

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

LUCINDA COUNCIL, RAVYNNE
GILMORE, VERNA MAITLAND, and
HILARI NGUFOR, individually and on behalf
of all others similarly situated,

Plaintiffs,

- against -

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED and BANK OF
AMERICA CORPORATION,

Defendants.

Case No. 3:24-cv-00534

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT**

TABLE OF CONTENTS

| | |
|---|----|
| MEMORANDUM OF POINTS AND AUTHORITIES..... | 2 |
| I. INTRODUCTION..... | 2 |
| II. BACKGROUND..... | 3 |
| A. Plaintiffs’ Civil Rights Allegations | 3 |
| B. Defendants’ Position on Plaintiffs’ Allegations..... | 5 |
| C. Negotiations and Mediations Between the Parties | 5 |
| D. The Class Litigation | 7 |
| III. THE PROPOSED CLASS SETTLEMENT AGREEMENT..... | 8 |
| A. The Settlement Class | 8 |
| B. Relief Terms of the Settlement Agreement | 9 |
| C. Release of Claims | 10 |
| D. Class Notice and Settlement Administration | 11 |
| E. Attorneys’ Fees and Expenses..... | 11 |
| F. Proposed Date of Final Approval Hearing | 11 |
| G. Class Action Fairness Act Notice..... | 11 |
| IV. ARGUMENT | 12 |
| A. Certification of the Settlement Class is Appropriate | 13 |
| 1. Numerosity | 14 |
| 2. Commonality | 14 |
| 3. Typicality | 15 |
| 4. Adequacy of Representation | 16 |

| | | |
|----|---|----|
| 5. | Plaintiffs Submit That Certification Under Rule 23(b)(3) is Appropriate | 16 |
| B. | The Proposed Settlement Satisfies the Legal Standard for Preliminary Approval | 18 |
| 1. | Likelihood of Success and Litigation Complexity Favors Settlement | 19 |
| 2. | Range of Possible Recovery and the Point On or Below the Range of Recovery at Which a Settlement Is Fair..... | 20 |
| 3. | More than Three Years of Facilitated Negotiations and Informal Discovery Support Settlement | 21 |
| 4. | The Court Can Gauge Any Opposition to the Settlement at the Fairness Hearing | 23 |
| C. | The Proposed Notice is the Best Practicable | 23 |
| D. | Plaintiffs’ Counsel Should Be Appointed As Class Counsel..... | 24 |
| | CONCLUSION | 25 |

TABLE OF AUTHORITIES

| CASES | PAGE(S) |
|--|----------------|
| <i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997) | 13, 16 |
| <i>Ass'n for Disabled Americans, Inc. v. Amoco Oil Co.</i> , 211 F.R.D. 457 (S.D. Fla. 2002) | 12 |
| <i>Behrens v. Wometco Enters., Inc.</i> , 118 F.R.D. 534 (S.D. Fla. 1988) | 20 |
| <i>Bennett v. Behring Corp.</i> , 737 F.2d 982 (11th Cir. 1984) | 12, 19 |
| <i>Council et al. v. Merrill Lynch, et al.</i> , No. 50-2022-CA-012658 (Fla. Cir. Ct.)..... | 4 |
| <i>In re Checking Acct. Overdraft Litig.</i> , 275 F.R.D. 654 (S.D. Fla. 2011) | 15, 16, 17 |
| <i>In re Checking Acct. Overdraft Litig.</i> , 830 F. Supp. 2d 1330 (S.D. Fla. 2011) | 22 |
| <i>City of L.A. v. Bankrate, Inc.</i> , No. 14 Civ. 81323, 2016 U.S. Dist. LEXIS 115071 (S.D. Fla. Aug. 24, 2016) .. | 18 |
| <i>Cotton v. Hinton</i> , 559 F.2d 1326 (5th Cir. 1977) | 12, 20 |
| <i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974) | 23 |
| <i>In re Equifax Customer Data Sec. Breach Litig.</i> , No. 17 Md 2800, 2020 U.S. Dist. LEXIS 118209 (N.D. Ga. Mar. 17, 2020) | 21 |
| <i>Estate of Dolby v. Butler & Hosch, P.A.</i> , No. 3 Civ. 2246, 2006 U.S. Dist. LEXIS 102738 (M.D. Fla. Aug. 4, 2006) | 22 |
| <i>Ferron v. Kraft Heinz Foods Co.</i> , No. 20 Civ. 62136, 2021 U.S. Dist. LEXIS 81589 (S.D. Fla. Jan. 18, 2021) | 17 |
| <i>Figueroa v. Sharper Image Corp.</i> , 517 F. Supp. 2d 1292 (S.D. Fla. 2007) | 12 |
| <i>Fresco v. Auto Data Direct, Inc.</i> , No. 3 Civ. 61063, 2007 U.S. Dist. LEXIS 37863 (S.D. Fla. May 14, 2007) .. | 13, 18 |
| <i>Holman v. Student Loan Xpress, Inc.</i> , No. 8 Civ. 305, 2009 U.S. Dist. LEXIS 113491 (M.D. Fla. Nov. 19, 2009) | 12 |
| <i>In re Initial Pub. Offering Sec. Litig.</i> , 226 F.R.D 186 (S.D.N.Y. 2005) | 18 |

