

# **EXHIBIT A-1**

*Colon v. Johnson et al* Class Action Settlement Agreement  
Final for Execution

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Johana Colon, Christine Rundberg, and Anthony Womack, as representatives of a class of similarly situated persons, and on behalf of the Advanced Diagnostic Group Employee Stock Ownership Plan,

Plaintiffs,

v.

Kevin G. Johnson, Nathan S. Ward, Shaun L. McGruder, Michael L. Schmickle, Leigh A. Fernandes, Dale L. Hersey, Joshua A. Blacksten, ADG Management Holdings, LLC, and GreatBanc Trust Co.,

Defendants.

Civil Action

No. 8:22-cv-00888-TPB-TGW

**CLASS ACTION SETTLEMENT AGREEMENT**

This CLASS ACTION SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into pursuant to Rule 23 of the Federal Rules of Civil Procedure. This Settlement Agreement is entered into by and between the Class Representatives in this Class Action, for themselves and on behalf of the Settlement Class and the Plan, on the one hand, and Defendants, on the other.

NOW, THEREFORE, without any admission or concession on the part of the Class Representatives of any lack of merit of the Class Action whatsoever, and without any admission or concession on the part of Defendants as to the merits of the allegations or claims asserted in the Class Action, it is hereby STIPULATED AND AGREED, by and among the Settling Parties to this Settlement Agreement, through their respective attorneys, subject to approval of the Court pursuant to Federal Rule of Civil Procedure 23(e), in consideration of the benefits flowing to the Settling Parties hereto from the Settlement Agreement, including avoiding the inherent risks, difficulties, uncertainties, and delays in conclusively resolving complex ERISA litigation such as the Class Action, that all Released Claims as

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against the Released Parties shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the following terms and conditions:

**1. ARTICLE 1 – DEFINITIONS**

As used in this Settlement Agreement and the Exhibits hereto, unless otherwise defined, the following terms have the meanings specified below:

1.1. “Administrative Expenses” means expenses incurred in the administration of this Settlement Agreement, including (a) all fees, expenses, and costs associated with providing the Settlement Notice to the Class Members; (b) all expenses related to taxes (including taxes and tax expenses noted in Section 4.5); (c) all expenses and costs associated with the distribution of funds under the Plan of Allocation; (d) all fees and expenses of the Settlement Administrator and Escrow Agent; (e) all fees and expenses of the Independent Fiduciary, not to exceed \$20,000 in fees plus up to \$5,000 in expenses; and (f) all fees, expenses, and costs associated with providing CAFA Notices. Excluded from Administrative Expenses are the Settling Parties’ respective legal fees and expenses. Administrative Expenses shall be approved by the Court and paid or reimbursed from the Qualified Settlement Fund.

1.2. “Alternate Payee” means a person other than a Participant or Beneficiary in the Plan who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order (“QDRO”), where the QDRO relates to the benefit of a Participant.

1.3. “Attorneys’ Fees and Costs” means the amount awarded by the Court as compensation for the services provided and expenses advanced and carried by Class Counsel. The amount of Attorneys’ Fees that Class Counsel will seek shall not exceed one-third of the Gross Settlement Amount and shall be deducted from the Gross Settlement Amount and paid from the Qualified Settlement Fund. In addition, Class Counsel also will seek reimbursement for all litigation costs and expenses advanced and carried by Class Counsel for the duration of this Class Action, which also shall be paid from the Qualified Settlement Fund.

1.4. “Beneficiary” means a person who is entitled, based on the designation of a Participant or by the terms of the Plan, to receive a benefit under the Plan that is derivative of a Participant’s benefit under the Plan, other than an Alternate Payee.

1.5. “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711-1715.

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1.6. “CAFA Notice” means notice of this proposed Settlement to the appropriate federal and state officials pursuant to CAFA, substantially in the form set forth in Exhibit E hereto.

1.7. “Class Action” means *Colon, et al. v. Johnson, et al.*, Civil Action No. 8:22-cv-00888-TPB-TGW, in the United States District Court for the Middle District of Florida, Tampa Division.

1.8. “Class Counsel” means Engstrom Lee LLC as lead class counsel and Wenzel, Fenton, Cabassa, P.A. as local counsel.

1.9. “Class Period” means the period from January 1, 2015, through the Settlement Agreement Execution Date.

1.10. “Class Representatives” means Johana Colon, Christine Rundberg, and Anthony Womack on behalf of themselves, the Plan, and each of the Class Members, and their respective Successors-In-Interest.

1.11. “Complaint” means the Second Amended Class Action Complaint filed on June 23, 2023, at ECF Dkt. 169.

1.12. “Court” means the United States District Court for the Middle District of Florida, Tampa Division.

1.13. “Defendants” means Kevin Johnson, Dale Hersey, Leigh Anne Fernandes, Nathan Ward, Shaun McGruder, Michael Schmickle, and ADG Management Holdings, LLC (collectively, “Officer/PBC Defendants”), Joshua Blacksten (“Blacksten”), and GreatBanc Trust Company (“GreatBanc”).

1.14. “Defense Counsel” means counsel for Defendants: Bryan Cave Leighton Paisner, LLP; Hodkin Stage, PLLC; Kilpatrick Townsend & Stockton, LLP; Holland & Knight, LLP; and Jackson Lewis P.C.

1.15. “Escrow Agent” means Huntington National Bank or another entity selected by Class Counsel, subject to approval by Defendants, which approval shall not be unreasonably withheld, to act as escrow agent for any portion of the Gross Settlement Amount deposited in or accruing in the Qualified Settlement Fund pursuant to this Agreement.

1.16. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*, including all regulations promulgated thereunder.

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1.17. “Final Fairness Hearing” means the hearing scheduled by the Court to consider (a) any objections by Class Members to the Settlement; (b) Class Counsel’s petition for Attorneys’ Fees and Costs, and Administrative Expenses; and (c) whether to finally approve the Settlement under Fed. R. Civ. P. 23.

1.18. “Final” means, with respect to any judicial ruling, order, or judgment, that the period for any motions for reconsideration, motions for rehearing, appeals, petitions for certiorari, or the like (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of any judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand.

1.18.1. The Settling Parties agree that absent an appeal or other attempted Review Proceeding, the Final Approval Order becomes Final forty-five (45) calendar days after its entry by the Court.

1.18.2. Notwithstanding any other provision hereof, the Final Approval Order shall be deemed Final without regard to whether the Court has entered an order regarding the award of Attorneys’ Fees and Costs, and Administrative Expenses, or whether that order has become Final, or is reversed or modified on appeal.

1.19. “Final Approval Order” means the entry of the order and final judgment approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Class Action with prejudice, to be proposed by the Settling Parties for approval by the Court, in substantially the form attached as Exhibit D hereto.

1.20. “Gross Settlement Amount” means the sum of NINETEEN MILLION (\$19,000,000.00), contributed to the Qualified Settlement Fund in accordance with Article 4.

1.20.1. The Officer/PBC Defendants shall pay or cause to be paid \$15,000,000.00 in full settlement of Plaintiffs’ claims against them.

1.20.2. GreatBanc shall cause its insurers to pay \$4,000,000.00 in full settlement of Plaintiffs’ claims against it.

1.20.3. Neither Defendants nor their insurers will make any additional payment in connection with the Settlement of the Class Action.

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1.21. “Independent Fiduciary” means Fiduciary Counselors Inc., which has no relationship to any of the Settling Parties and will serve as an independent fiduciary to the Plan to approve and authorize the Settlement of Released Claims on behalf of the Plan in accordance with Section 2.1.

1.22. “Mediator” means Mark W. Bennett, Retired U.S. District Judge, who presided over a two-day in-person and remote mediation in this Class Action on January 9 & 10, 2024, with substantial follow up with the Settling Parties over the next nine days on same (the “Mediation”).

1.23. “Net Settlement Amount” means the Gross Settlement Amount plus any interest earned by the Qualified Settlement Fund minus: (a) all Attorneys’ Fees and Costs and (b) all Administrative Expenses.

1.24. “Non-Rollover-Electing Settlement Class Member” means a Settlement Class Member who does not submit a Rollover Form or whose Rollover Form is rejected by the Settlement Administrator.

1.25. “Participant” means an employee of a participating employer in the Plan who became eligible to receive a benefit under the Plan between December 11, 2015, and May 31, 2019.

1.26. “Person” means an individual, partnership, corporation, limited liability company, governmental entity or any other form of legal entity or organization.

1.27. “Plaintiffs” means the Class Representatives and each Settlement Class Member.

1.28. “Plan” means the Advanced Diagnostic Group Employee Stock Ownership Plan, and the trust created and attendant to the Plan.

1.29. “Plan of Allocation” means the method of allocating and distributing the Net Settlement Amount to Settlement Class Members as set forth in Section 5.1.

1.30. “Preliminary Approval Order” means the order of the Court to be proposed by the Settling Parties for approval by the Court in substantially the form attached hereto as Exhibit C, whereby the Court preliminarily approves this Settlement.

1.31. “Prior Distributions” means all distributions from the Plan issued to Participants or their Beneficiaries or Alternate Payee before the Settlement Agreement Execution Date. It is the understanding of the Settling Parties, Class Counsel, and Defense Counsel that the last Prior Distributions were issued from the Plan in 2020.

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Subject to confirmation by the Settlement Administrator, it is the understanding of the Settling Parties, Class Counsel, and Defense Counsel that the aggregate amount of Prior Distributions is \$10,498,570.

1.32. “Qualified Settlement Fund” means the interest-bearing settlement fund account to be established and maintained by the Escrow Agent in accordance with Articles 4 & 5 herein and referred to as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).

1.33. “Released Claims” means any and all past, present, and future actual or potential claims (including claims for any and all losses, damages, unjust enrichment, attorneys’ fees, disgorgement, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), actions, demands, rights, obligations, liabilities, expenses, costs, and causes of action, accrued or not, whether arising under federal, state, or local law, whether by statute, contract, or equity, including but not limited to for breach of fiduciary duty, prohibited transaction, or for equitable relief against non-fiduciaries under ERISA, whether brought in an individual or representative capacity, whether accrued or not, whether known or unknown, suspected or unsuspected, foreseen or unforeseen based in whole or in part on acts or failures to act during the Class Period or Settlement administration process related to or that could have impacted the Plan or Plaintiffs’ interests in the Plan, directly or indirectly:

1.33.1. That were asserted or could have been asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the Complaint and the prior versions of the Complaint filed in the Class Action;

1.33.2. That arise out of, relate in any way to, are based on, or have any connection with or that could have been raised against the Defendants related to or that could have impacted the Plan or Plaintiffs’ interests in the Plan, directly or indirectly, that were discovered or that could have been discovered from discovery that occurred during this Class Action, including but not limited to those asserted in Plaintiffs’ expert reports served on January 2, 2024, prior to the Mediation; or

1.33.3. That would be barred by *res judicata* based on entry of the Final Approval Order;

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1.33.4. That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to any Settlement Class Member in accordance with the Plan of Allocation; or

1.33.5. That relate to the approval by the Independent Fiduciary of the Settlement, unless brought against the Independent Fiduciary alone.

1.33.6. The Class Representatives, Settlement Class Members and the Plan expressly waive and relinquish, to the fullest extent permitted by law, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which provides that a “general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor,” and any similar state, federal or other law, rule or regulation or principle of common law of any domestic governmental entity.

1.33.7. “Released Claims” do not include (i) any claims to enforce this Settlement Agreement; (ii) any claims that Plaintiffs may have in an individual, derivative, or representative capacity against GreatBanc’s counsel Moore & VanAllen and individual Moore & VanAllen attorneys as to the Plan; (iii) indemnification rights that the Officer/PBC Defendants, GreatBanc or Blacksten may have against ADG Acquisition Holdings, Inc., and any of its predecessors, successors, parents, subsidiaries, and affiliates (except the Plan and any participant in the Plan); and (iv) indemnification rights that Nathan Ward, Shaun McGruder, Michael Schmickle, and ADG Management Holdings, LLC, may have against persons or entities who are not: (x) parties to the Class Action or their respective counsel and insurers; or (y) the Plan or any Settlement Class Member.

1.33.8. For the avoidance of doubt, “Released Claims” include claims, if any, that Plaintiffs could assert against GreatBanc (or any other Defendant) arising out of or related in any way now or in the future to any claims that Plaintiffs may have in their individual, derivative, or representative capacities against GreatBanc’s counsel Moore & VanAllen and individual Moore & VanAllen attorneys as to the Plan, whether known or unknown.

1.34. For the avoidance of doubt, the Officer/PBC Defendants, GreatBanc and Blacksten note that they reserve all indemnification rights that they may have against ADG Acquisition Holdings, Inc., and any of its predecessors, successors, parents, subsidiaries, and affiliates (except the Plan and any participant in the Plan).



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1.35. “Released Parties” means (a) all Defendants and any of their Successor-In-Interest; (b) Defendants’ insurers, co-insurers, and reinsurers; (c) Defendants’ attorneys, agents, directors, officers, employees, or representatives, but excluding Moore & VanAllen and individual Moore & VanAllen attorneys as to the Plan; (d) Scott Long; Victor Balestra; Michael Chalhoub; Anna Schlanger; Richard Schlanger; Jessica McGruder; James Harpel; Teresa (Schmickle) Dittmar; 2014 Johnson Family GRAT; and 2015 Johnson Family GRAT; (e) Stout Risius Ross; (f) any affiliates or affiliated companies of the Defendants; (g) anyone that Plaintiffs could have asserted was a fiduciary as to the Plan; and (h) anyone that Plaintiffs could have asserted was a “party in interest” as to the Plan, but excluding Moore & VanAllen and individual Moore & VanAllen attorneys as to the Plan. “Released Parties” does not include ADG Acquisition Holdings, Inc. or any of its predecessors, successors, parents, subsidiaries, and affiliates (except the Plan and any Settlement Class Member) with respect to claims for indemnification as described in Section 1.34.

1.36. “Rollover Form” means the form substantially similar to Exhibit B that the Settlement Administrator will send with the Settlement Notice, subject to Section 1.46, Section 2.3.5, and Section 5.6.2.

1.37. “Rollover-Electing Settlement Class Member” means a Settlement Class Member whose Rollover Form is accepted by the Settlement Administrator.

1.38. “Settlement” means the settlement to be consummated under this Settlement Agreement and its exhibits, including any modifications or amendments adopted pursuant to Section 13.6.

