1.5 “Effective Date” means the first date by which all of the events and conditions specified in paragraph 7.1 of the Stipulation have been met and have occurred.

1.6 “Escrow Agent” means Epiq Systems.

1.7 “Final” means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form attached hereto as Exhibit A-1, shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of the time in which to appeal the Judgment has passed without any appeal having been taken; and (iii) if a motion to alter or amend is filed or if an appeal is taken, the determination of that motion or appeal in such a manner as to permit the consummation of the Settlement, in accordance with the terms and conditions of this Stipulation. For purposes of this paragraph, an “appeal” shall include any petition for a writ of *certiorari* or other writ that may be filed in connection with approval or disapproval of this Settlement, but shall not include any appeal which concerns only the issue of attorneys’ fees, costs and expenses or any Plan of Distribution of the Settlement Fund.

1.8 “Judgment” means the judgment and order of dismissal with prejudice to be rendered by the Court upon final approval of the Settlement, substantially in the form attached hereto as Exhibit A-1.

1.9 “Net Settlement Fund” means the Settlement Fund of \$1,000,000.00 minus the fees, costs, expenses and awards set forth in the Stipulation, including, but not limited to, those identified in the Plan of Distribution.

1.10 “Person” means an individual, corporation (including all divisions and subsidiaries), partnership, limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and his, her or its spouses, heirs, predecessors, successors, representatives, or assignees.

1.11 “Plaintiff” means Richard Swift.

1.12 “Plaintiff’s Counsel” means Jonathan Cohen, Rachel Soffin and John Yanchunis of the law firm of Morgan & Morgan Complex Litigation Group.

1.13 “Plan of Distribution,” as set forth in paragraph 9 of the Stipulation, means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Class Members after payment of expenses of notice and administration of the Settlement, any service award approved by the Court to be provided to Plaintiff, and such attorneys’ fees, costs, and expenses, as may be awarded to Plaintiff’s Counsel by the Court. Any Plan of Distribution is not part of the Stipulation and the Released Persons shall not have any responsibility or liability with respect thereto.

1.14 “Released Claims” means all claims, whether known or unknown (including, but not limited to, “Unknown Claims”), as defined in paragraph 1.19, that were asserted or could have been asserted in this case by Plaintiff or Class Members, directly against the Released Persons under federal or state law, including, without limitation, all claims arising out of, or relating to, in whole or in part, the claims or facts and circumstances asserted in this Action, including, without limitation, any claims by Plaintiff or Class Members arising out of, or relating to, Defendants’ alleged violations of the TCPA during the Class Period. Excluded from the “Released Claims” are claims arising out of the violation or breach of the terms of the Settlement.

1.15 “Released Person” means Defendants, as well as each and all of their present or former parents, subsidiaries, affiliates (as defined in 17 C.F.R. §210.1- 02(b)), successors and assigns, and each and all of the present or former officers, directors, employees, agents, attorneys, accountants, financial advisors, commercial bank lenders, insurers, investment bankers, representatives, general and limited partners and partnerships, heirs, executors, administrators, successors and assigns of each of them.

1.16 “Settlement Administrator” means Epiq Systems.

1.17 “Settlement Fund” means \$1,000,000.00 in cash to be paid to the Escrow Agent pursuant to paragraph 2.1 of this Stipulation. The Settlement Fund is comprised of \$1,000,000.00 to be paid by Defendants.

1.18 “Settling Parties” means, collectively, Defendants and Plaintiff on behalf of himself and the Class.

1.19 “Unknown Claims” means any Released Claims which Plaintiff or any Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the

Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiff shall expressly and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by the laws of the state of Florida. Plaintiff and Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiff shall expressly, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiff acknowledges, and Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

2. The Settlement

a. The Settlement Fund

2.1 Defendants shall cause the payment of \$1,000,000.00 to be transferred to the Escrow Agent within ten (10) calendar days after the later of: (i) the date that the Court has entered an order preliminarily approving the Settlement; and (ii) the date that Defendants receive

instructions from Plaintiff's Counsel referencing a taxpayer identification number for the Settlement Fund. These funds, in the total amount of \$1,000,000.00, shall constitute the Settlement Fund. The Settlement Fund shall be held by the Escrow Agent until further order of the Court, except that prior to the time the Court enters the Judgment, the Fund may be drawn upon by the Escrow Agent to pay class notice and administration costs. All costs and expenses in connection with the administration of the Settlement, any service award to Plaintiff and the attorneys' fees, costs and expenses awarded to Plaintiff's Counsel shall be paid from the Settlement Fund subject to approval from the Court.

b. The Escrow Agent

2.2 The Escrow Agent shall maintain the Settlement Fund deposited pursuant to paragraph 2.1 hereof in a non-interest bearing bank account maintained at a banking institution that is fully insured by the United States Government or an agency thereof.