| | |
|--|---------------|
| <i>Kirkpatrick v. J.C. Bradford & Co.</i> , 827 F.2d 718 (11th Cir. 1987) | 16 |
| <i>Klewinowski v. MFP, Inc.</i> , No. 13 Civ. 1204, 2013 U.S. Dist. LEXIS 130591 (M.D. Fla. Sept. 12, 2013) ... | 14 |
| <i>Lipuma v. Am. Express</i> , 406 F. Supp. 2d 1298 (S.D. Fla. 2005) | 20, 21 |
| <i>Mullane v. Cent. Hanover Bank & Tr. Co.</i> , 339 U.S. 306 (1950) | 23 |
| <i>Rosario-Guerro v. Orange Blossom Harvesting, Inc.</i> , 265 F.R.D. 619 (M.D. Fla. 2010) | 15 |
| <i>Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.</i> , 601 F.3d 1159, 1170 (11th Cir. 2010) | 17, 18 |
| <i>Smith v. Wm. Wrigley Jr. Co.</i> , No. 9 Civ. 60646, 2010 U.S. Dist. LEXIS 67832 (S.D. Fla. June 15, 2010) . | 14, 15 |
| <i>In re Terazosin Hydrochloride Antitrust Litig.</i> , 220 F.R.D. 672 (S.D. Fla. 2004) | 15 |
| <i>In re U.S. Oil and Gas Litig.</i> , 967 F.2d 489 (11th Cir. 1992) | 12 |
| <i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011) | 14 |
| <i>Waters v. Cook’s Pest Control, Inc.</i> , No. 7 Civ. 394, 2012 U.S. Dist. LEXIS 99129 (N.D. Ala. July 17, 2012) | 14 |
| <i>Woznicki v. Radon Corp.</i> , No. 18 Civ. 2090, 2021 U.S. Dist. LEXIS 161400 (M.D. Fla. Aug. 25, 2021) ... | 22 |
| STATUTES | |
| 42 U.S.C. § 1981 | 2 |
| 42 U.S.C. §§ 2000e | 2 |
| RULES | |
| Fed. R. of Civ. P. 23 | <i>passim</i> |
| Local Rule 3.01 | 25 |
| OTHER | |
| 4 Newberg on Class Actions §11.41 (4 th ed. 2002) | 12 |
| Manual for Complex Litigation (Fourth) §§ 21.632-33 (2004)..... | 12 |