1.39. “Settlement Administrator” means Analytics Consulting LLC (“Analytics”), an independent contractor to be retained by Class Counsel and approved by the Court for purposes of sending the Settlement Notices to the Class and establishing the Settlement Website and telephone support line. As Settlement Administrator, Analytics is appointed the “administrator” of the Qualified Settlement Fund under Treas. Reg. § 1.468B-2(k)(3)(ii) and, consistent with Treas. Reg. § 1.468B-2(l)(2) and under the terms of this Settlement Agreement, is responsible for all tax withholding and reporting for the Qualified Settlement Fund and its distributions, including determining whether tax-qualified roll-over distributions may be offered to the Settlement Class Members, and administering the Settlement and Plan of Allocation.

1.40. “Settlement Agreement” means this agreement embodying the terms of the Settlement, including any modifications or amendments hereto.

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1.41. “Settlement Agreement Execution Date” is the last date that this Settlement Agreement is executed by a Settling Party.

1.42. “Settlement Class” or “Class” means the following class to be certified by the Court for settlement purposes: All Participants who were issued a distribution from the Plan, or their Beneficiaries or Alternate Payee, excluding Leigh Anne Fernandes and Dale Hersey.

1.43. “Settlement Class Members” or “Class Members” means all individuals in the Settlement Class, including the Class Representatives.

1.44. “Settlement Credit Amount” means that portion of the Net Settlement Amount payable to an individual Settlement Class Member, as determined according to the procedures described in Section 5.1 herein.

1.45. “Settlement Effective Date” means the date on which the Final Approval Order is Final, provided that by such date the Settlement has not been terminated in accordance with Article 11.

1.46. “Settlement Notice” means the Notice of Class Action Settlement and Final Fairness Hearing to be sent to Class Members identified by the Settlement Administrator following the Court’s issuance of the Preliminary Approval Order, in substantially the form attached hereto as Exhibit A. The Settlement Notice shall inform Class Members of a Final Fairness Hearing to be held by the Court, on a date to be determined by the Court, at which any Class Member satisfying the conditions set forth in the Preliminary Approval Order and the Settlement Notice may be heard regarding: (a) the terms of the Settlement Agreement; (b) the petition of Class Counsel for award of Attorneys’ Fees and Costs; and (c) payment or reimbursement of Administrative Expenses. Subject to its discretion and authority granted by the Preliminary Approval Order and further identified in Section 5.6.2, the Settlement Administrator will include a Rollover Form, in substantially the form attached hereto as Exhibit B, with the Settlement Notice.

1.47. “Settlement Website” means the internet website established in accordance with Section 12.2.

1.48. “Settling Parties” means the Defendants and the Class Representatives, the latter on behalf of themselves, the Plan, and each of the Settlement Class Members.

1.49. “Successor-In-Interest” shall mean a Person’s estate, legal representatives, heirs, successors or assigns, including successors or assigns that result from corporate mergers or other structural changes.

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**2. ARTICLE 2 – REVIEW AND APPROVAL BY INDEPENDENT FIDUCIARY, PRELIMINARY SETTLEMENT APPROVAL, AND NOTICE TO THE CLASS**

2.1. Independent Fiduciary. The Independent Fiduciary retained by Defendants, solely in their role as Settling Parties entitled to a binding Plan release, shall have the following responsibilities, including whether to approve and authorize the settlement of Released Claims on behalf of the Plan.

2.1.1. The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”), in making its determination.

2.1.2. The Independent Fiduciary shall notify Defendants directly of its determination, in writing (with copies to Class Counsel and Defense Counsel), which notification shall be delivered no later than ten (10) calendar days after Class Counsel provide the Independent Fiduciary either a draft in substantially final form of, or after they file, their application for Attorney’s Fees and Costs with the United States District Court.

2.1.3. All fees and expenses associated with the Independent Fiduciary’s determination and performance of its other obligations in connection with the Settlement, up to \$20,000 in fees and up to \$5,000 in expenses, will constitute Administrative Expenses and will be paid from the Qualified Settlement Fund, subject to Court approval.

2.1.4. Defendants, Defense Counsel, Class Counsel and Class Representatives shall respond to reasonable requests from the Independent Fiduciary for information so that the Independent Fiduciary can review and evaluate the Settlement Agreement, including any requests for confidential information submitted by the parties to the Mediator.

2.1.5. If Defendants reasonably conclude, solely in their role as Settling Parties entitled to a binding Plan release, that the Independent Fiduciary’s determination does not comply with PTE 2003-39 or is otherwise deficient, Defendants shall so inform the Independent Fiduciary and Class Counsel within five (5) calendar days of receipt of the determination.

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2.1.6. A copy of the Independent Fiduciary determination letter and report shall be provided to Class Counsel, who may file it with the Court in support of final approval of the Settlement.

2.2. Preliminary Approval. Based on the Court's order, ECF Dkt. 265, the Class Representatives, through Class Counsel, shall file with the Court on or by March 27, 2024, a motion seeking preliminary approval of this Settlement Agreement and for entry of the Preliminary Approval Order in substantially the form attached hereto as Exhibit C. While Defendants may not agree with all the averments of Plaintiffs' Motion for Preliminary Approval of Settlement, Defendants will not object to the relief sought in Plaintiffs' motion. Class Counsel shall give Defendants at least five days before filing to review the draft in substantially final form of Plaintiffs' Motion for Preliminary Approval. Defendants may, but shall not be required to, submit papers in connection with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. Defendants shall provide any comments to Plaintiffs' Motion at least two days prior to filing and, if any issues are not amicably resolved, Defendants will provide copies of any such papers they intend to file in substantially final form to Class Representatives, through Class Counsel, at least one day prior to filing.

2.3. The Preliminary Approval Order to be presented to the Court shall, among other things:

2.3.1. Grant the motion to certify the Settlement Class for settlement purposes only under Fed. R. Civ. P. 23(b)(1);

2.3.2. Approve the text of the Settlement Notice for mailing to Settlement Class Members;

2.3.3. Determine that under Fed. R. Civ. P. 23(c)(2), the Settlement Notice constitutes the best notice practicable under the circumstances, provides due and sufficient notice of the Final Fairness Hearing and of the rights of all Class Members, and complies fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law;

2.3.4. Approve the appointment of the Settlement Administrator, including for the Settlement Administrator to be responsible for all tax withholding and reporting related to the Qualified Settlement Fund, including for determining whether tax-qualified rollover distributions may be offered to the Settlement Class Members;

2.3.5. Order the Settlement Administrator to send—within thirty (30) calendar days following entry of the Preliminary Approval Order—by first-class

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mail the Settlement Notice to each Settlement Class Member, in accordance with Section 2.6;

2.3.6. Approve the establishment of the Qualified Settlement Fund;

2.3.7. Approve the appointment of the Independent Fiduciary and payment or reimbursement of up to \$25,000 in fees and expenses of the Independent Fiduciary from the Qualified Settlement Fund;

2.3.8. Provide that, pending final determination of whether the Settlement Agreement should be approved, no Settlement Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants, the Released Parties, and/or the Plan;

2.3.9. Set the Final Fairness Hearing for at least one hundred and twenty (120) days after entry of the Preliminary Approval Order, in order to determine whether: (a) the Court should approve the Settlement as fair, reasonable, and adequate; (b) the Court should enter the Final Approval Order; and (c) the Court should approve the application for Attorneys' Fees and Costs, and Administrative Expenses;

2.3.10. Provide that any objections to any aspect of the Settlement Agreement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Final Fairness Hearing if they have been filed validly with the Clerk of the Court and copies provided to Class Counsel and Defense Counsel. To be filed validly, the objection and any supporting documents must be filed or postmarked at least twenty-one (21) calendar days prior to the scheduled Final Fairness Hearing. Any Person wishing to speak at the Final Fairness Hearing shall file, with copies provided to Class Counsel and Defense Counsel, a notice of intent to participate fourteen (14) calendar days before the Final Fairness Hearing. A notice of intent to participate shall be timely filed if it is post-marked to the Clerk of Court, Class Counsel, and Defense Counsel within fourteen (14) calendar days before the Final Fairness Hearing;

2.3.11. Provide that any party may file a response to an objection by a Class Member at least seven (7) calendar days before the Final Fairness Hearing;

2.3.12. Provide that the Final Fairness Hearing may be held in person, by telephone, or via videoconference, without further direct notice to

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the Class Members, other than by notice to Class Counsel, and/or be adjourned or continued by order of the Court; and

2.3.13. Approve the form of the CAFA Notice attached as Exhibit E and order that upon mailing of the CAFA Notices, Defendants shall have fulfilled their obligations under CAFA.

2.4. Settlement Class. The Settling Parties agree to certification of the Settlement Class for settlement purposes only, and Defendants agree not to challenge certification of the Settlement Class for settlement purposes. The Settling Parties further agree that, if the Settlement does not become Final, then no Settlement Class will be deemed to have been certified by, or as a result of, this Settlement Agreement, and the Class Action and the claims asserted therein will revert to their status as of the day immediately before the stay entered by the Court on January 16, 2024, at ECF Dkt. 258. In such event, Defendants will not be deemed to have consented to the certification of any class, and the agreements and stipulations in this Settlement Agreement and its Exhibits concerning class definition, class period, and class certification shall not be used in any way to support any class definition, any class period, any class certification, or for any other purpose, and Defendants will retain all rights to oppose class certification. Defendants' foregoing reservation of rights with respect to class certification shall not be construed as consent of Plaintiffs to Defendants filing any additional papers in opposition to Plaintiffs' motion for class certification pending as of January 16, 2024, at ECF Dkt. 212.

2.5. Settlement Administrator. Plaintiffs and Defendants shall use reasonable efforts to respond timely to written requests, including by e-mail, from the Settlement Administrator for any readily accessible data that they have from discovery that is reasonably necessary to determine the feasibility of administering the Plan of Allocation or to implement the Plan of Allocation.

2.5.1. The Settlement Administrator must agree to be bound by the Amended Agreed Confidentiality Order (ECF Dkt. 241) entered in the Class Action and any further non-disclosure or security protocol required by the Settling Parties.

2.5.2. The Settlement Administrator shall use the data acquired in discovery, including from the Plan's former Recordkeeper, solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.

2.5.3. At the request of the Settling Parties, the Settlement Administrator shall provide a written protocol addressing how the Settlement Administrator

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will maintain and store information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.

2.6. Settlement Notice. By the date and in the manner set by the Court in the Preliminary Approval Order, and unless otherwise set forth below, the Settlement Administrator shall cause to be sent to each Class Member identified by the Settlement Administrator a Settlement Notice and Rollover Form in the form and manner to be approved by the Court, which shall be in substantially the form attached hereto as Exhibits A and B or a form subsequently agreed to by the Settling Parties and approved by the Court.

2.6.1. The Settlement Administrator shall use records provided by the Plan's former recordkeeper in discovery in the Class Action to identify Settlement Class Members and their mailing addresses last known to the Plan.

2.6.2. Before mailing a Settlement Notice to a Settlement Class Member, the Settlement Administrator shall (a) determine whether the Settlement Class Member has provided an updated mailing address to Class Counsel or the Settlement Administrator and (b) use commercially reasonable efforts to attempt to verify the Settlement Class Member's mailing address and search for any new address information. For any returned Settlement Notice, the Settlement Administrator shall make a second commercially reasonable effort to try to find that Class Member, including mailing the Settlement Notice at least one additional time. Each Settlement Notice shall be sent to the mailing address determined, in the judgment of the Settlement Administrator, most likely to reach the Settlement Class Member.

2.6.3. The Settlement Administrator shall email the Settlement Notice to each Settlement Class Member who provides an email address to the Settlement Administrator and requests such electronic copy.

2.6.4. The Settlement Administrator may communicate with the Plan's former recordkeeper, with prior notice to Class Counsel and Defense Counsel, if the Settlement Administrator believes that such communication may help to explain, verify, or supplement the information regarding the Class provided by the Plan's former recordkeeper in discovery in the Class Action. Any expense incurred as a result of such communication shall be deemed to be an Administrative Expense of the Settlement, and Plaintiffs shall request payment or reimbursement of any such expense from the Qualified Settlement Fund. Defendants shall not be obligated to make any payment related to Plan records inquiries in connection with the Settlement. The Settling Parties agree that they

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will not withhold any approval or consent to release information to the Settlement Administrator, if requested by the Plan's former recordkeeper.

2.7. CAFA Notice. No later than ten (10) calendar days after the filing of the motion for preliminary approval of the Settlement, Defendants will serve or cause the Settlement Administrator to serve the CAFA Notice in substantially the form attached as Exhibit E hereto on the Attorney General of the United States and the attorneys general of all states in which Class Members reside, as specified by 28 U.S.C. § 1715.

**3. ARTICLE 3 – FINAL SETTLEMENT APPROVAL**

3.1. No later than thirty (30) calendar days before the Final Fairness Hearing, Class Counsel shall submit to the Court a motion for entry of the Final Approval Order (Exhibit D) in the form approved by Class Counsel and Defense Counsel, which shall request approval by the Court of the terms of this Settlement Agreement and entry of the Final Approval Order in accordance with this Settlement Agreement. Class Counsel shall give Defendants at least five days to review Plaintiffs' Motion for Final Approval before filing. Defendants may, but shall not be required to, submit papers in connection with Plaintiffs' Motion for Final Approval.

3.2. The Final Approval Order as proposed by the Settling Parties shall provide for the following, among other things, as is necessary to carry out the Settlement consistent with applicable law:

3.2.1. Approval of the Settlement of the Released Claims covered by this Settlement Agreement adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class Members and directing the Settling Parties to take the necessary steps to effectuate the terms of the Settlement Agreement;

3.2.2. A determination under Fed. R. Civ. P. 23(c)(2) that the Settlement Notice constitutes the best notice practicable under the circumstances and that due and sufficient notice of the Final Fairness Hearing and the rights of all Class Members has been provided;

3.2.3. Dismissal with prejudice of the Class Action and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Class Members, or on behalf of the Plan, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement;

3.2.4. That the Plan and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners,



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officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be: (a) conclusively deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from all Released Claims; and (b) barred and enjoined from suing the Released Parties in any action or proceeding alleging any of the Released Claims;

3.2.5. That each Class Member shall release the Released Parties and Class Counsel for any claims, liabilities, and attorneys' fees and costs arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and costs;

3.2.6. That the provisions of Sections 3.2.3., 3.2.4 and 3.2.5 shall apply even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Class Action and the Released Claims, whether or not such Class Members receive a monetary benefit from the Settlement, whether or not such Class Members actually received the Settlement Notice, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and Administrative Expenses and whether or not the objections or claims for distribution of such Class Members have been approved or allowed;

3.2.7. That Section 15(b) of the Amended Agreed Confidentiality Order entered in the Class Action (ECF Dkt. 241) is modified for the limited purpose of allowing the Settling Parties, Class Counsel, and Defense Counsel to retain and use Confidential Information and documents marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" in connection with claims that are excluded from the definition of "Released Claims" per Section 1.33.7.