2.3 The Escrow Agent shall not disburse the Settlement Fund except: (a) in order to pay for notice and administration costs pursuant to paragraph 2.1 hereof; (b) as provided in the Stipulation; (c) by an order of the Court; or (d) with the written agreement of counsel for the Settling Parties.

2.4 Subject to further order(s) and/or directions as may be made by the Court, or as provided in the Stipulation, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of the Stipulation. The Settling Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

2.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such

time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

c. Injunctive Relief

2.6 Defendants represent that they have implemented changes to policies and procedures that govern outbound phone calls to cellular telephone numbers associated with existing Bank of America customers in order to mitigate the risk of making more than one call to persons other than the intended call recipient who may have acquired a Bank of America customer's former cellular telephone number. Specifically, Defendants represent that as of May 2015 they perform daily reviews of instances in which a call recipient indicated that he or she was not the person that Defendants were attempting to contact and that Defendants' computer systems are updated on a daily basis to reflect any such responses from call recipients. In addition, Defendants have implemented monitoring to ensure that these processes are validated.

d. Termination of Settlement

2.7 In the event that the Stipulation is not approved or fails to become effective for any reason, the Settlement Fund, less expenses actually incurred or due and owing for notice and administrative costs pursuant to paragraph 2.1, shall be refunded to Defendants pursuant to written instructions from Defendants' counsel. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither Plaintiff nor his counsel shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to paragraph 2.1 of the Stipulation.

3. Notice Order and Settlement Hearing

3.1 Promptly after execution of the Stipulation, the Settling Parties shall submit the Stipulation together with the attached exhibits ("**Exhibits**") to the Court and shall apply for entry

of an order (“**Notice Order**”), substantially in the form attached hereto as Exhibit A-2, requesting, *inter alia*, the preliminary approval of the Settlement set forth in the Stipulation; approval for the mailing of a settlement notice postcard (“**Notice**”); and approval for the posting of a settlement notice on the website located at www.SwiftBofASettlement.com (or some other website established and maintained by the Settlement Administrator) in the forms attached hereto as Exhibits A-3 and A-4. The Notice shall include a summary of the Settlement terms set forth in the Stipulation, the proposed Plan of Distribution, the general terms of the Fee and Expense Motion, the directions for the filing of objections, and the date of the Final Settlement Approval Hearing.

3.2 Plaintiff’s Counsel shall request that after notice is given to the Class, the Court hold a hearing (“**Final Settlement Approval Hearing**”) and approve the Settlement of the Action as set forth herein. At or after the Final Settlement Approval Hearing, Plaintiff’s Counsel shall also request that the Court approve the proposed Plan of Distribution and the Fee and Expense Motion.

4. Releases

4.1 Upon the Effective Date, Plaintiff and each Class Member shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged against the Released Persons all Released Claims (including Unknown Claims), as well as any other claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the Action or the Released Claims.

4.2 Upon the Effective Date, Plaintiff and each Class Member, and their predecessors, successors, agents, representatives, attorneys and affiliates, and the heirs, executors, administrators, successors and assigns of each of them, directly or indirectly, individually,

derivatively, representatively or in any other capacity, shall be permanently barred and enjoined from the assertion, institution, maintenance, prosecution or enforcement, individually or as a putative class member or class representative, against Defendants, or any other Released Persons, in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all Released Claims; provided however, that if Defendants: (a) fail to execute the Stipulation and such other documents as may be required to obtain final Court approval of the Stipulation; or (b) fail to cause Defendants' payment of the Settlement Fund to be deposited with the Escrow Agent, Plaintiff and each Class Member, and their predecessors, successors, agents, representatives, attorneys and affiliates, and the heirs, executors, administrators, successors and assigns of each of them, shall not be so barred and enjoined with respect to claims against Defendants.

4.3 Upon the Effective Date, Defendants and any of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged Plaintiff, Class Members, and Plaintiff's Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement or resolution of the Action or the Released Claims.