Plaintiffs Lucinda Council, Ravynne Gilmore, Verna Maitland, and Hilari Ngufor, individually and on behalf of the proposed Settlement Class (collectively, “Plaintiffs”), respectfully move for an order: (1) preliminarily approving the Settlement Agreement, attached as Exhibit A to the Affirmation of Adam T. Klein (“Klein Aff.”)¹ between Plaintiffs and Defendants Merrill Lynch, Pierce, Fenner & Smith Inc. and Bank of America Corp. (“Defendants” or “Merrill”) (together with Plaintiffs, “Parties”); (2) conditionally certifying the proposed settlement class, for settlement purposes only, under Federal Rule of Civil Procedure 23; (3) appointing Plaintiffs as Class Representatives and Shavitz Law Group, P.A. (“Shavitz”) and Outten & Golden LLP (“O&G”), jointly as Class Counsel; (4) approving the proposed Notice of Class Action, Proposed Settlement Agreement, and Settlement Fairness Hearing (“Notice”) attached as Exhibit B, and authorizing its distribution; (5) setting a date and time for the Final Fairness Hearing; and (6) entering the proposed Preliminary Approval Order (“Order”), attached hereto as Exhibit C, in substantially the same form as the contents of the Order.

This motion is made based on the accompanying Memorandum of Points and Authorities, the Settlement Agreement, Declaration of Adam T. Klein and the accompanying exhibits, and Declaration of Gregg I. Shavitz, and all other papers, pleadings, documents, arguments, materials, and any other evidence the Court may consider.

¹ Unless otherwise indicated, all exhibits are attached to the Affirmation of Adam T. Klein (“Klein Aff.”) and all capitalized terms used herein have the same meaning as set forth in the Settlement Agreement.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs are former Merrill employees who brought suit on behalf of themselves and current and former African-American employees who worked for Merrill as Financial Advisors (“FAs”), Financial Advisor Development Program Trainees (“FADPs”) (formerly known as Practice Management Development Trainees (“PMDs”)), and/or Financial Solutions Advisors (“FSAs”) (collectively, “Financial Advisors”). Plaintiffs have reached a settlement with Defendants to resolve claims of race and color discrimination, in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e *et seq.*, and 42 U.S.C. § 1981 as amended (“Section 1981”).

Plaintiffs brought this case to challenge discriminatory compensation and promotion practices at Merrill based on race and/or color. The proposed settlement of this important civil rights issue remedies the policies and practices that Plaintiffs challenged, thereby increasing opportunities for African-American Financial Advisors who were previously disadvantaged because of their race and/or color. In addition to the significant programmatic changes, which benefit both Class Members and future Financial Advisors, the settlement requires Merrill to pay Nineteen Million Nine Hundred Fifty Thousand Dollars and Zero Cents (\$19,950,000.00), which will cover individual settlement payments to eligible Class Members, the costs of settlement administration, and attorneys’ fees and costs.

As set forth below, the Settlement Agreement is fair, reasonable, and adequate, and satisfies all of the criteria for preliminary approval.

II. BACKGROUND

A. Plaintiffs' Civil Rights Allegations

In their federal complaint, filed on May 24, 2024, in this Court, Plaintiffs allege that Merrill afforded African-American Financial Advisors fewer business opportunities than comparable White Financial Advisors, and as a result, they received less compensation and have been promoted less frequently than their White counterparts. Compl. at ¶ 2. Plaintiffs further allege that African-American Financial Advisors were terminated (or “washed out”) from employment with Defendants at higher rates than their White counterparts and fail to advance to more senior roles. *Id.* ¶ 3. Plaintiffs allege that these violations of African-American Financial Advisors' rights are systemic and based on company-wide policies and practices. *Id.* ¶ 4.

Prior to filing the lawsuit, Plaintiffs' Counsel conducted a thorough investigation into the merits of the class claims, the proper measure of damages, the legal issues involved in race and color discrimination issues in corporations, and the likelihood of class certification. Klein Aff. ¶ 13. Plaintiffs' Counsel conducted in-depth interviews with Plaintiffs and other Merrill current and former employees to determine their compensation, their job responsibilities, their backgrounds and contributions, and other information relevant to their claims. *Id.* ¶ 14. Plaintiffs' Counsel obtained and reviewed documents from Plaintiffs related to their work and promotion standards, and conducted in-depth background research on Merrill, including filings and other public

documents, to obtain information on its structure, locations, and promotion and pay policies. *Id.*