3.2.8. That all applicable CAFA requirements have been satisfied;

3.2.9. That (a) the Plan of Allocation is approved; (b) the Settlement Administrator shall have final authority to determine each Class Member's Settlement Credit Amount in accordance with the Plan of Allocation; and (c) the Settlement Administrator is authorized to direct the Escrow Agent to make such distributions from the Qualified Settlement Fund as necessary to implement the Plan of Allocation

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3.2.10. That within thirty-one (31) calendar days following the issuance of all Settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each Person who received a Settlement payment from the Qualified Settlement Fund and the amount of such payment;

3.2.11. Consistent with Section 13.1, that the Court shall retain jurisdiction to enforce and interpret the Settlement Agreement.

3.3. The Final Approval Order and judgment entered by the Court approving the Settlement Agreement shall provide that upon its entry, all Settling Parties, Class Members, and the Plan shall be bound by the Settlement Agreement and the Final Approval Order.

**4. ARTICLE 4 – ESTABLISHMENT AND FUNDING OF THE QUALIFIED SETTLEMENT FUND**

4.1. No later than ten (10) calendar days after the Preliminary Approval Order is issued, the Settlement Administrator shall cause to be established, at the Escrow Agent, an account for the safekeeping of the Settlement payments (the “Qualified Settlement Fund”), which shall be an interest-bearing account and considered a common fund created as a result of the Class Action. The Qualified Settlement Fund shall be governed by this Settlement Agreement and orders of the Court. The Settling Parties agree that the escrow account is intended to be, and will be, an interest-bearing Qualified Settlement Fund within the meaning of U.S. Department of Treasury Regulation § 1.468B-1 (26 C.F.R. § 1.468B-1).

4.2. Based on information to be supplied by the Settlement Administrator, Class Counsel shall provide to Defendants: (i) written notification of the date of establishment of the Qualified Settlement Fund; (ii) written notification of the following information regarding the Escrow Agent and the Settlement Fund Account: bank name, bank address, ABA number, account number, account name, and IRS Form W-9 and taxpayer identification number; and (iii) any additional information needed for Defendants to deposit the payments set forth below into the Qualified Settlement Fund. The Settlement Administrator shall direct the Escrow Agent to make distributions by wire transfer or check from the Qualified Settlement Fund in strict accordance with the Settlement Agreement and Court Orders. No other disbursements may be authorized.

4.2.1. Within thirty (30) days of the entry of the Preliminary Approval Order, the Officer/PBC Defendants shall pay or cause to be paid \$150,000, and

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GreatBanc shall cause its insurers to pay \$40,000, into the Qualified Settlement Fund.

4.2.2. Within forty-five (45) days of the entry of the Final Approval Order, the Officer/PBC Defendants shall pay or cause to be paid \$14,850,000, and GreatBanc shall cause its insurers to pay \$3,960,000, into the Qualified Settlement Fund, unless there is a Review Proceeding of the Final Approval Order, in which case these payments will be made 30 days after the Final Approval Order and the subsequent Review Proceeding has become Final.

4.3. The Escrow Agent may invest the Qualified Settlement Fund in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and the Escrow Agent shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

4.4. The payments in Sections 4.2.1 & 4.2.2, together with any interest earned thereon, shall fund the Qualified Settlement Fund. Under no circumstances shall the Defendants or their insurers be responsible for any payments, costs, or fees whatsoever under the Settlement beyond Defendants' obligation to cause the amounts set forth in Sections 4.2.1 & 4.2.2 to be deposited in the Qualified Settlement Fund as provided in this Article 4.

4.5. The Qualified Settlement Fund will be considered to be in the legal custody of the Court until such time as such funds may be distributed pursuant to the orders of the Court, or the terms of this Settlement Agreement. The Court shall retain continuing jurisdiction over the Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1(c)(1). The Qualified Settlement Fund shall be structured and managed by the Settlement Administrator to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code, and Treas. Reg. § 1.468B-1 *et seq.*, and the Settlement Administrator shall provide reports to Class Counsel to keep Class Counsel apprised of actions taken by the Settlement Administrator or Escrow Agent for tax compliance purposes. Plaintiffs intend that the Qualified Settlement Fund be structured and administered to preserve, to the maximum degree possible, the tax benefits associated with ERISA-qualified plans. All expenses incurred to maximize the tax benefits, if any, for the Settlement Class, and taxes on the income of the Qualified Settlement Fund and tax-related expenses incurred in connection with the taxation of the Qualified Settlement Fund shall be the responsibility of Plaintiffs and shall be paid out of the Qualified Settlement Fund.

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4.6. Subject to Class Counsel's prior approval and if authorized by the Court, the Settlement Administrator shall direct the Escrow Agent to pay from the Qualified Settlement Fund the costs and expenses of the Qualified Settlement Fund charged to the Qualified Settlement Fund in accordance with Section 1.1. Subject to Class Counsel's prior approval and if authorized by the Court, the Settlement Administrator may instruct the Escrow Agent to reserve any portion of the Qualified Settlement Fund for the purpose of satisfying future or contingent expenses or obligations, including expenses of Qualified Settlement Fund administration or any disbursement provided under the terms of this Settlement Agreement. Defendants take no position, directly or indirectly, with respect to such matters. Plaintiffs and Defendants acknowledge and agree that Defendants shall have no authority, control, or liability in connection with the design, management, administration, including on any tax issue or taxes due, investment, maintenance, or control of the Qualified Settlement Fund, or any distribution therefrom, or for any expenses the Qualified Settlement Fund may incur, or for any taxes that may be payable by the Qualified Settlement Fund or due on any distribution from the Qualified Settlement Fund, including due by any distributee therefrom.

4.7. Sole Monetary Contribution. The Gross Settlement Amount shall be the full and sole monetary contribution made by the Defendants and their insurers in connection with this Settlement Agreement.

**5. PAYMENTS FROM THE QUALIFIED SETTLEMENT FUND**

5.1. Plan of Allocation. For each Settlement Class Member identified by the Settlement Administrator, the Settlement Administrator shall calculate a Settlement Credit Amount. Each Settlement Class Member's Settlement Credit Amount shall be equal to the Net Settlement Amount multiplied by the percentage of all Prior Distributions distributed to that Settlement Class Member (or to the Participant on whom the Settlement Class Member's membership in the Class is based).<sup>1</sup> In accordance with the procedures set forth in this Article, as approved or modified by the Court, the Settlement Administrator will distribute to each Class Member their Settlement Credit Amount. Any Settlement Credit Amounts distributed but not claimed (as contemplated by Section 5.5) shall revert to the Qualified Settlement Fund and be re-distributed *pro rata* to Settlement Class Members who claimed their Settlement Credit Amounts.

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<sup>1</sup> For illustrative purposes, if it is assumed that (i) the Net Settlement Amount equals \$12 million, (ii) the sum of all Prior Distributions equals \$10.5 million, and (iii) Class Member A received \$10,500 of the Prior Distributions, then Class Member A's Settlement Credit Amount equals \$12,000. This is because Class Member A's percentage of Prior Distributions equals 0.1% ( $\$10,500/\$10,500,000=0.001$ ), and the Net Settlement Amount multiplied by 0.1% equals \$12,000 ( $\$12,000,000*0.001=\$12,000$ ).

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5.1.1. The Plan of Allocation shall be submitted to the Court for preliminary and final approval in connection with the preliminary and final approval motions contemplated by the Settlement Agreement. If the Court rejects this Plan of Allocation, Plaintiffs shall provide their revised plan of allocation for review and comment by Defendants before submission to the Court.

5.1.2. The Class Representatives, Class Counsel, Defendants, and Defense Counsel shall have no responsibility or liability for the calculations and distributions of the Net Settlement Amount to Settlement Class Members. In the event of an error by the Settlement Administrator in the calculations or distributions of the Net Settlement Amount to Settlement Class Members, the Settlement Administrator shall correct the error within a reasonable amount of time.

5.1.3. The aggregate of all Settlement Credit Amounts may not exceed the Net Settlement Amount. In the event that the Settlement Administrator determines that aggregate monetary payment pursuant to the Plan of Allocation would exceed the Net Settlement Amount, the Settlement Administrator is authorized to make such *pro rata* changes as are necessary to ensure that the aggregate monetary payment pursuant to the Plan of Allocation does not exceed the Net Settlement Amount.

5.2. Following the Settlement Effective Date and completion of all payments to the Qualified Settlement Fund required by Sections 4.2.1 and 4.2.2, the Qualified Settlement Fund shall be distributed in the following manner, as approved or modified by the Court: First, within ten (10) Business Days, all Attorneys' Fees and Costs and Administrative Expenses approved by the Court shall be paid or reimbursed. Second, within twenty (20) Business Days, (a) the Settlement Administrator shall begin distributing the Net Settlement Amount to Class Members in accordance with the Plan of Allocation and Section 5.4. Pending final distribution of the Net Settlement Amount to Class Members, the Escrow Agent will maintain the Qualified Settlement Fund. If Class Counsel's motion for Attorneys' Fees and Costs, and Administrative Expenses remains pending as of the Settlement Effective Date, calculation and distribution of the Net Settlement Amount shall proceed subject to a reserve maintained in the Qualified Settlement Fund in an amount equal to the sum of Attorneys' Fees and Costs and Administrative Expenses requested in Class Counsel's motion. Any difference between the amount of such reserve and a subsequent award of Attorneys' Fees and Costs, and Administrative Expense shall be distributed to Class Members per Section 5.5.2.

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5.3. Final List of Class Members. Prior to the disbursement of the Net Settlement Amount to the Class Members, the Settlement Administrator shall provide to Defense Counsel and Class Counsel a final list of Class Members to whom the Net Settlement Amount will be distributed in accordance with the Plan of Allocation. Such list shall be final, and only persons on the list shall be eligible to receive any recovery from this Settlement.

5.4. Initial Distribution of Settlement Credit Amounts to Class Members.

5.4.1. For each Rollover-Electing Class Member, no later than twenty (20) Business Days following the Settlement Effective Date, the Settlement Administrator shall attempt to effect a rollover of the Class Member's Settlement Credit Amount from the Qualified Settlement Fund to the individual retirement account or other eligible employer plan elected by each Rollover-Electing Class Member in their Rollover Form, if the conditions for such rollover are satisfied and adequate paperwork necessary to transfer such Settlement Credit Amount by rollover has been provided.

5.4.2. If the Settlement Administrator is unable to effectuate the rollover instructions of any Rollover-Electing Class Member as provided in their Rollover Form due to inadequate information supplied by the Class Member or failure by the custodian of the individual retirement account or other eligible employer plan designated by the Class Member to claim the Class Member's Settlement Credit Amount within thirty (30) days of its issuance from the Qualified Settlement Fund, the Class Member will be treated as a Non-Rollover-Electing Class Member.

5.4.3. Non-Rollover-Electing Class Members. For each Non-Rollover-Electing Class Member, no later than twenty (20) Business Days following the Settlement Effective Date, or as soon as practicable if the Class Member becomes a Non-Rollover-Electing Class Member pursuant to Section 5.4.2, the Settlement Administrator shall distribute the Class Member's Settlement Credit Amount from the Qualified Settlement Fund by calculating and withholding any taxes required to be withheld per Section 5.4.5 and mailing a check for the remainder of the Settlement Credit Amount to the Settlement Class Member.

5.4.4. Before mailing any check to a Settlement Class Member, the Settlement Administrator shall (a) determine whether the Settlement Class Member has provided an updated mailing address to Class Counsel or the Settlement Administrator and (b) use commercially reasonable efforts to attempt to verify the Settlement Class Member's mailing address and search for any new address information. Each check shall be sent to the mailing address

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determined, in the judgment of the Settlement Administrator, most likely to reach the Settlement Class Member.

5.4.5. For each check issued, other than any permitted rollover, the Settlement Administrator shall (1) calculate and withhold any applicable taxes required to be withheld associated with the payments allocable to the Class Member; (2) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state and local revenue agents; and (3) issue appropriate tax forms to the Class Member.

5.5. Expiration of Checks and Disbursement of Unclaimed Settlement Credit Amounts.

5.5.1. For Non-Rollover-Electing Class Members, the Settlement Administrator may issue up to three checks to attempt to distribute their Settlement Credit Amount to them. The first round of checks issued pursuant to this Plan of Allocation shall expire sixty (60) calendar days after their issue date. For Class Members who fail to cash checks issued in this first round before the expiration date of the check, the Settlement Administrator will endeavor to locate an alternative current address. If an alternative address is identified, a second round of checks will be issued to Settlement Class Members who failed to cash checks issued in the first round and for whom an alternative address is identified. These checks will expire ninety (90) calendar days after their issue date. Additionally, starting thirty (30) days after a check has been mailed to a Settlement Class Member but not cashed and continuing until all second round checks have expired, the Settlement Administrator may stop payment on the check (if necessary) and re-issue the check to the Settlement Class Member if (a) the Settlement Class Member contacts the Settlement Administrator and reports that the check was lost or not received and (b) provides or confirms to the Settlement Administrator the mailing address to which the Settlement Class Member would like the check to be re-issued. Any check re-issued at the request of a Class member pursuant to this Section shall expire sixty (60) calendar days after its issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund.

5.5.2. After all efforts permitted by Section 5.5.1 to distribute each Settlement Credit Amount to the Class Member for whom it was calculated have been exhausted, all Settlement Credit Amounts that reverted to the Qualified Settlement Fund per Section 5.5.1 shall be re-distributed *pro rata* to the Class Members who received their Settlement Credit Amounts in the same manner that such Class Members received the Settlement Credit Amount initially allocated to them.

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5.5.3. Any checks issued per Section 5.5.2 shall be mailed one time and shall expire sixty (60) days after issuance. Any such checks that are undelivered or not cashed shall revert to the Qualified Settlement Fund. Any funds left in the Qualified Settlement Fund after efforts described in Section 5.5.2 and 5.5.3 have been exhausted shall be transferred to the Florida Department of Financial Services Unclaimed Property Fund.

5.6. Responsibility for taxes.

5.6.1. The Settling Parties acknowledge that any payments to Settlement Class Members may be subject to applicable tax laws. Defense Counsel, Defendants, Class Counsel, and the Class Representatives will provide no tax advice to the Class Members and make no representations regarding the tax consequences of any of the Settlement payments described in this Settlement Agreement. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law and the terms of this Settlement Agreement in respect of all payments or distributions made under the Settlement Agreement.

5.6.2. The Settlement Administrator is the “administrator” of the Qualified Settlement Fund under Treas. Reg. § 1.468B-2(k)(3)(ii) and the terms of this Settlement Agreement. Consistent with Treas. Reg. § 1.468B-2(l)(2), and under the terms of this Settlement Agreement, the Settlement Administrator shall have sole responsibility for tax withholding and reporting for the Qualified Settlement Fund and its distributions, and the fulfillment of plan administrative functions related to the distributions, including determining whether the distributions to the Settlement Class Members qualify as eligible rollover distributions within the meaning of Code Section 402 and implementing regulations and, if so, for compliance with same, including responsibility for any notices that may be required for such distributions.