4.4 This Section regarding the Releases, paragraphs 4.1 through 4.4, constitutes a release and waiver of, without limitation as to any other applicable law, Section 1542 of the California Civil Code, and any similar laws of other states. Section 1542 of the California Civil Code provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE

MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

Plaintiff understands and acknowledges, and each member of the Class shall be deemed to understand and acknowledge, the significance of these releases and of this waiver of California Civil Code section 1542 and of any and all similar laws of other states relating to limitations on releases, including, without limitation, limitations on releases of unknown or unliquidated claims. In connection with such releases, waiver and relinquishment, Plaintiff acknowledges, and all members of the Class shall be deemed to acknowledge, that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement and releases, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the releases of the Released Claims will be and will remain in effect notwithstanding the discovery or existence of any such additional or different facts.

4.5 For avoidance of doubt, none of the foregoing provisions apply to any claims for breach of this Settlement Agreement.

5. Administration of Settlement Notice Plan and Objections

5.1 The Settlement Administrator, subject to such supervision and direction of the Court as may be necessary or as circumstances may require, shall provide notice of the Settlement to the Class.

5.2 Within twenty-one (21) business days of the date that the Court enters an order preliminarily approving the Settlement, the Settlement Administrator shall mail to all Class Members with reasonable effort: (1) a form of notice, substantially in the form hereto as Exhibit A-3, setting forth a summary of the terms of the Stipulation, including the proposed Plan of Distribution and Plaintiff's Counsel's proposed request for attorneys' fees, costs and expenses;

the right to object to the Settlement, proposed Plan of Distribution, or proposed request for fees, costs and expenses; and the right to appear at the Final Settlement Approval Hearing.

5.3 Within ten (10) business days of the date that the Court enters an order preliminarily approving the Settlement, the Settlement Administrator shall cause the Notice to be posted on the website located at www.SwiftBofASettlement.com (or some other website established and maintained by the Settlement Administrator), which was created by the Settlement Administrator and is dedicated to this Action. The cost of the procedures described in this paragraph shall be paid out of the Settlement Fund.

5.4 Within forty-five (45) calendar days after the mailing of the Notice or such other time as may be set by the Court, each Class Member who wishes to object to the Settlement shall be required to submit to the Court and the Settlement Administrator a letter stating his, her or its objection to the Settlement.

5.5 Except as otherwise ordered by the Court, all Class Members who fail to submit written objections as set forth in paragraph 5.4, shall be forever barred from objecting to the Stipulation and the Settlement set forth herein, and will in all other respects be subject to and bound by the provisions of the Stipulation, the releases contained herein, and the Judgment.

5.6 The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the Settlement notice plan or objection procedures set forth herein.

5.7 No Person shall have any claim against Plaintiff, Plaintiff's Counsel, Defendants, the Released Persons or their respective counsel, or the Settlement Administrator, based on the administration of the Settlement, including, without limitation, the Settlement notice plan, distributions made in accordance with the Settlement Agreement and the Settlement contained herein, the Plan of Distribution, or further order(s) of the Court.

6. Attorneys' Fees, Costs and Expenses for Plaintiff's Counsel

6.1 Plaintiff's Counsel may submit a motion ("**Fee and Expense Motion**") seeking distributions to Plaintiff's Counsel from the Settlement Fund for: (a) reimbursement of actual costs and expenses incurred in connection with prosecuting the Action; plus (b) an award of attorneys' fees to be paid out of the Settlement Fund. Defendants will take no position with regard to the Fee and Expense Motion, but nothing in this clause or Agreement shall prevent Defendants from responding, in full, to any of the Court's inquiries regarding the Fee and Expense Motion. Neither Plaintiff's Counsel nor any Class Member shall be entitled to terminate the Stipulation if the Court disapproves of or modifies the terms of this Stipulation with respect to attorneys' fees, costs or expenses, or the distribution of the Net Settlement Fund.

6.2 The attorneys' fees awarded, and all the costs and expenses, including the fees of experts and consultants, as awarded by the Court, shall be paid to Plaintiff's Counsel from the Settlement Fund, as ordered, immediately after the Court enters the Judgment, and executes an order awarding such fees and expenses. This provision shall apply notwithstanding timely objections to, potential for appeal from, or collateral attack on, the Settlement. Defendants shall have no obligation to make any payment other than as provided in funding the Settlement Fund. In the event the Stipulation shall not become effective for any reason, the attorneys' fees, costs and expenses, including the fees of experts and consultants, as awarded by the Court, and paid to Plaintiff's Counsel, shall be refunded to Defendants.