Upon conclusion of their initial investigation, on October 9, 2020, Named Plaintiff Ravynne Gilmore filed a Charge of Discrimination against Merrill with the Equal Employment Opportunity Commission (“EEOC”) alleging race discrimination on behalf of herself and other similarly situated African-American Financial Advisors. Soon thereafter, on October 15, 2020, Named Plaintiff Hilari Ngufor filed a Charge of Discrimination against Merrill with the EEOC alleging race discrimination on behalf of himself and other similarly situated African-American Financial Advisors.²

Prior to filing the Complaint, Plaintiffs previously filed a putative class action in Florida state court, alleging race discrimination claims based on federal and state law. *See Council et al. v. Merrill Lynch, et al.*, Case No. 50-2022-CA-012658 (Fla. Cir. Ct.), (filed Dec. 23, 2022). During conferences with the Parties, the Honorable Jaimie Goodman questioned whether the court could exercise jurisdiction over the matter relating to non-Florida settlement class members and indicated that federal court would be a more appropriate forum given the resources available and claims at issue. Klein Aff. ¶ 25. Upon consent of all Parties, on May 6, 2024, the Parties stipulated to voluntarily dismiss the matter pursuant to Fla. R. Civ. P. 1.420(a)(1), for the express purpose of filing the instant matter. *Id.*

² On July 2, 2021, Plaintiffs Gilmore and Council filed a class action complaint of discrimination in the Eastern District of Michigan, styled *Gilmore et al. v. Merrill Lynch, Pierce, Fenner & Smith Inc. & Co. et al.*, No. 21 Civ. 11553, and voluntarily dismissed the action without prejudice on November 22, 2022 to allow the parties to conclude their settlement negotiations.

B. Defendants' Position on Plaintiffs' Allegations

While the Parties concluded that it is in their best interest to resolve the Action, Defendants continue to deny the claims and allegations, including that they have discriminated or retaliated against African-American Financial Advisors in any way. Defendants believe that they treat all employees fairly and equally regardless of race or color and are committed to ensuring equal employment opportunity. To that end, Defendants believe that all Financial Advisors have the same opportunities to earn compensation regardless of race or color and are paid based on their success in advising clients. It is also Defendants' position that they have taken a number of actions over the last decade to help improve opportunities available to African-American employees, including but not limited to conducting an annual African-American Leadership Symposium, maintaining dedicated resources to provide coaching and support for African-American Financial Advisors, and implementing workshops for African-American Financial Advisors focused on best practices and strategies. Defendants remain committed to improving the opportunities available to African-American Financial Advisors, including through the programmatic relief set forth in the Settlement Agreement.

C. Negotiations and Mediations Between the Parties

The Parties agreed to this Settlement after more than three years of ongoing, arms-length negotiations. On September 22, 2020, Class Counsel sent Defendants a letter informing them of the Named Plaintiffs' claims and invited pre-litigation discussions to explore the possibility of an early resolution. Klein Aff. ¶ 15. After a

series of exchanges, the Parties entered into a Tolling Agreement in November 2020, and agreed to exchange preliminary information to assist them in analyzing the claims, defenses, and scope of exposure and damages. *Id.*

Defendants produced Human Resources and compensation data, as well as teaming and compensation policies to allow the Parties to engage in informed and good faith settlement discussions. *Id.* ¶ 15. Plaintiffs' Counsel analyzed the compensation data provided by Merrill to determine to what degree African-American Financial Advisors were paid less than their White counterparts, after controlling for standard variables, and calculated back pay damages. *Id.* Plaintiffs' Counsel also examined Defendants' job titles and compensation and teaming guidelines to identify any variability in the criteria used for compensation, teaming, and promotion decisions, the discretion given to individual decision-makers, and the fit between job responsibilities, job description, and job title. *Id.* ¶ 16. Plaintiffs' Counsel extensively researched legal scholarship and sociolegal literature to identify ways that Merrill can become a more inclusive and successful work environment for African-American Financial Advisors, in order to effectively negotiate for Merrill to reexamine and realign their hiring, compensation, and retention practices and policies and make impactful and long-term change. *Id.*