5.6.3. Each Settlement Class Member who receives a payment pursuant to the Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state and local taxes resulting from or attributable to the payment received by such person. Each Settlement Class Member shall hold Defendants, Defense Counsel, Released Parties, Class Counsel, and the Settlement Administrator harmless from (a) any tax liability, including without limitation penalties and interest, related in any way to payments or credits under the Settlement Agreement, and (b) the costs (including, without limitation, fees, costs and expenses of attorneys, tax advisors, and experts) of any proceedings (including, without limitation, any investigation, response, and/or suit) related to such tax liability.



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5.7. The Released Parties shall have no responsibility for or liability whatsoever with respect to (a) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Qualified Settlement Fund or otherwise; (b) the management, investment, or distribution of the Qualified Settlement Fund; (c) the Plan of Allocation as approved by the Court; (d) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (e) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (f) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting or payments to or tax withholding from payments made to Class Members from the Qualified Settlement Fund, or the filing of any returns. Further, the Released Parties shall have no responsibility for or liability whatsoever with respect to any act, omission, or determination of the Settlement Administrator in connection with the administration of the Qualified Settlement Fund, including the offering of a tax-qualified rollover to Class Members, or otherwise.

**6. ARTICLE 6 – ATTORNEYS’ FEES AND COSTS, AND ADMINISTRATIVE EXPENSES**

6.1. Application for Attorneys’ Fees and Costs, and Administrative Expenses. Class Counsel intends to seek to recover their Attorneys’ Fees not to exceed one-third of the Gross Settlement Amount. Class Counsel also will seek reimbursement of all litigation costs and expenses advanced and carried by Class Counsel for the duration of the Class Action, which shall be recovered from the Qualified Settlement Fund. At the same time, Class Counsel will also seek approval for the payment or reimbursement of all Administrative Expenses (other than any Administrative Expenses already authorized by the Preliminary Approval Order). The appropriate amount of any such awards shall be determined by the Court in its discretion. This Settlement Agreement does not purport to establish a presumptively reasonable amount and Defendants will not take any position on Class Counsel’s application for fees and costs. Plaintiffs and Defendants acknowledge and agree that Defendants shall have no authority, control, or liability in connection with Class Counsel’s Attorneys’ Fees and Costs, or Administrative Expenses.

6.2. Class Counsel will file a motion for an award of Attorneys’ Fees and Costs, and Administrative Expenses, no later than thirty (30) calendar days before the date of the Final Fairness Hearing set by the Court.

6.3. Class Representatives and Class Counsel are solely responsible for the liability, if any, related to the Notice of Attorney’s Lien filed by Nichols Kaster at ECF Dkt. 82. All claims for attorney’s fees, costs, or expenses by or on behalf of Plaintiffs

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are included in Released Claims in Section 1.33, and neither Defendants nor their insurers will make any payment beyond the Gross Settlement Amount in Section 1.20.

6.4. This Settlement Agreement is not contingent on whether Class Counsel's motion for Attorney's Fees and Costs, and Administrative Expenses, is approved or modified.

**7. ARTICLE 7 – RELEASES AND COVENANTS NOT TO SUE**

7.1. As of the Settlement Effective Date, the Plan (subject to Independent Fiduciary approval as required by Section 2.1) and the Settlement Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own behalf and on behalf of the Plan, shall fully, finally, and forever settle, release, relinquish, waive, and discharge all Released Parties from the Released Claims, whether or not such Class Members have received or will receive a monetary benefit from the Settlement, whether or not such Class Members have actually received the Settlement Notice, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, whether or not the objections or claims for distribution of such Class Members have been approved or allowed, and whether or not the Settlement Administrator concludes that they are eligible for a tax-qualified rollover from the Qualified Settlement Fund.

7.2. As of the Settlement Effective Date, the Settlement Class Members and the Plan (subject to Independent Fiduciary approval as required by Section 2.1) expressly agree that they, acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance agency or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims against any Released Party, and that the foregoing covenants and agreements shall be a complete defense to any such claims or actions against any of the respective Released Parties. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement in accordance with the procedures set forth in this Settlement Agreement.

7.3. Class Counsel, the Class Members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, had they been known, might have affected the decision to settle with the Released Parties, or the decision to release, relinquish,

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waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Settlement Class Member and the Plan shall expressly, upon the entry of the Final Approval Order, be deemed to have, and, by operation of the Final Approval Order, shall have fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims.

7.4. Each Settlement Class Member and the Plan hereby stipulate and agree with respect to any and all Released Claims that, upon entry of the Final Approval Order, the Settlement Class Members and Plan shall be conclusively deemed to, and by operation of the Final Approval Order shall settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims pertaining specifically to Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Also, the Settlement Class Members and the Plan hereby stipulate and agree with respect to any and all Released Claims that, upon entry of the Final Approval Order, that the Settlement Class Members and the Plan shall be conclusively deemed to, and by operation of the Final Approval Order shall waive any and all provisions, rights, and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable, or equivalent in substance to Section 1542 of the California Civil Code.

7.5. The Settlement Class Members and the Plan acknowledge and shall be deemed by operation of the Final Approval Order to have acknowledged that each of the foregoing terms in this Article 7 were bargained for separately and are each a key element of the Settlement embodied in this Settlement Agreement.

7.6. Dismissal With Prejudice. The Class Action and all Released Claims shall be dismissed with prejudice.

7.7 Mutual Releases Among Defendants. The Officer/PBC Defendants, Blacksten and GreatBanc each mutually release any and all claims that they could have asserted against each other relating to the subject matter of the Class Action or the defense of the Class Action.

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**8. ARTICLE 8 – REPRESENTATIONS AND WARRANTIES**

8.1. Taxation. Plaintiffs acknowledge and agree that the Released Parties have no responsibility for any taxes due by Plaintiffs or the Plan or the Settlement Administrator from this Settlement, including on funds deposited in or distributed from the Qualified Settlement Fund. Plaintiffs further acknowledge and agree that any such tax payments, and any professional, administrative, or other expenses associated with such tax payments, shall be paid out of the Qualified Settlement Fund. Nothing herein shall constitute an admission or representation that any such taxes will or will not be due.

8.2. Cooperation. Defendants agree to provide good faith cooperation in providing information, to the extent they have any, necessary for identification of Class Members and contact information. Any fees charged by former service providers to facilitate this or other information needed for the Settlement shall be paid from (or reimbursed from) the Qualified Settlement Fund

8.3. No Assignment. Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any Released Claims against any Released Party and further covenant that they will not assign or otherwise transfer any interest in any Released Claims. Class Representatives further represent and warrant that they shall have no surviving claim or cause of action against any Released Party with respect to the Released Claims or that is in any way related to the Class Action.

8.4. The Settling Parties further represent and warrant as follows:

8.4.1. That they have diligently prepared the case pursuant to the Court's orders; that they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations under the auspices of the Mediator; that in executing this Settlement Agreement they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements, or omissions pertaining to any of the foregoing matters by any Settling Party or by any Person representing any Settling Party to this Settlement Agreement.

8.4.2. That they assume the risk of mistake as to facts or law. Each Settling Party further recognizes that additional evidence may come to light, but

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that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement.

8.4.3. That they have carefully read the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each Person executing this Settlement Agreement on behalf of each of the Defendants and Class Representatives. The Settling Parties, and each of them, further represent and warrant to each other that he, she, they, or it has made such investigation of the facts pertaining to the Settlement, this Settlement Agreement, and all of the matters pertaining thereto, as he, she, they, or it deems necessary.

8.5. Signatories' Representations and Warranties. Each Person executing this Settlement Agreement on behalf of any other Person does hereby personally represent and warrant to the other Settling Parties that he, she, they, or it has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

8.6. Settling Parties' Reliance. The Settling Parties acknowledge that each other Settling Party is relying on these representations and warranties in entering into this Settlement Agreement:

**9. ARTICLE 9 – NO ADMISSION OF LIABILITY**

9.1. The Settling Parties understand and agree that this Settlement Agreement embodies a compromise settlement of disputed claims, and that nothing in this Settlement Agreement, including the furnishing of consideration for this Settlement Agreement, shall be deemed to constitute any finding, admission, or suggestion of any wrongdoing or liability by any Defendants, or give rise to any inference of wrongdoing or admission of wrongdoing or liability in this or any other proceeding.

9.2. This Settlement Agreement and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal or factual. Defendants specifically deny any such liability or wrongdoing and state that they are entering into this Settlement Agreement to eliminate the burden and expense of further litigation. Further, the Class Representatives, while believing that the claims brought in the Class Action have merit, have concluded that the terms of this Settlement Agreement are fair, reasonable, and adequate to the Plan, themselves, and members of the Settlement Class given, among other things, the inherent risks, difficulties, and delays in complex ERISA litigation such as the Class Action. Neither the fact nor the terms of this Settlement Agreement shall be used, offered, or received in evidence in any action or proceeding for any purpose, except in

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an action or proceeding to enforce this Settlement Agreement or arising out of or relating to the Final Approval Order.

9.3. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not constitute admissions of any liability of any kind, whether legal or factual. Subject to *Federal Rule of Evidence* 408, the Settlement and the negotiations related to it are not admissible as substantive evidence, for purposes of impeachment, or for any other purpose.

9.4. This Settlement Agreement and the payments made hereunder:

9.4.1. Do not constitute and shall not be deemed to constitute any liability, breach of fiduciary duty or any other violation or wrongdoing under ERISA, or wrongdoing of any other type or kind by any Defendant, or give rise to any inference of wrongdoing or liability under ERISA;

9.4.2. Do not constitute, and shall not be offered or received against or to the prejudice of any Defendant as evidence of, any presumption, concession, or admission by any Defendant with respect to the truth of any allegation by Plaintiffs or as alleged in the Class Action, or of any liability, breach of fiduciary duty or any other violation or wrongdoing under ERISA, damages, fault, omission, or wrongdoing of any Defendant; and

9.4.3. Shall not be offered by or received against or to the prejudice of any Defendant, in any other civil, criminal, or administrative lawsuit or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement.

**10. ARTICLE 10 – CONDITIONS TO FINALITY OF SETTLEMENT**

This Settlement shall be contingent upon each of the following conditions in this Article 10 being satisfied. The Settling Parties agree that if any of these conditions is not satisfied, then this Settlement Agreement is terminated (subject to Defendants' right to waive the conditions set forth in Section 10.3 and 10.5) and the Class Action will, for all purposes with respect to the Settling Parties, revert to its status as of the Court Order entering the stay on January 16, 2024, at ECF Dkt. 258.

10.1. Court Approval and Class Certification for Settlement Purposes. The Court shall have certified the Settlement Class for settlement purposes (and Defendants will not object to this certification for settlement purposes), the Settlement shall have been approved by the Court, the Court shall have entered the Final Approval Order substantially in the form attached as Exhibit D hereto.

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10.2. Finality of Settlement. The Settlement Effective Date shall have occurred.

10.3. Resolution of CAFA Objections (If Any). In the event that any of the government officials who received a CAFA Notice objects to and requests modification(s) to the Settlement, including if the United States Department of Labor threatens to commence an investigation or lawsuit, Class Representatives and Class Counsel agree to cooperate and work with Defendants and Defense Counsel to overcome such objection(s) and requested modification(s). In the event such objection(s) or requested modification(s) are not overcome, Defendants shall have the right to terminate the Settlement Agreement pursuant to Article 11, which may be waived.

10.4. Prior to the Final Fairness Hearing, another party has not filed a separate class action or action on behalf of the Plan that asserts Released Claims against the Released Parties.

10.5. Settlement Authorized by Independent Fiduciary. At least fourteen (14) calendar days before the Final Fairness Hearing, the Independent Fiduciary shall have approved and authorized in writing the Settlement and given a release to all of the Released Parties in its capacity as fiduciary of the Plan for and on behalf of the Plan in accordance with PTE 2003-39. If the Independent Fiduciary disapproves or otherwise does not authorize the Settlement or refuses to execute the release on behalf of the Plan, then the Settling Parties may mutually agree to modify the terms of this Settlement Agreement as necessary to facilitate an approval by the Independent Fiduciary and/or the Independent Fiduciary's release on behalf of the Plan. Otherwise, Defendants shall have the option to waive this condition, in which case such option is to be exercised in writing within ten (10) business days after the Settling Parties' receipt of the Independent Fiduciary's written determination, unless otherwise agreed by the Settling Parties.

**11. ARTICLE 11 – TERMINATION, AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

11.1. The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect if:

11.1.1. Under Section 2.1, (a) either the Independent Fiduciary does not approve the Settlement Agreement or disapproves the Settlement Agreement for any reason whatsoever, or Defendants reasonably conclude that the Independent Fiduciary's approval does not include the determinations required by the PTE 2003-39; and (b) the Settling Parties do not mutually agree

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to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39; and (c) Defendants do not exercise their option to waive this condition as provided in Section 10.5;

11.1.2. The Preliminary Approval Order or the Final Approval Order is not entered by the Court in substantially the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties.

11.1.3. The Settlement Class is not certified as defined herein or in a form which is otherwise agreed to by the Settling Parties;

11.1.4. This Settlement Agreement is disapproved by the Court or fails to become effective and the Settling Parties do not mutually agree to modify the Settlement Agreement in order to obtain the Court's approval or otherwise effectuate the Settlement; or

11.1.5. The Preliminary Order or Final Approval Order is finally reversed on appeal, or is modified on appeal, and the Settling Parties do not mutually agree to any such modification.

11.2. If (i) the Court enters an order modifying the economic terms of this Settlement Agreement or materially modifying any term of the Preliminary Approval Order or the Final Approval Order, and (ii) within twenty (20) days after the date of any such ruling or within twenty (20) days after the date of the Court's order following a motion for reconsideration of any such ruling, whichever is later, the party detrimentally affected by the modification(s) declines to waive its objections to the modifications and the Settling Parties otherwise are not able to reach an agreement in light of the modifications, then this Settlement Agreement shall automatically terminate on the twentieth (20th) day after issuance of the order referenced herein.

11.3. If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Class Action and the Released Claims asserted by the Class Representatives shall for all purposes with respect to the Settling Parties revert to their status as though the Settling Parties never executed the Settlement Agreement.

11.3.1. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Defendants and/or Defendants' insurer within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void.

11.3.2. The Settling Parties shall confer in good faith to propose a revised proposed Case Management and Scheduling Order to the Court,



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considering the status of the Class Action as of the stay entered on January 16, 2024, at ECF Dkt. 258.