6.3 The procedure for and the allowance or disallowance by the Court of the Fee and Expense Motion to be paid out of the Settlement Fund, are not part of the Settlement set forth in the Stipulation, and any order or proceeding relating to the Fee and Expense Motion, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to

terminate or cancel the Stipulation, or affect or delay the finality of the Judgment, approving the Stipulation and the Settlement of the Action.

6.4 Released Persons shall have no responsibility for any payment of attorneys' fees, costs and expenses to Plaintiff's Counsel or Class Member's counsel over and above payment of the Settlement Fund.

7. Conditions of Settlement; Effect of Disapproval or Cancellation

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

(a) execution of the Stipulation and such other documents as may be required to obtain final Court approval of the Stipulation in a form satisfactory to Plaintiff's Counsel and Defendants' counsel;

(b) Defendants causing their contribution to the Settlement Fund to be deposited with the Escrow Agent;

(c) the Court entering the Notice Order, as required by paragraph 3.1 hereof;

(d) the Court entering a Judgment that, *inter alia*, dismisses with prejudice the Action as set forth above; and

(e) the Judgment becoming Final, as defined in paragraph 1.8 hereof.

7.2 Upon the occurrence of all of the events referenced in paragraph 7.1 hereof, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. Upon the occurrence of any of the following events, the Stipulation shall be canceled and terminated unless Plaintiff's Counsel and Defendants' Counsel mutually agree in writing to proceed with the Settlement:

(a) Defendants fail to cause the Settlement Fund to be deposited with the Escrow Agent as required by paragraph 2.1 hereof;

(b) the Court declines to enter the Notice Order, as required by paragraph 3.1 hereof;

(c) the Court declines to enter a Judgment that, *inter alia*, dismisses with prejudice the Action as set forth above; or

(d) the Judgment fails to become Final, as defined in paragraph 1.8 hereof.

7.3 In the event that the Stipulation is not approved by the Court or the Settlement set forth in the Stipulation fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Action as of January 29, 2016. In such event, the terms and provisions of the Stipulation, with the exception of paragraphs 1.1-1.19, 2.6 and 8.3-8.4 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in this Action or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*, and the Settling Parties shall be deemed to return to their status as January 29, 2016 and shall be required to present an amended schedule to the Court. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Distribution or the amount of any attorneys' fees, costs and expenses awarded by the Court to Plaintiff's Counsel shall constitute grounds for cancellation or termination of the Stipulation.

8. Miscellaneous Provisions

8.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this Stipulation; and (b) agree to cooperate to the extent reasonably necessary to effectuate and

implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

8.2 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Action. The Settlement shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Judgment will contain a finding that, during the course of the Action, the parties and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement were negotiated in good faith by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Action was brought or defended in bad faith or without a reasonable basis.

8.3 Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; or (c) is or may be deemed to be, or may be used as an admission or evidence that any claims asserted by Plaintiff were not valid or that the amount recoverable was not greater than the Settlement amount in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Released Persons, Plaintiff, and/or Plaintiff's

Counsel may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8.4 All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Stipulation.

8.5 All of the Exhibits to Plaintiff's Memorandum are material and integral parts hereof and are fully incorporated herein by this reference.

8.6 The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8.7 The Stipulation and the attached Exhibits constitute the entire agreement among the Settling Parties and no representations, warranties or inducements have been made to any Settling Parties concerning the Stipulation or the Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided herein, each Settling Party shall bear its own costs.

8.8 Neither Class Members nor Defendants shall be bound by the Stipulation if the Court or any appellate court modifies material terms thereof, provided, however, that it shall not be a basis for Class Members to terminate the Settlement if the Court modifies any proposed Plan of Distribution or criteria for allocation of the Settlement Fund amongst the Class Members, or the Plan of Distribution is modified on appeal. Nor shall it be a basis to terminate the Stipulation if the Court or any appellate court disapproves of or modifies the terms of this Stipulation with respect to attorneys' fees, costs or expenses or the distribution of the Net Settlement Fund. Notwithstanding any such modification of the terms or Plan of Distribution or

the Stipulation with respect to attorneys' fees, costs or expenses, Defendants shall be entitled to all benefits of the Settlement and shall not, under any circumstances, be called upon to contribute additional funds to the Settlement Fund.