Based upon their investigation, Plaintiffs' Counsel assessed the merits, risks, and potential damages associated with the class claims of racial discrimination in pay and promotions, and the Parties then began to mediate the class dispute. *Id.* ¶ 17. The Parties retained an experienced third-party neutral, Mediator David Rotman, with

substantial experience in employment class actions, to assist them in settlement discussions. *Id.* On May 25, 2021, July 27, 2021, and September 28, 2021, the Parties attended good faith, arms-length mediations facilitated by Mediator David Rotman. *Id.* At the September 28, 2021 mediation, the Parties agreed to the general terms of a class settlement, which were memorialized in a settlement term sheet agreement. *Id.* Other terms of the settlement were negotiated over the ensuing months and the Parties finalized the Settlement Agreement on December 28, 2022, which was further modified on May 24, 2024. At all times during the settlement negotiation process, negotiations on the class claims were conducted at an arm's-length basis. *Id.* ¶ 18; *see* Ex. A (Settlement Agreement) § 1. The Named Plaintiffs have agreed to resolve their individual, non-class claims for separate consideration, and have agreed to provide a broader general release of claims for matters that are outside the scope of this Settlement. The separate consideration was negotiated separately and agreed to by the Parties after they reached agreement on the class claims and will not be taken from the Gross Fund.³

D. The Class Litigation

As contemplated in the Settlement Agreement, on May 24, 2024, Plaintiffs filed a Class Action Complaint against Defendants in this Court on behalf of themselves and others similarly situated, alleging on behalf of themselves and the Settlement Class Members (defined below) that African-Americans who are, or were, employed as FAs,

³ If requested by this Court, the Parties will provide a separate submission under seal describing the terms of the resolution of Named Plaintiffs' individual, non-class claims. Klein Aff. ¶ 26.

FADPs/PMDs, and FSAs with the Company have been, and are, afforded fewer business opportunities than comparable White FAs, FADPs/PMDs, and FSAs. The Named Plaintiffs collectively allege on behalf of themselves and Settlement Class Members that they have experienced, and do experience, race and/or color discrimination in aspects of their employment, including, but not limited to, in compensation, teaming or pooling opportunities, distribution of accounts, career advancement, work assignments, termination, and/or other terms and conditions of employment. Plaintiffs' Complaint seeks recovery of backpay wages, plus interest, and attorneys' fees and costs. Compl. at ¶¶ 2-6; 21; 48.

III. THE PROPOSED CLASS SETTLEMENT AGREEMENT

A. The Settlement Class

“Settlement Class Members” means the class that the Parties jointly seek to have certified, solely for the purposes of the Settlement Agreement, which is defined as:

[A]ll African-American employees and former employees who held the position(s) at the Company of Financial Advisor (“FA”), Financial Advisor Development Program Trainee (“FADP”) (formerly known as Practice Management Development Trainee (“PMD”)), and Financial Solutions Advisor (“FSA”) at any time during the Class Period. “Settlement Class Members” do not include any FAs, FADPs, PMDs, or FSAs who (i) did not pass the licensing exams required for the respective position; (ii) have executed a release of claims on or before the deadline for the Settlement Administrator to mail Notice to the Settlement Class releasing any claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims; or (iii) have obtained a final judgment or determination concerning any claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims.

Ex. A (Settlement Agreement), §§ 2.31, 4.2.

B. Relief Terms of the Settlement Agreement

The Settlement requires Merrill to pay a Gross Settlement Amount of Nineteen Million Nine Hundred Fifty Thousand Dollars and Zero Cents (\$19,950,000.00). Ex. A (Settlement Agreement) § 4.1. The Gross Settlement Fund will cover: (1) Settlement Class Member payments; (2) settlement administration costs; (3) Court-approved attorneys' fees and expenses; and (4) applicable tax withholdings. *Id.* The plan of allocation fairly and adequately compensates every eligible Settlement Class Member. *Id.* § 4.3; Klein Aff. ¶ 22. The Parties have agreed that the payment amount will be calculated based on an assignment of points for each workweek worked during the Class Period in a relevant job title. Ex. A (Settlement Agreement) § 4.3.