11.3.3. In any subsequent proceeding, the terms of this Settlement Agreement shall not constitute nor be construed as an admission by any Settling Party, nor be used against any Settling Party, in any manner, whether as evidence or argument.

11.4. It shall not be deemed a failure to approve the Settlement Agreement if the Court denies or modifies, in whole or in part, Class Counsel's request for Attorneys' Fees and Costs, and Administrative Expenses, or modifies any of the proposed orders relating to Attorneys' Fees and Costs, and Administrative Expenses.

**12. ARTICLE 12 – CONFIDENTIALITY OF THE SETTLEMENT  
NEGOTIATIONS AND PERMITTED SETTLEMENT-RELATED  
COMMUNICATIONS**

12.1. Except as set forth explicitly below, the Settling Parties, Class Counsel, and Defense Counsel agree to keep confidential all positions, assertions, and offers made during settlement negotiations relating to the Class Action and the Settlement Agreement, except that they may discuss the negotiations and statements made to and shared with the Mediator, with Settlement Class Members, the Independent Fiduciary, and the Settling Parties' tax, legal, and regulatory advisors, provided in each case that they comply with this Article 12 in all other respects.

12.2. The Settlement Administrator, at the direction of Class Counsel, will establish a Settlement Website on which it will post the following documents or links to the following documents following the date of the Preliminary Approval Order: the Complaint, Settlement Agreement and its Exhibits, Settlement Notice and Rollover Form, Plaintiffs' Motion for Attorneys' Fees and Costs, and Administrative Expenses, any Court orders related to the Settlement, any amendments or revisions to these documents, and any other documents or information mutually agreed upon by the Settling Parties.

12.3. Defendants, Class Representatives, Class Counsel, and Defense Counsel agree that they will not at any time make (or encourage or induce others to make) any statements, or take any other actions, to disparage, defame, sully, or compromise the goodwill, name, brand, or reputation of any Settling Party or their counsel. However, Defendants are free to make non-disparaging statements to their employees about the conclusion of this matter. Class Counsel may state the grounds they assert support their motion for Preliminary Approval of the Settlement, motion for Final Approval of the Settlement, or their request for Attorneys' Fees and Costs, Administrative

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Expenses, or as necessary to provide notice to the Settlement Class. This prohibition does not prohibit any Settling Party from making any statements pursuant to a valid legal process, a request by a regulatory agency, or as required by law.

12.4. Defendants, Class Representatives, Class Counsel, and Defense Counsel agree that they will not issue any press release regarding the Settlement, affirmatively contact any media sources regarding the Settlement, or respond to any request for comment on the Settlement by the media. Nothing in this section shall prevent Class Counsel from maintaining non-confidential information related to the Settlement on their websites, blogs, or social media accounts, or firm resumés or biographies, nor shall this section prevent notice as otherwise agreed upon by the Settling Parties.

12.5. Defendants, Class Representatives, Class Counsel, and Defense Counsel agree that they will not publicly disclose the terms of the Settlement until after the motion for preliminary approval of the Settlement has been filed with the Court, other than as necessary to administer the Settlement, or unless such disclosure is pursuant to a valid legal process, a request by a regulatory agency, or as otherwise required by law, government regulations, or order of the Court.

**13. ARTICLE 13 – GENERAL PROVISIONS**

13.1. Continuing Jurisdiction of the Court. The Settling Parties agree that the Court has personal jurisdiction over the Settlement Class and Defendants and shall maintain personal and subject-matter jurisdiction for purposes of enforcing the Settlement Agreement, or resolving any dispute that may arise regarding the Class Notice, the Final Approval Order, or any other matters relating thereto.

13.1.1. The Settling Parties agree to reasonably cooperate and act in good faith and a timely manner to resolve any dispute that arises regarding the Settlement Agreement;

13.1.2. If the Settling Parties are unable to resolve their dispute, the Court shall have the power to do so, subject to the limitation that this does not include the power to modify or change the terms of the Settlement Agreement.

13.2. The Settling Parties agree to cooperate fully with each other in seeking Court approvals of the Preliminary Approval Order and the Final Approval Order, and to undertake all tasks as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms. The Settling Parties agree to provide each other with copies of any filings necessary to effectuate this Settlement reasonably in advance of filing. The Settling Parties agree, without further consideration, and as part of finalizing the Settlement

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hereunder, that he, she, or it will, in good faith, execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this Settlement Agreement.

13.3. Only Class Counsel may seek enforcement of this Settlement Agreement on behalf of Class Members. Any individual concerned about Defendants' compliance with this Settlement Agreement may so notify Class Counsel and direct any requests for enforcement to them. Class Counsel shall have the full and sole discretion to take whatever action they deem appropriate that is not in contravention to this Settlement Agreement, or to refrain from taking any action, in response to such request. Any action by Class Counsel to monitor or enforce the Settlement Agreement shall be done without additional fee or reimbursement of expenses from the Qualified Settlement Fund beyond the Attorneys' Fees and Costs determined by the Court.

13.4. This Settlement Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, Florida state law.

13.5. Any motion to enforce this Settlement Agreement—including by way of injunction—shall be filed in this Class Action.

13.6. Before entry of the Preliminary Approval Order and approval of the Independent Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties. Following approval by the Independent Fiduciary, this Settlement Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Settling Parties and only if the Independent Fiduciary approves such modification or amendment in writing. Following entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Independent Fiduciary in writing and approved by the Court.

13.7. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any party shall not be deemed to be or construed as a waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

13.8. All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit A – Notice of Class Action

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Settlement and Fairness Hearing; Exhibit B – Rollover Form; Exhibit C -- Preliminary Approval Order; Exhibit D – Final Approval Order; Exhibit E – Form of CAFA Notice.

13.9. No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.

13.10. Principles of Interpretation. The following principles of interpretation apply to this Settlement Agreement:

13.10.1. Headings. Any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Sections they caption.

13.10.2. Singular and Plural. Definitions apply to the singular and plural forms of each term defined.

13.10.3. Gender. Definitions apply to the masculine, feminine, non-binary, and neutral genders of each term defined.

13.10.4. References to a Person. References to a Person are also to the Person's permitted successors and assigns, except as otherwise provided herein.

13.10.5. Terms of Inclusion. Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

13.11. Severability. The material provisions of this Settlement Agreement are not severable.

13.12. Survival. All of the covenants, representations, and warranties, express or implied, oral, or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No Party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Settlement Effective Date.

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13.13. Notices. Any notice, demand, or other communication under this Settlement Agreement (other than the Settlement Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier or via e-mail:

**IF TO CLASS REPRESENTATIVES:**

Jennifer K. Lee  
Carl F. Engstrom  
ENGSTROM LEE LLC  
323 N. Washington Ave., Suite 200  
Minneapolis, MN 55401  
Telephone: (612) 293-6184  
Email: [jlee@engstromlee.com](mailto:jlee@engstromlee.com)  
Email: [cengstrom@engstromlee.com](mailto:cengstrom@engstromlee.com)

*Counsel for Class Representatives and  
the Proposed Class*

**IF TO DEFENDANTS:**

W. Bard Brockman  
Michael P. Carey  
Brooke V. Ingoglia  
BRYAN CAVE LEIGHTON PAISNER  
LLP

One Atlantic Center, 14<sup>th</sup> Floor  
1201 W. Peachtree St. NW  
Atlanta, Georgia 30309-3471  
Telephone: (404) 572-6600  
Email: [bard.brockman@bclplaw.com](mailto:bard.brockman@bclplaw.com)  
Email: [michael.carey@bclplaw.com](mailto:michael.carey@bclplaw.com)

*Counsel for Defendants Johnson, Hersey, and  
Fernandes*

Adam J. Hodkin  
Florida Bar No. 962597

***Colon v. Johnson et al* Class Action Settlement Agreement  
Final for Execution**

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Telephone: (561) 810-1600  
Email: ahodkin@hswlawgroup.com

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Schmickle, & ADG Management Holdings  
LLC*

Eric L. Ray  
Lindsey R. Camp  
HOLLAND & KNIGHT, LLP  
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Suite 1900  
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Telephone: (561) 833-2000  
Email: eric.ray@hklaw.com  
Email: lindsey.camp@hklaw.com

*Counsel for Defendant Joshua Blacksten*

Howard Shapiro  
Robert Rachal  
JACKSON LEWIS P.C.  
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Suite 1400  
New Orleans, LA 70130  
Telephone: (504) 208-1755  
Email: howard.shapiro@jacksonlewis.com  
Email: robert.rachal@jacksonlewis.com

*Counsel for Defendant GreatBanc Trust  
Company*

Any Settling Party may change the address at which it is to receive notice by written notice delivered to the other Settling Parties in the manner described above.

13.14. Entire Agreement. This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties. No representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto. It

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specifically supersedes any settlement terms or settlement agreements relating to the Defendants that were previously agreed upon orally or in writing by any of the Settling Parties.

13.15. Counterparts. The Settlement Agreement may be executed by exchange of executed signature pages, and any signature transmitted by facsimile, DocuSign or similar electronic signature service, or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute the same instrument.

13.16. Binding Effect. This Settlement Agreement binds and inures to the benefit of the Settling Parties hereto, their assigns, heirs, administrators, executors, and successors.

13.17. Destruction/Return of Confidential Information. The Settling Parties agree that the lists of Class Members are deemed Confidential, and that the Settling Parties shall have the right to continue to designate documents provided to any party in connection with this Settlement Agreement as Confidential. For material designated "confidential" that Class Representatives or Class Counsel received from Defendants or a third party in the course of litigating this Class Action, Section 15 of the Amended Agreed Confidentiality Order (Dkt. 241) entered in the Class Action shall apply, except to the extent that such Order is further modified by the Court, as contemplated by Section 16 of the Order and Section 3.2.7 of this Agreement.

13.18. Retention of Privilege. Nothing in this Settlement Agreement, or the negotiations relating to it, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney-client privilege, joint defense privilege, or work product protection.

IN WITNESS WHEREOF, the Settling Parties have executed this Settlement Agreement on the dates set forth below.

**Colon v. Johnson et al Class Action Settlement Agreement  
Final for Execution**

**PLAINTIFFS**

**March 25, 2024**

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Johana Colon

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Anthony Womack

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Christine Rundberg



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Jennifer K. Lee\*  
Minnesota Bar Number: 0399012  
Carl F. Engstrom\*  
Minnesota Bar Number: 0396298  
**ENGSTROM LEE LLC**  
323 N. Washington Ave, Suite 200  
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Email: cengstrom@engstromlee.com

***Counsel for Plaintiffs and  
the Proposed Settlement Class***

**OFFICER DEFENDANTS**

**March \_\_, 2024**

\_\_\_\_\_  
Kevin Johnson

\_\_\_\_\_  
Dale Hersey

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Leigh Anne Fernandes

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W. Bard Brockman  
Florida Bar # 0868817  
Michael P. Carey\*  
Georgia Bar #109364  
Brooke V. Ingoglia\*  
Texas Bar #24136909  
**BRYAN CAVE LEIGHTON  
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Email: michael.carey@bclplaw.com

***Counsel for Defendants Johnson, Hersey  
and Fernandes***

[ADDITIONAL SIGNATURES ON  
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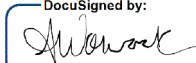


**Colon v. Johnson et al Class Action Settlement Agreement  
Final for Execution**

**PLAINTIFFS**

**March 25, 2024**

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Johana Colon

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Anthony Womack

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Christine Rundberg

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Jennifer K. Lee\*  
Minnesota Bar Number: 0399012  
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***Counsel for Plaintiffs and  
the Proposed Settlement Class***

**OFFICER DEFENDANTS**

**March \_\_, 2024**

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Email: michael.carey@bcplaw.com

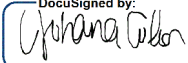
***Counsel for Defendants Johnson, Hersey  
and Fernandes***

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**Colon v. Johnson et al Class Action Settlement Agreement  
Final for Execution**

**PLAINTIFFS**

**March 26, 2024**

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Johana Colon

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Anthony Womack

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***Counsel for Plaintiffs and  
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**OFFICER DEFENDANTS**

**March \_\_, 2024**

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***Counsel for Defendants Johnson, Hersey  
and Fernandes***

[ADDITIONAL SIGNATURES ON  
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**Colon v. Johnson et al Class Action Settlement Agreement  
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**PLAINTIFFS**

March \_\_, 2024

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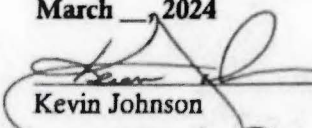
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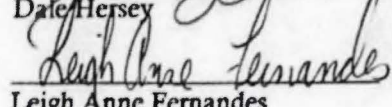
*Counsel for Plaintiffs and  
the Proposed Settlement Class*

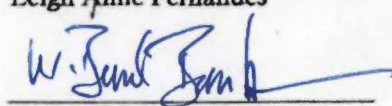
**OFFICER DEFENDANTS**

March \_\_, 2024

  
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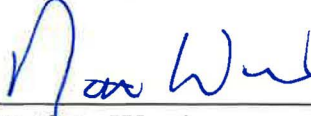
*Counsel for Defendants Johnson, Hersey  
and Fernandes*

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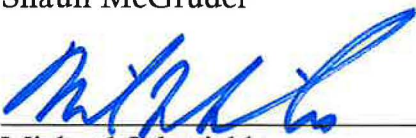
***Colon v. Johnson et al* Class Action Settlement Agreement  
Final for Execution**

**PBC DEFENDANTS**

March \_\_, 2024

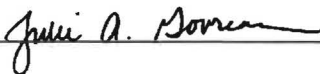
  
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Nathan Ward

  
\_\_\_\_\_  
Shaun McGruder


  
\_\_\_\_\_  
Michael Schmickle

**GREATBANC TRUST COMPANY**

March 27, 2024

By:   
\_\_\_\_\_

Title: SVP & General Counsel

  
\_\_\_\_\_  
Howard Shapiro  
Robert Rachal

**JACKSON LEWIS P.C.**

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***Counsel for GreatBanc Trust Company***

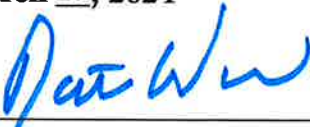
**Colon v. Johnson et al Class Action Settlement Agreement  
Final for Execution**

**ADG MANAGEMENT HOLDINGS,  
LLC**


**JOSHUA BLACKSTEN**

**March 27, 2024**

**March \_\_, 2024**

By:   
\_\_\_\_\_  
Nathan Ward  
Managing Member

\_\_\_\_\_  
Joshua Blacksten

  
\_\_\_\_\_  
Adam J. Hodkin  
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*Counsel for the PBC Defendants*