8.9 Plaintiff's Counsel, on behalf of the Class, is expressly authorized to take all appropriate action required or permitted to be taken by the Class pursuant to the Stipulation to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the Class which they deem appropriate.

8.10 Plaintiff and Plaintiff's Counsel represent and warrant that none of Plaintiff's claims or causes of action referred to in this Action or this Stipulation have been assigned, encumbered or in any manner transferred in whole or in part.

8.11 Each counsel or other Person executing the Stipulation or any of the attached Exhibits on behalf of any Settling Party hereby warrants that such Person has the full authority to do so.

8.12 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

8.13 The Stipulation shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the Settling Parties hereto.

8.14 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all Settling Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

8.15 Pending approval of the Court of the Stipulation and the attached Exhibits, all proceedings in this Action shall be stayed and all Class Members shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Persons.

8.16 This Stipulation and the attached Exhibits shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the state of Florida, and the rights and obligations of the Settling Parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Florida without giving effect to that State's choice-of-law principles.

9. Plan of Distribution

9.1 The Settlement Administrator, subject to such supervision and direction of the Court as may be necessary or as circumstances may require, shall oversee distribution of the Settlement Fund, which shall be applied and distributed by the Settlement Administrator in accordance with the following:

(a) after entry of the Judgment, to pay Plaintiff a service award in an amount not to exceed \$1,500.00, as allowed by the Court;

(b) after entry of the Judgment, to pay Plaintiff's Counsel's costs and expenses incurred in connection with the Action, as allowed by the Court;

(c) to pay all the costs and expenses reasonably and actually incurred in connection with providing notice, locating Class Members, and administering and distributing the Settlement Fund to Class Members;

(d) to pay any fees charged by the Escrow Agent pursuant to paragraph 2.1;

(e) after entry of the Judgment, to pay Plaintiff's Counsel's attorneys' fees in an amount not to exceed 25% of the Settlement Fund, as allowed by the Court;

(f) after entry of the Judgment and after deduction of the amounts set forth in (a), (b), (c), (d) and (e) of paragraph 9.1, to distribute the balance of the Net Settlement Fund to Class Members, as allowed by the Stipulation, this Plan of Distribution, or the Court by mailing checks in equal *pro rata* amounts to each Class Member at his, her or its mailing address, as maintained by the Settlement Administrator and confirmed through the National Change of Address Database. The mailed checks shall be valid for a period of one-hundred and eighty (180) days. The cost of these procedures shall be paid out of the Settlement Fund.

(g) For any checks that are returned undeliverable with forwarding address information, the Settlement Administrator shall re-mail the check to the new address indicated. For any payment checks that are returned undeliverable without forwarding address information, the Settlement Administrator shall make reasonable efforts to identify updated address information and re-mail checks to the extent an updated address is identified. The cost of these procedures shall be paid out of the Settlement Fund.

9.2 Defendants shall not have a reversionary interest in the Net Settlement Fund. If there is any balance remaining in the Net Settlement Fund after one-hundred and eighty (180) days from the date of distribution of the Net Settlement Fund (whether by reason of uncashed checks, the failure of checks to be delivered to Class Members or otherwise), any such balance shall be redistributed to Class Members who filed claims if it is economically feasible to redistribute such balance. In the event that it is not economically feasible to distribute the balance to Class Members, the balance shall be donated in the form of a *cy pres* award to The Florida Bar Foundation, or to another legal aid organization providing legal services or 501(c)(3) nonprofit organization approved by the Court.

9.3 Defendants shall take no position with respect to the Plan of Distribution or any other such plan as may be approved by the Court.

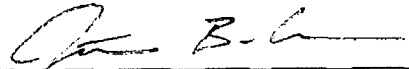
9.4 It is understood and agreed by the Settling Parties that any order or proceeding relating to the Plan of Distribution shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's Judgment approving the Stipulation and the Settlement set forth herein, or any other orders entered pursuant to the Stipulation. Class Members and Defendants shall be bound by the terms of this Stipulation, irrespective of whether the Court disapproves or modifies the Plan of Distribution.

9.5 The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the administration and distribution of the Net Settlement Fund, the Plan of Distribution, or any losses incurred in connection therewith.

IN WITNESS HEREOF, the parties hereto have caused the Stipulation to be executed by their duly authorized attorneys, dated as of April 19, 2016.

**MORGAN & MORGAN
COMPLEX LITIGATION GROUP**

Jonathan B. Cohen
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