In addition to monetary relief, Merrill agrees to significant programmatic relief measures, which are in place for a period of five years (60 months) from the date of the Final Approval Order. *Id.* § 4.5. These future-looking commitments are meant to reinforce Merrill's commitment to equal employment opportunity for all employees, irrespective of race and color. The programmatic relief measures that Merrill agreed to in the proposed Settlement include: (1) revised diversity and inclusion training for Merrill employees (including important topics such as preventing employment discrimination and harassment; how to recognize implicit or unconscious bias; and how to create an inclusive work environment that will evaluate employees and candidates fairly); (2) analyses of diversity metrics for African-American Financial Advisors on at least an annual basis (including examining rates of African Americans entering and exiting any Financial Advisor training program that prepares individuals to be fully-

licensed financial advisors; the rates of African-American Financial Advisor hiring and retention; and the ability of African-American Financial Advisors to grow their business, including growth in production credits, households, and revenue); (3) review and renewal of teaming approval policies that allow Financial Advisors to consider a variety of potential teammates, offer suggestions at an early point in the formation process, and instruct that decisions to team or not to team may not be made on the basis of a legally protected characteristic; (4) developing additional workplace initiatives designed to attract diverse Financial Advisors and to retain them, and enhance their success, including targeted mentoring and training and a review of current and past diversity programs and initiatives; and (5) appointing an expert, outside labor economist to perform pay equity analyses during the programmatic relief period. *Id.*

C. Release of Claims

In exchange for this relief, the Settlement Class will release Defendants from the following claims (“Released Claims”):

any and all employment discrimination claims or benefits claims that were or could have been asserted arising out of the same transactions, series or connected transactions, occurrences, or nucleus of operative facts that form the basis of the class claims asserted in Complaint, including, but not limited to, claims for race and/or color discrimination under Title VII, Section 1981, LAD, ELCRA, NYSHRL, FCRA, or any other federal, state, local, or common law statute, regulation, or principle of common law or equity that may apply to such discrimination in employment or employee benefit claims.

Id. § 6.1(A).

D. Class Notice and Settlement Administration

As discussed more fully below, the Settlement provides for a detailed notice program, including retaining a settlement administrator to oversee the process, ensuring that Settlement Class Members will be sent the Settlement Notice via first-class U.S. Mail, and establishing a website and email account to answer Settlement Class Member questions, collecting and verifying responses, and distributing settlement payments. *Id.* §§ 3.3, 5.1(B).

E. Attorneys' Fees and Expenses

Plaintiffs' counsel did not begin to negotiate attorneys' fees and expenses until after agreeing to the principal terms set forth in the Settlement Agreement. Klein Aff. ¶ 19. Plaintiffs' Counsel will file their motion for attorneys' fees and expenses with the Court fourteen (14) days after filing the instant Motion. *Id.* ¶ 20. As explained in the Settlement Notice, Class Counsel will seek one-third of the Gross Settlement Amount (\$6,583,500.00) in Attorneys' Fees. Ex. A (Settlement Agreement) § 4.4. Class Counsel will also seek recovery of Costs and Administrative Expenses. *Id.*

F. Proposed Date of Final Approval Hearing

Plaintiffs request that the Court schedule a Final Approval Hearing at least 45 days from the close of the Opt-Out Period to allow sufficient notice of the Settlement to the Settlement Class.

G. Class Action Fairness Act Notice

Defendants will submit the notices required by the Class Action Fairness Act of 2005 ("CAFA") to the appropriate Federal and State officials.

IV. ARGUMENT

Federal Rule of Civil Procedure 23(e) requires judicial approval for the compromise of claims brought on a class basis. “Although class action settlements require court approval, such approval is committed to the sound discretion of the district court.” *In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). In exercising that discretion, courts are mindful of the “strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.” *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). The policy favoring settlement is especially relevant in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See, e.g., Ass’n for Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 466 (S.D. Fla. 2002) (“There is an overriding public interest in favor of settlement, particularly in class actions that have the well-deserved reputation as being most complex.”) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)); *see also* 4 Newberg on Class Actions § 11.41 (4th ed. 2002) (citing cases).