*Counsel for Defendant Joshua Blacksten*

**\*Admitted by Special Admission**

**Colon v. Johnson et al Class Action Settlement Agreement  
Final for Execution**

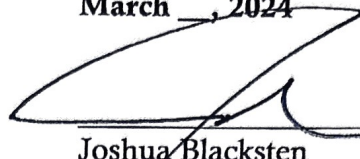
**ADG MANAGEMENT HOLDINGS,  
LLC**

**JOSHUA BLACKSTEN**

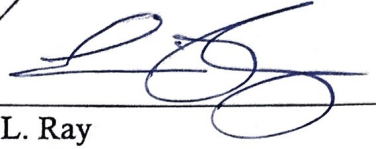
March \_\_, 2024

March \_\_, 2024

By: \_\_\_\_\_  
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 3/27/24

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*Counsel for the PBC Defendants*

*Counsel for Defendant Joshua Blacksten*

**\*Admitted by Special Admission**

# **EXHIBIT A**

## NOTICE OF CLASS ACTION SETTLEMENT

*in*

### ADG ESOP LITIGATION

*Colon, et al. v. Johnson, et al., Case No. 8:22-cv-888-TPB-TGW (M.D. Fla.)*

#### PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

**This is a notice of a proposed class action settlement in the above-referenced lawsuit.**

**If you are a member of the Class, the settlement will affect your legal rights.**

**This is not a solicitation from a lawyer.**

**You have not been sued.**

- A Settlement has been reached in a class action lawsuit concerning the Advanced Diagnostic Group Employee Stock Ownership Plan (the “Plan”). The class action lawsuit involves whether the Plan, which was established in 2015 and terminated in 2019, had been created, administered, and terminated by Defendants Kevin G. Johnson, Nathan S. Ward, Shaun L. McGruder, Michael L. Schmickle, Leigh A. Fernandes, Dale L. Hersey, Joshua A. Blacksten, ADG Management Holdings, LLC, and GreatBanc Trust Co. (collectively, “Defendants”) in accordance with certain provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”). ERISA is the federal law that regulates and sets minimum standards for the administration of most retirement plans in the private sector, including the Plan. Defendants deny all claims, and nothing in the Settlement is an admission or concession on Defendants’ part of any fault or liability whatsoever.
- The Settlement will provide, among other things, for a \$19 million Settlement Fund that will be allocated to eligible Settlement Class Members after any Court-approved deductions for Attorneys’ Fees and Costs, and Administrative Expenses.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated [DATE]. Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.settlementwebsite.com]. Certain other documents also will be posted on that website. You should visit that website if you would like more information about the Settlement or the lawsuit. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>.
- The Settlement Class (whose members are “Settlement Class Members”) includes all Participants who were issued a distribution from the Plan, or their Beneficiaries or Alternate Payee, excluding Leigh Anne Fernandes and Dale Hersey.
- Your rights and the choices available to you—and the applicable deadlines to act—are explained in this Notice. Please note that neither Advanced Diagnostic Group (“ADG”) nor any employees, attorneys, or representatives of ADG may advise you as to what the best choice is for you or how you should proceed.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement, and that final approval is upheld in the event of any appeal.



- A Fairness Hearing will take place on [DATE], at [TIME], before the Honorable Thomas Barber, United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602, in Courtroom XX, to determine whether to grant final approval of the Settlement and approve the requested Attorneys’ Fees and Costs, and Administrative Expenses. If the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at [www.settlementwebsite.com].
- Any objections to the Settlement, or to the requested Attorneys’ Fees and Costs, and Administrative Expenses, must be filed with the Clerk of Court and served in writing on Class Counsel and Defense counsel, as identified in Item 11 below.

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:</b>	
<p><b><u>PAYMENT OPTION ONE:</u></b>  <b>ROLLOVER TO AN  INDIVIDUAL RETIREMENT  ACCOUNT OR QUALIFIED  EMPLOYER PLAN</b></p>	<p>This lawsuit concerns a retirement plan. You have the option of receiving your share of the Settlement in the form of a direct rollover to an individual retirement account or qualified employer plan. To do this, you must submit the enclosed Rollover Form on or before [date of Fairness Hearing]. A Rollover Form may also be obtained by calling the Settlement Administrator at [telephone number] or by accessing [www.settlementwebsite.com]. Rollovers will be effectuated only if and when the Court gives final approval to the Settlement and the Settlement becomes effective.</p> <p><u>Payments distributed in the form of a rollover will not be subject to automatic withholding.</u></p> <p>For additional information, see Item 6 below.</p>
<p><b><u>PAYMENT OPTION TWO:</u></b>  <b>CHECK MAILED DIRECTLY  TO YOU</b></p>	<p>If you do nothing in response to this Notice, the Settlement Administrator will attempt to mail your share of the Settlement directly to you by check. Checks will be distributed only if and when the Court gives final approval to the Settlement and the Settlement becomes effective.</p> <p><u>Payments made directly by check are subject to automatic tax withholding and tax reporting, as determined by the Settlement Administrator.</u></p> <p>For additional information, see Item 6 below.</p>

<p><b>YOU CAN OBJECT (NO LATER THAN [DATE])</b></p>	<p>If you wish to object to any part of the Settlement, or to the requested Attorneys’ Fees and Costs, and Administrative Expenses, you must file and postmark your objection and any supporting documents with the Clerk of the Court, and mail copies to Class Counsel and Defense Counsel (as identified in Item 11, below), at least <b>21 calendar days</b> before the Fairness Hearing. Please note that you will not be permitted to make an objection to the Settlement if you do not comply with the requirements for making objections.</p>
<p><b>YOU CAN ATTEND A HEARING ON [DATE]</b></p>	<p>You may also attend the Fairness Hearing and speak at the Fairness Hearing on [DATE]. If you wish to attend the hearing and speak at the hearing, you must provide Class Counsel and Defense counsel (as identified in Item 11 below) with notice of your intent to appear postmarked at least <b>14 calendar days</b> before the Fairness Hearing. Please note that you will not be permitted to speak at the Fairness Hearing if you do not comply with the requirements for making an objection.</p>

**The Class Action**

The case is called *Colon, et al. v. Johnson, et al.*, Case No. 8:22-cv-888-TPB-TGW (M.D. Fla.) (the “Class Action” or “lawsuit”). It has been pending since April 14, 2022. The Court supervising the case is the United States District Court for the Middle District of Florida. The individuals who brought this lawsuit are called the Class Representatives, and the persons that were sued are called the Defendants. The Class Representatives—Johana Colon, Christine Rundberg, and Anthony Womack—are former participants in the Plan. Defendants are Kevin G. Johnson, Nathan S. Ward, Shaun L. McGruder, Michael L. Schmickle, Leigh A. Fernandes, Dale L. Hersey, Joshua A. Blacksten, ADG Management Holdings, LLC, and GreatBanc Trust Co. The claims in the lawsuit are described below in Item 2 below, and additional information about them, including a copy of the operative Complaint, is available at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com).

**The Settlement**

Following negotiations facilitated by a mediator with the Class Representatives, Class Counsel, Defendants, and Defense Counsel, a Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$19,000,000.00 will be established to resolve the claims against Defendants in the Action. The “Net Settlement Amount” is \$19,000,000.00 minus any Court-Approved Attorneys’ Fees and Costs, and Administrative Expenses. The Net Settlement Amount will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court and further described below in Item 5.

**Statement of Attorneys’ Fees and Costs, Administrative Expenses  
Sought in the Class Action**

Class Counsel has devoted thousands of hours to investigating the facts, prosecuting the lawsuit, reviewing documents obtained from Defendants and third parties, and negotiating the Settlement. During that time, they also have advanced significant costs, including substantial expert fees and

travel costs, necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending.

Class Counsel will apply to the Court for payment of Attorneys' Fees for their work in the case. The amount of fees that Class Counsel will request will not exceed one-third of the Qualified Settlement Fund (\$6,333,333.33). In addition, Class Counsel also will seek to recover their litigation costs advanced and Administrative Expenses associated with the Settlement. Any Attorneys' Fees and Costs, and Administrative Expenses, awarded by the Court will be paid or reimbursed from the Qualified Settlement Fund.

A full and formal application for Attorneys' Fees and Costs, and Administrative Expenses will be filed with the Court on or before [DATE]. This application will be made available at [www.settlementwebsite.com]. You may also obtain a copy of this application through the Public Access to Court Electronic Records System (PACER) at <http://www.pacer.gov>, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602.

**1. Why Did I Receive This Settlement Notice?**

The Court caused this Notice to be sent to you because our records indicate that you may be a Settlement Class Member. If you fall within the definition of the Settlement Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Settlement Class Members according to a Court-approved Plan of Allocation.

**2. What Is the Class Action About?**

In the Class Action, the Class Representatives claim that the Defendants improperly established, administered, and terminated the Plan. Defendants deny all claims and assert that they have always acted prudently and in the best interests of participants and beneficiaries.

**3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between the Class Representatives, Defendants, and their counsel. These negotiations were facilitated by an experienced mediator. The parties to the Settlement have taken into account the uncertainty, risks, and costs of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel believe that the Settlement is best for the Settlement Class. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever. They have entered into the Settlement Agreement to avoid the uncertainty, expense, and burden of additional litigation.

#### 4. What Does the Settlement Provide?

Under the Settlement, Defendants or their insurers will pay \$19,000,000.00 into a Qualified Settlement Fund to resolve the claims of the Settlement Class against Defendants. The Net Settlement Amount (after deduction of any Court-approved Attorneys' Fees and Costs, and Administrative Expenses) will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court (as explained further in Item 5, below). Class Members who are entitled to a distribution will receive their distribution as a rollover to a qualified retirement account or by check.

All Settlement Class Members and anyone claiming through them will fully release the Plan as well as Defendants and the Released Parties from certain Released Claims, as defined in the Settlement Agreement. The Released Parties include each Defendant and certain related parties as outlined in the Settlement Agreement. The Released Claims include any claims against any of the Released Parties with respect to the Plan that were asserted in the Action against Defendants or could have been asserted against Defendants.

This is *only* a summary of the Released Claims, and is not a binding description. The governing releases are found within Article 7 of the Settlement Agreement, which is available at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com).

#### 5. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records provided by the Plan's recordkeeper. Calculations regarding individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To receive a distribution from the Net Settlement Amount, you must be a "Settlement Class Member" as described on page 1 of this Notice.

There are 185 Settlement Class Members according to preliminary review of Plan records. Pursuant to the proposed Plan of Allocation, the Net Settlement Amount will be divided *pro rata* among Settlement Class Members. Each Settlement Class Member will have the opportunity to receive a share of the Net Settlement Amount (defined in the Settlement Agreement as their "Settlement Credit Amount") based on the amount of their prior distributions from the Plan relative to all prior distributions to Settlement Class Members. The Settlement Agreement (in Article 5) provides the following illustrative example of the proposed Plan of Allocation:

For illustrative purposes, if it is assumed that (i) the Net Settlement Amount equals \$12 million, (ii) the sum of all Prior Distributions equals \$10.5 million, and (iii) Class Member A received \$10,500 of the Prior Distributions, then Class Member A's Settlement Credit Amount equals \$12,000. This is because Class Member A's percentage of Prior Distributions equals 0.1% ( $\$10,500/\$10,500,000=0.001$ ), and the Net Settlement Amount multiplied by 0.1% equals \$12,000 ( $\$12,000,000*0.001=\$12,000$ ).

A more complete description regarding the details of the Plan of Allocation can be found in Article 5 of the Settlement Agreement, which is available at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com).

## **6. How Can I Receive My Distribution?**

A Rollover Form is enclosed with this Notice and explains the steps necessary to receive your share of the Settlement via direct rollover to an individual retirement account or qualified employer plan. You may also obtain the Rollover Form on the Settlement Website at [www.settlementwebsite.com](http://www.settlementwebsite.com) or by calling the Settlement Administrator at [telephone number](tel:). Rollover Forms should be submitted prior to the date set forth above for the Fairness Hearing. Settlement payments distributed via direct rollover will not be subject to automatic withholdings. Further information regarding rollovers can be found at the end of this notice on page 10.

All other settlement payments will be mailed in the form of a check. You do not need to do anything to receive a check. However, because checks will be sent by mail, it is important to notify the Settlement Administrator ([telephone number](tel:) or via the contact form at [www.settlementwebsite.com](http://www.settlementwebsite.com)) of any changes to your mailing address. You may also notify Class Counsel (identified in Item 11, below) of any changes to your mailing address.

Payments made directly to Class Members by check are subject to automatic tax withholding and tax reporting, as determined by the Settlement Administrator. Any tax withheld by the Settlement Administrator may not constitute all tax that you may owe in connection your settlement payment. You will be responsible for determining and paying any tax that is due but was not automatically withheld in connection with your settlement payment.

If you submit a Rollover Form but your requested rollover is not effectuated for any reason (for example, because your Rollover Form was submitted too late, the information that you provided was not sufficient, or the financial institution that you designated did not accept the rollover), the Settlement Administrator will attempt to mail you a check. Such checks will be subject to automatic tax withholding and reporting, as determined by the Settlement Administrator, and all other terms of the Settlement Agreement that apply to payments by check.

## **7. When Will I Receive My Distribution?**

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court and there are no appeals, the Settlement distribution likely will occur within approximately four months of the Court's Final Approval Order, unless there are unforeseen circumstances. There will be no payments under the Settlement if the Settlement Agreement is terminated.

## **8. Can I Exclude Myself from The Settlement?**

No. The Class has been certified for Settlement purposes under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Settlement Class Member, you are bound by the Settlement (if it receives final Court approval) and any judgments or orders that are entered in the Action. If you wish to object to any part of the Settlement, you may file an objection with the Clerk of the Court and write to Class Counsel and Defense Counsel about why you object to the Settlement, as discussed below.

**9. Do I Have a Lawyer in The Case?**

The Court has appointed the law firms of Engstrom Lee LLC in Minneapolis, Minnesota, and Wenzel Fenton Cabassa, P.A. in Tampa, Florida as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

**10. How Will the Lawyers Be Paid?**

Class Counsel will file a motion for an award of Attorneys’ Fees and Costs, and Administrative Expenses, prior to the objection deadline. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for Attorneys’ Fees to not more than one-third of the Gross Settlement Amount. In addition, Class Counsel will seek to recover all actual and anticipated litigation costs and administrative expenses associated with the Settlement. The Court will determine the amount of fees, costs, and administrative expenses that will be awarded, if any. All papers filed in this Action, including Class Counsel’s motion for Attorneys’ Fees and Costs, and Administrative Expenses, will be available for review on the Settlement Website [[www.settlementwebsite.com](http://www.settlementwebsite.com)] and via the Public Access to Court Electronic Records System (PACER), available online at <http://www.pacer.gov>.

**11. How Do I Tell the Court If I Don’t Like the Settlement?**

If you are a Settlement Class Member, you can object to the Settlement by mailing to Class Counsel and to Defense Counsel at the addresses below a written objection explaining why you object and enclosing any supporting documents. Your written objection must: (1) clearly identify the case name and number: *Colon, et al. v. Johnson, et al.*, Case No. 8:22-cv-888-TPB-TGW; (2) include your full name, current address, and telephone number; (3) describe the position you wish to assert, including the factual and legal grounds for the position; (4) provide copies of all documents that you wish to submit in support of your position; (5) provide the name(s), address(es) and phone number(s) of any attorney(s) representing you; and (6) include your signature. Your written objection and supporting documents must be mailed to Class Counsel and Defense counsel and postmarked no later than [21 calendar days prior to Fairness Hearing] to be considered. Class Counsel and Defense Counsel will have an opportunity to respond to your objection. You also must file your objection with the Court by mailing or hand delivering it to the Clerk of Court of the United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602. There is also a web portal for filing documents on the Court’s website, <https://www.flmd.uscourts.gov/electronic-document-submission-web-portal>.

CLASS COUNSEL	DEFENSE COUNSEL
Jennifer Lee Carl Engstrom <b>ENGSTROM LEE LLC</b> 323 N. Washington Ave., Ste. 200 Minneapolis, MN 55401	W. Bard Brockman Michael P. Carey Brooke V. Ingolia <b>BRYAN CAVE LEIGHTON PAISNER LLP</b> One Atlantic Center, 14 <sup>th</sup> Floor 1201 W. Peachtree St. NW Atlanta, GA 30309-3471  Adam J. Hodkin

	<p><b>HODKIN STAGE PLLC</b> 1200 N. Federal Highway, Suite 200 Boca Raton, FL 33432</p> <p>Eric L. Ray Lindsey R. Camp <b>HOLLAND &amp; KNIGHT, LLP</b> 777 South Flagler Drive Suite 1900 West Palm Beach, Florida 33401</p> <p>Howard Shapiro Robert Rachal <b>JACKSON LEWIS P.C.</b> 601 Poydras Street Suite 1400 New Orleans, LA 70130</p>
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**12. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court will hold a Fairness Hearing at [TIME] on [DATE], at United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602, in Courtroom XX. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the motion for Attorneys’ Fees and Costs, and Administrative Expenses. If there are objections, the Court will consider them then. You do not have to appear at the Fairness Hearing in order to have your objection considered by the Court. Please note that if the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at [www.settlementwebsite.com](http://www.settlementwebsite.com).

**13. Do I Have to Attend the Fairness Hearing?**

No, but you are welcome to come at your own expense. You may also make an appearance through an attorney at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it.

**14. May I Speak at The Fairness Hearing?**

Yes. If you wish to attend and speak at the Fairness Hearing, you must file an intent of notice to participate with the Clerk of the Court and mail to Class Counsel and Defense Counsel (as identified in Item 11, above) a notice of intent to appear postmarked at least [14 calendar days] before the Fairness Hearing. In order to speak at the Fairness Hearing, you must also comply with the requirements for making an objection (described above in Item 11, above) if you wish to object to the Settlement.

**15. What Happens If I Do Nothing at All?**

If you are a “Settlement Class Member” as described on page 1, and you do nothing, the Settlement Administrator will attempt to mail your *pro rata* share of the Net Settlement Amount directly to you via check, if the Settlement is finally approved.

**16. How Do I Get More Information?**

If you have questions regarding the Settlement, you can visit [[www.settlementwebsite.com](http://www.settlementwebsite.com)], call [[phone number](#)], or write to the Settlement Administrator at [[mailing address](#)]. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, and can be reviewed in person during regular business hours at the Office of the Clerk of the United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602. Please note that neither ADG nor any employees, attorneys, or representatives of ADG may advise you regarding the Settlement or how you should proceed.



## **YOUR ROLLOVER OPTIONS**

The Settlement Administrator has determined that the payment you are receiving from the Qualified Settlement Fund (“Fund”) is eligible to be rolled over to an IRA or an employer plan. This Q&A is intended to help you decide whether to do such a rollover. This notice describes the rollover rules that apply to payments from the Fund.

### **GENERAL INFORMATION ABOUT ROLLOVERS**

**How can a rollover affect my taxes?** You will be taxed on a payment from the Fund if you do not roll it over. If you are under age 59½ and do not do a rollover, you will also have to pay a 10% additional income tax on early distributions (generally, distributions made before age 59½), unless an exception applies. However, if you do a rollover, you will not have to pay tax until you receive payments later and the 10% additional income tax will not apply if those payments are made after you are age 59½ (or if an exception to the 10% additional income tax applies).

**What types of retirement accounts and plans may accept my rollover?** You may roll over the payment to either an IRA (an individual retirement account or individual retirement annuity) or an employer plan (a 401(k), section 403(b) plan, or governmental section 457(b) plan) that will accept the rollover. The rules of the IRA or employer plan that holds the rollover will determine your investment options, fees, and rights to payment from the IRA or employer plan (for example, IRAs are not subject to spousal consent rules, and IRAs may not provide loans). Further, the amount rolled over will become subject to the tax rules that apply to the IRA or employer plan.

**How do I do a rollover?** There are two ways to do a rollover. You can do either a direct rollover or a 60-day rollover.

**If you do a direct rollover,** the Fund will make the payment directly to your IRA or an employer plan. You should contact the IRA sponsor or the administrator of the employer plan for information on how to do a direct rollover. The information they give you can then be used to complete the settlement administration form. You generally need to have an account opened (even if it's not funded) for an institution to process your rollover.

**If you do not do a direct rollover,** you may still do a rollover by making a deposit into an IRA or eligible employer plan that will accept it. Generally, you will have 60 days after you receive the payment to make the deposit. If you do not do a direct rollover, the Fund is required to withhold 20% of the payment for federal income taxes (up to the amount of cash and property received other than employer stock). This means that, in order to roll over the entire payment in a 60-day rollover, you must use other funds to make up for the 20% withheld. If you do not roll over the entire amount of the payment, the portion not rolled over will be taxed and will be subject to the 10% additional income tax on early distributions if you are under age 59½ (unless an exception applies).

# **EXHIBIT B**

**ADG ESOP Class Action Settlement Administrator**

**[ADDRESS]**

**[www.settlementwebsite.com]**

**ROLLOVER FORM**

JOHN Q CLASSMEMBER  
123 MAIN ST APT 1  
ANYTOWN, ST 12345

Claim Number: 1111111

In order to receive your share of the Settlement by direct rollover to a qualified individual retirement account, Class Members must complete, sign, and mail this form with a postmark on or before **[DATE OF FAIRNESS HEARING]**. Please review the instructions below carefully. If you have questions regarding this form, you may contact the Settlement Administrator as indicated below:

**WWW.SETTLEMENTWEBSITE.COM** OR CALL **[PHONE NUMBER]**

\*\*\*\*\*

**PART 1: INSTRUCTIONS FOR COMPLETING ROLLOVER FORM**

1. If you would like to receive your share of the Settlement by direct rollover to a qualified individual retirement account (commonly called an "IRA") or qualified employer plan (such as a 401(k) plan), please complete this Rollover Form. You should also keep a copy of all pages of your Rollover Form, including the first page with the address label, for your records.
2. **Mail your completed Rollover Form postmarked on or before **[DATE OF FAIRNESS HEARING]** to the Settlement Administrator at the following address:**

**ADG ESOP Class Action Settlement Administrator**  
**P.O. Box [number] [City, State, ZIP]**

**You also may email a completed, signed copy to **[settlement administrator email address]**. It is your responsibility to ensure the Settlement Administrator has timely received your Rollover Form.**

3. Other Reminders:
  - You must provide your date of birth, signature, and a completed Substitute IRS Form W-9, which is attached as part 5 to this form.
  - If you desire to do a direct rollover and you fail to complete all of the rollover information in Part 4, below, payment will be made to you by check.
  - If you change your address after sending in your Rollover Form, please provide your new address to the Settlement Administrator.
  - **Timing of Payments to Eligible Settlement Class Members.** The timing of the distribution of the Settlement payments are conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to an appeal in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur within four months of the Court's Final Approval Order.

4. **Questions?** If you have any questions about this Rollover Form, please call the Settlement Administrator at [phone number]. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax or other advice concerning the Settlement or your situation. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement and the Settlement administration is available on the settlement website, [www.settlementwebsite.com].

**PART 2: SETTLEMENT CLASS MEMBER INFORMATION**

First Name	Middle	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Mailing Address		
<input type="text"/>		
City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Home Phone	Work Phone or Cell Phone	
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>	
Participant's Social Security Number	Participant's Date of Birth	
<input type="text"/> - <input type="text"/> - <input type="text"/>	<input type="text"/> - <input type="text"/> - <input type="text"/>	
Email Address	M M	D D Y Y Y Y
<input type="text"/>		

[ROLLOVER FORM CONTINUES ON THE NEXT PAGE]

**PART 3: BENEFICIARY OR ALTERNATE PAYEE INFORMATION (IF APPLICABLE)**

- Check here if you are the **surviving spouse or other beneficiary** for the Settlement Class Member and the Settlement Class Member is deceased. **Documentation must be provided showing current authority of the representative to file on behalf of the deceased.** Please complete the information below and then continue on to Parts 4 and 5 on the next page.
  
- Check here if you are an alternate payee under a qualified domestic relations order (QDRO). The Settlement Administrator may contact you with further instructions. Please complete the information below and then continue on to Parts 4 and 5 on the next page.

First Name	Middle	Last Name
Mailing Address		
City	State	Zip Code
Home Phone	Work Phone or Cell Phone	
Participant's Social Security Number	Participant's Date of Birth	
Email Address	M M    D D    Y Y Y Y	

[ROLLOVER FORM CONTINUES ON THE NEXT PAGE]

**PART 4: PAYMENT ELECTION**

**Direct Rollover to an Eligible Plan** – Check only one box below and complete the Rollover Information Section below:

- Government 457(b)                     
  401(a)/401(k)                     
  403(b)  
 Direct Rollover to a Traditional IRA                     
  Direct Rollover to a Roth IRA (subject to ordinary income tax)

**Rollover Information:**

Company or Trustee's Name (to whom the check should be made payable)

--

Company or Trustee's Mailing Address 1

--

Company or Trustee's Mailing Address 2

--

Company or Trustee's City

--

State

--	--

Zip Code

--	--	--	--

Your Account Number

--

Company or Trustee's Phone Number

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**PART 5: SIGNATURE, CONSENT, AND SUBSTITUTE IRS FORM W-9**

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS ROLLOVER FORM IS TRUE, CORRECT, AND COMPLETE AND THAT I SIGNED THIS ROLLOVER FORM.

1. The Social Security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. person (including a U.S. resident alien).

\_\_\_\_\_

**Class Member Signature**

M M	D D	Y Y Y Y								
<table border="1" style="width:30px; height:25px;"> <tr><td style="width:15px;"></td><td style="width:15px;"></td></tr> </table>			<table border="1" style="width:30px; height:25px;"> <tr><td style="width:15px;"></td><td style="width:15px;"></td></tr> </table>			<table border="1" style="width:40px; height:25px;"> <tr><td style="width:10px;"></td><td style="width:10px;"></td><td style="width:10px;"></td><td style="width:10px;"></td></tr> </table>				

**Date Signed (Required)**

Note: If you are subject to backup withholding, you must cross out item 2 above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

# **EXHIBIT C**



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Johana Colon, *et al.*,

Plaintiffs,

v.

Kevin G. Johnson, *et al.*,

Defendants.

Case No. 8:22-cv-888-TPB-TGW

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

The above-entitled matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement. ECF No.     . After review of the subject motion and the attachments thereto, the Court **GRANTS** the motion and **ORDERS** as follows:<sup>1</sup>

1. Based on the Court's review, the Court finds, on a preliminary basis that: (1) the Settlement is fair, reasonable, and adequate, and within the range of possible approval; (2) the Settlement has been negotiated in good-faith at arms-length between experienced attorneys familiar with the legal and factual issues of this case and facilitated by an experienced mediator following substantial discovery; (3) the form and method of notice of the Settlement of the Final Fairness Hearing is appropriate;

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<sup>1</sup> All defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement executed by the Parties and filed with the Court.

and (4) the Settlement meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and applicable Eleventh Circuit precedents. Accordingly, the Court preliminarily approves the Settlement Agreement in its entirety.

2. Pursuant to Federal Rule of Civil Procedure 23(b)(1), the Court certifies, for settlement purposes only, the following Settlement Class:

All Participants who were issued a distribution from the Plan, or their Beneficiaries or Alternate Payee, excluding Leigh Anne Fernandes and Dale Hersey.

Named Plaintiffs Johana Colon, Christine Rundberg, and Anthony Womack are appointed as the Class Representatives, and Engstrom Lee LLC, and Wenzel Fenton Cabassa, P.A. are appointed as Class Counsel for the Settlement Class.

3. The Court finds the Plan of Allocation proposed by Class Counsel is fair, reasonable and adequate as it proposes each Class Member's distribution to be equal to the Net Settlement Amount multiplied by the percentage of all Prior Distributions received by the Class Member during the Class Period.

4. The Court finds that under Fed. R. Civ. P. 23(c)(2), the proposed Notice of Settlement (Exhibit A to the Settlement Agreement) constitutes the best notice practicable under the circumstances, provides due and sufficient notice of the Final Fairness Hearing and of the rights of all Settlement Class Members, and complies fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law. Specifically, the Court finds that the proposed Notice fairly and adequately provides information to the Settlement Class regarding, among other things: (1) the nature of the claims asserted in the Action; (2) the scope of the

Settlement Class; (3) the terms of the Settlement Agreement; (4) the process for submitting a Rollover Form, if permitted; (5) Settlement Class Members' right to object to the Settlement and the deadline for doing so; (6) the Settlement Class's release; (7) the identity of Class Counsel and the amount of compensation they will seek in connection with the Settlement; (8)) the date, time, and location of the Fairness Hearing; and (9) Settlement Class Members' right to appear at the Fairness Hearing.

5. Pursuant to the Settlement Agreement, Analytics Consulting LLC is hereby appointed as the Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order.

6. The Court approves the establishment of the Qualified Settlement Fund. Analytics Consulting LLC shall be the administrator of the Qualified Settlement Fund and shall be responsible for all tax withholding and reporting related to the Qualified Settlement Fund, including for determining whether tax-qualified rollover distributions may be offered to the Settlement Class Members.

7. No later than **thirty (30) calendar days** after the entry of this Order, the Settlement Administrator shall send by first-class mail the Settlement Notice (attached as Exhibit A to the Settlement Agreement) to each Settlement Class Member identified by the Settlement Administrator based upon the data available from either the Plan's former Recordkeeper provided in discovery or information provided by Settlement Class Members. The Settlement Administrator shall use commercially reasonable

efforts to locate Settlement Class Members' last known addresses for any who have moved since the last distribution to them from the Plan.

8. In accordance with the Settlement Agreement, the Settlement Administrator also shall establish a Settlement Website and toll-free telephone line relating to the Settlement no later than **thirty (30) calendar days** following the entry of this Preliminary Approval Order.

9. The Court hereby appoints Fiduciary Counselors to perform the duties of the Independent Fiduciary under the Settlement Agreement. The Court further approves the payment or reimbursement of up to \$25,000 in fees and expenses of the Independent Fiduciary from the Qualified Settlement Fund.

10. On **[date]** at **[time]** **[no sooner than 120 days after the entry of this Order]**, or at such other date and time later set by Court Order,<sup>2</sup> in courtroom **[ ]** of the United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602, this Court will hold a Fairness Hearing to determine whether: (a) the Court should approve the Settlement as fair, reasonable, and adequate; (b) the Court should enter the Final Approval Order; and (c) the Court should approve the application for Attorneys' Fees and Costs, and Administrative Expenses. The Final Fairness Hearing may be held in person, by telephone, or via videoconference, without further direct notice to the Class Members, other than by notice to Class Counsel, and/or be adjourned or continued by order of the Court.

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<sup>2</sup> Any change in the date, time, location, or format of the Fairness Hearing shall be posted on the Settlement Website.

11. Any Settlement Class Member may comment in support of or in opposition to the Settlement Agreement. Any objections to any aspect of the Settlement Agreement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Final Fairness Hearing if they have been filed validly with the Clerk of the Court and copies provided to Class Counsel and Defense Counsel. To be filed validly, the objection and any notice of intent to participate or supporting documents must be filed or postmarked at least **twenty-one (21) calendar days** prior to the scheduled Final Fairness Hearing. The comment and/or objection also must: (1) clearly identify the case name and number of this Action; (2) include the Settlement Class Member's full name, current address, and telephone number; (3) describe the position the Settlement Class Member wishes to assert, including the factual and legal grounds for the position; (4) provide copies of all documents that the Settlement Class Member wishes to submit in support of his or her position; (5) provide the name(s), address(es) and phone number(s) of any attorney(s) representing the Settlement Class Member; and (6) include the Settlement Class Member's signature. Any Person wishing to speak at the Final Fairness Hearing shall file, with copies provided to Class Counsel and Defense Counsel, a notice of intent to participate **fourteen (14) calendar days** before the Final Fairness Hearing. A notice of intent to participate shall be timely filed if it is post-marked to the Clerk of the Court, Class Counsel, and Defense Counsel within fourteen (14) calendar days before the Final Fairness Hearing.

12. Any party may file a response to an objection by a Class Member at least seven (7) calendar days before the Final Fairness Hearing.

13. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived such Settlement Class Member's objections and shall forever be barred from making any such objections in this Action or in any other action or proceeding.

14. Any application for Attorneys' Fees and Costs, and Administrative Expenses, shall be filed no later than **thirty (30) calendar days** prior to the deadline for objections.

15. No later than **thirty (30) calendar days** prior to Fairness Hearing, Class Counsel shall file papers in support of Final Approval of the Settlement Agreement. Class Counsel shall file any objections to the Settlement with the motion for Final Approval of the Settlement.

16. Pending final determination of whether the Settlement Agreement should be approved, no Settlement Class Member may directly, through Representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants, the Released Parties, and/or the Plan.

17. The Court approves the CAFA Notice attached as Exhibit E and orders that upon mailing of the CAFA Notice, Defendants shall have fulfilled their obligations under CAFA.

It is so ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2024.

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Honorable Thomas P. Barber  
United States District Judge

# **EXHIBIT D**



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

Johana Colon, *et al.*,

Plaintiffs,

v.

Kevin G. Johnson, *et al.*,

Defendants.

Case No. 8:22-cv-888-TPB-TGW

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT**

The above-entitled matter came before the Court on the Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement. ECF No.     . After review of the Unopposed Motion for Final Approval of Settlement and the attachments thereto, the Court **GRANTS** the motion and **ORDERS** as follows:<sup>1</sup>

1. The Court has jurisdiction over the subject matter of this action and personal jurisdiction over all parties to this action, including all members of the Settlement Class.

2. The Court certifies, for Settlement purposes only, the following Settlement Class:

All Participants who were issued a distribution from the Plan, or their Beneficiaries or Alternate Payee, excluding Leigh Anne Fernandes and Dale Hersey.

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<sup>1</sup> All defined terms contained herein shall have the same meaning as set forth in the Settlement Agreement executed by the Parties and filed with the Court.

The Court finds that this Settlement Class meets all of the requirements of Rule 23(a) and 23(b)(1).

3. Pursuant to Rules 23(e)(1)(A) and (C), the Court hereby approves of the Settlement of the Released Claims covered by this Settlement Agreement and finds the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class Members.

4. The Court hereby orders that the Settling Parties take all necessary steps to effectuate the terms of the Settlement Agreement.

5. The Court hereby finds that under Fed. R. Civ. P. 23(c)(2) the Settlement Notice constituted the best notice practicable under the circumstances and that due and sufficient notice of the Final Fairness Hearing and the rights of all Class Members has been provided.

6. In accordance with the Court's Orders, and as reflected in the information from the Settlement Administrator, Analytics Consulting LLC, Settlement Notices were timely distributed by first-class mail to all Class Members who could be identified with reasonable effort. The Settlement Administrator searched for updated address information for those returned as undeliverable, and re-mailed notices to those Class Members. In total,     % were ultimately returned as undeliverable. In addition, pursuant to the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.* ("CAFA"), notice was provided to the Attorneys General for each of the states in which a Class Member resides and the Attorney General of the United States.

7. The Court finds that the Settlement is fair, reasonable, and adequate, based on the following findings of fact, conclusions of law, and determinations of mixed fact/law questions:

A. The Settlement resulted from arm's-length negotiations by experienced and competent counsel overseen by a neutral mediator;

B. The Settlement was negotiated only after Class Counsel had received substantial discovery from Defendants;

C. The Settling Parties were well positioned to evaluate the value of the Class Action;

D. If the Settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation;

E. The amount of the Settlement (\$19,000,000.00) is fair, reasonable, and adequate. The Settlement amount is within the range of reasonable settlements that would have been appropriate in this case, based on the nature of the claims, the potential recovery, the risks of litigation, and settlements that have been approved in other similar cases;

F. The Class Representatives have actively and independently participated in the Class Action;

G. The Class Representatives and Class Counsel have concluded that the Settlement Agreement is fair, reasonable and adequate;

H. Class Members had the opportunity to be heard on all issues regarding the Settlement and release of claims by submitting objections to the Settlement Agreement to the Court; and

I. There were [REDACTED] objections to the settlement. [REDACTED] of those objections were timely. The Court has considered all of them, and they do not affect the Court's determination that the Settlement is fair, reasonable, and adequate. Accordingly, the Court overrules them with prejudice.

J. The Settlement was reviewed by an independent fiduciary, Fiduciary Counselors, Inc., who has approved the Settlement.

8. The Motion for Final Approval of the Settlement Agreement is hereby GRANTED, the Settlement of the Class Action is APPROVED as fair, reasonable and adequate to the Plan and the Settlement Class.

9. This Action and all Released Claims asserted therein whether asserted by Class Representatives on their own behalf or on behalf of the Class Members, or on behalf of the Plan, are hereby dismissed with prejudice without costs to any of the Settling Parties other than as provided for in the Settlement Agreement.

10. The Plan and each Class Member (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be: (a) conclusively deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the Released Parties from all Released Claims; and (b) barred and

enjoined from suing the Released Parties in any action or proceeding alleging any of the Released Claims.

11. Each Class Member shall release the Released Parties and Class Counsel for any claims, liabilities, and attorneys' fees and costs arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and costs.

12. The provisions of Sections 3.2.3., 3.2.4 and 3.2.5 of the Settlement Agreement shall apply even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Class Action and the Released Claims, whether or not such Class Members receive a monetary benefit from the Settlement, whether or not such Class Members actually received the Settlement Notice, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and Administrative Expenses, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

13. The Court finds that all applicable CAFA requirements have been satisfied.

14. The Plan of Allocation is approved. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Class Member in accordance with the Plan of Allocation. The

Settlement Administrator is further authorized to direct the Escrow Agent to make such distributions from the Qualified Settlement Fund as necessary to implement the Plan of Allocation.

15. Within **thirty-one (31)** calendar days following the issuance of all settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each Person who received a settlement payment or contribution from the Qualified Settlement Fund and the amount of such payment or contribution.

16. Section 15(b) of the Amended Agreed Confidentiality Order entered in the Class Action (Dkt. 241) is modified for the limited purpose of allowing the Settling Parties, Class Counsel, and Defense Counsel to retain and use Confidential Information and documents marked “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” in connection with claims that are excluded from the definition of “Released Claims” per Section 1.33.7 of the Settlement Agreement.

17. Upon the Effective Date of this Order under the Settlement Agreement, all Settling Parties, the Settlement Class, and the Plan shall be bound by the Settlement Agreement and by this Final Approval Order.

18. The Court shall retain jurisdiction to enforce and interpret the Settlement Agreement.

It is so ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2024.

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Honorable Thomas P. Barber  
United States District Judge

# **EXHIBIT E**



# JacksonLewis

Jackson Lewis P.C.  
601 Poydras Street, Suite 1400  
New Orleans LA 70130  
(504) 208-1755 Direct  
(504) 208-1759 Fax  
[jacksonlewis.com](http://jacksonlewis.com)

MY DIRECT DIAL IS: (504) 208-5835  
MY EMAIL ADDRESS IS: HOWARD.SHAPIRO@JACKSONLEWIS.COM

March     , 2024

**By First Class Mail, Return Receipt Requested**

[INSERT ADDRESS BLOCK]

Re: *Johana Colon, et al. v. Kevin G. Johnson, et al.*  
No. 8:22-cv-00888-TPB-TGW (M.D. Fla.)

Dear Attorney General:

Pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Defendant GreatBanc Trust Co., through undersigned counsel, writes jointly with the consent of Defendants Kevin Johnson, Dale Hersey, Leigh Anne Fernandes, Nathan Ward, Shaun McGruder, Michael Schmickle, ADG Management Holdings, LLC, and Joshua Blacksten (collectively “Defendants”) to give notice of a proposed settlement in the above-referenced matter.

On [INSERT DATE], Plaintiffs’ Counsel filed a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) notifying the United States District Court for the Middle District of Florida of a proposed settlement of the above-captioned matter. The Settlement Agreement contemplates that the Court will certify a class for settlement purposes defined as:

All Participants who were issued a distribution from the Plan, or their Beneficiaries or Alternate Payee, excluding Leigh Anne Fernandes and Dale Hersey.

In accordance with 28 U.S.C. § 1715(b), Defendants provide the following documents on the enclosed CD:

1. Plaintiffs’ Class Action Complaint;
2. Plaintiffs’ Amended Class Action Complaint;
3. Plaintiffs’ Second Amended Class Action Complaint; and
4. Plaintiffs’ Unopposed Motion for Preliminary Approval, along with the supporting materials, which include:
  - i. Declaration of Jennifer Lee in Support of Plaintiffs’ Motion for Preliminary Approval;
  - ii. Exhibit 1, Class Action Settlement Agreement
  - iii. Exhibit A, Notice of Class Action Settlement;

# JacksonLewis

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- iv. Exhibit B, Rollover Form
- v. Exhibit C, Proposed Order Preliminarily Approving Class Action Settlement;
- vi. Exhibit D, Proposed Final Approval Order and Final Judgment; and
- vii. Exhibit E, CAFA Notice template;

Also, we attach to this letter a table providing a reasonable estimate of the number of class members residing in each state. This table is based on the last known addresses Defendants have for these class members.

The material terms of the settlement are as follows:

Defendants agree to pay \$19,000,000 into a Qualified Settlement Fund. Class Members are eligible to receive a pro rata share of the amount in the settlement fund remaining after payment of administrative expenses, any attorneys' fees and expenses the Court may award to Plaintiffs' Counsel, and the fees of the independent fiduciary. The amount of each Class Member's payment will be based proportionately on his or her prior distributions from the Plan and will be determined according to a Plan of Allocation set forth in the Settlement Agreement at Section 1.29 that was submitted by Class Counsel to the District Court Judge as part of the preliminary approval proceedings.

On [INSERT DATE], United States District Judge Thomas Barber granted Plaintiffs' Motion for Preliminary Approval of Settlement. The Court set the Final Fairness Hearing for [INSERT DATE], at [TIME] E.D.T., Courtroom 14A, United States District Court, 801 North Florida Avenue, Tampa, Florida 33602. There are no other agreements between Class Counsel and Counsel for Defendants. There are no final judgments or notices of dismissal in this matter, nor are there written judicial opinions relating to the materials described under 28 U.S.C. §§ 1715(b)(3)-(6).

We appreciate your time and attention to this matter. Please contact me with any questions or concerns.

Sincerely yours,



Howard Shapiro  
Counsel for GreatBanc Trust Co.

Enclosures

*Johana Colon, et al. v. Kevin G. Johnson, et al.,*  
No. 8:22-cv-00888-TPB-TGW (M.D. Fla.)**Approximate Number of Class Members in Each State or Territory**

<b>State / Territory</b>	<b>Number of Class Members</b>
Alabama	0
Alaska	0
Arizona	0
Arkansas	0
California	0
Colorado	0
Connecticut	0
Delaware	0
District of Columbia	0
Florida	164
Georgia	13
Hawaii	0
Idaho	0
Illinois	0
Indiana	0
Iowa	0
Kansas	0
Kentucky	0
Louisiana	0
Maine	0
Maryland	0
Massachusetts	0
Michigan	0
Minnesota	0
Mississippi	0
Missouri	0
Montana	0
Nebraska	0
Nevada	0
New Hampshire	0
New Jersey	0
New Mexico	0
New York	0
North Carolina	0
North Dakota	1
Ohio	1
Oklahoma	0
Oregon	0
Pennsylvania	0
Rhode Island	0
South Carolina	1

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South Dakota	0
Tennessee	0
Texas	0
Utah	0
Vermont	0
Virginia	0
Washington	0
West Virginia	0
Wisconsin	0
Wyoming	0
Armed Forces/Military	0
American Samoa	0
Guam	0
Puerto Rico	0
Northern Mariana Islands	0
U.S. Virgin Islands	0