Courts in this circuit recognize that the law favors compromise and settlement of class action suits. *Figueroa v. Sharper Image Corp.*, 517 F. Supp. 2d 1292, 1319 (S.D. Fla. 2007). The court’s review is a two-step process: preliminary approval and then, after notice is sent to the putative class, a subsequent fairness hearing to determine if final approval is warranted. *Holman v. Student Loan Xpress, Inc.*, No. 8:08 Civ. 305, 2009 U.S. Dist. LEXIS 113491, at *14-15 (M.D. Fla. Nov. 19, 2009); *see also Manual*

for Complex Litigation (Fourth) §§ 21.632-33 (2004). Preliminary approval requires two elements: first, the court must determine whether the requirements for class certification are met; and second, the court must determine if the proposed settlement is fair, reasonable, and adequate. *See, e.g., Fresco v. Auto Data Direct, Inc.*, No. 03 Civ. 61063, 2007 U.S. Dist. LEXIS 37863, at *11-12 (S.D. Fla. May 14, 2007). Plaintiffs submit that each of these requirements is satisfied here.

A. Certification of the Settlement Class is Appropriate.

As set forth below, the Settlement is fair, reasonable, and adequate, and satisfies all of the criteria for preliminary approval under federal law. For the Court to certify a class, Plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b). The four requirements of Rule 23(a) are numerosity, commonality, typicality, and adequacy. *See* Fed. R. Civ. P. 23(a). Here, Plaintiffs seek certification of the Settlement Class under Rule 23(b)(3), which provides that certification is appropriate when common question of law or fact predominate over any individual issues and a showing that the class action mechanism is the superior method efficiently handling the case. Fed. R. Civ. P. 23(b)(3).⁴ As discussed below, Plaintiffs contend that these requirements are met here for settlement purposes.

⁴ The Rule 23(b)(3) analysis in the settlement context does not address all factors that courts consider when deciding whether to certify classes in litigation. The Supreme Court has held, “Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

1. Numerosity.

Numerosity requires “the class [be] so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1). Numerosity is met where the class is so numerous that “joinder of proposed class members is impracticable.” *Smith v. Wm. Wrigley Jr. Co.*, No. 9 Civ. 60646, 2010 U.S. Dist. LEXIS 67832, at *10 (S.D. Fla. June 15, 2010) (citation omitted). Parties seeking class certification do not need to know the “precise number of class members,” but they “must make reasonable estimates with support as to the size of the proposed class.” *Id.* (quoting *Fuller v. Becker & Poliakoff, P.A.*, 197 F.R.D. 697, 699 (M.D. Fla. 2000)). Plaintiffs estimate there are approximately 1,375 eligible Settlement Class Members based on the information provided by Defendants. Klein Aff. ¶ 21.

2. Commonality.

Rule 23(a)(2) requires the existence of “questions of law or fact common to the class.” Commonality is satisfied when the claims depend on a common contention, the resolution of which will bring a class-wide resolution of the claims. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011). “[T]his prerequisite does not mandate that all questions of law or fact be common; rather, a single common question of law or fact is sufficient to satisfy the commonality requirement, as long as it affects all class members alike.” *Klewinowski v. MFP, Inc.*, No. 13 Civ. 1204, 2013 U.S. Dist. LEXIS 130591, at *4 (M.D. Fla. Sept. 12, 2013); *see also Waters v. Cook’s Pest Control, Inc.*, No. 7 Civ. 394, 2012 U.S. Dist. LEXIS 99129, at *26-27 (N.D. Ala. July 17, 2012) (citing *Williams v. Mohawk Indus.*, 568 F.3d 1350,1355 (11th Cir. 2009)). “The threshold for

commonality under Rule 23(a)(2) is not high.” *Tornes v. Bank of Am., NA (In re Checking Account Overdraft Litig.)*, 275 F.R.D. 654, 659 (S.D. Fla. 2011). Where, as here, the named plaintiff argues liability based on “a standardized course of conduct that affects all class members,” courts routinely find commonality is satisfied. *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 687 (S.D. Fla. 2004). Here, Plaintiffs believe that the putative Class is unified by common factual allegations and legal theories: class members were afforded fewer business opportunities, received less compensation, were promoted less frequently, were terminated at higher rates, and failed to advance to more senior roles because of their race, in violation of Title VII and Section 1981. Plaintiffs submit that these claims and legal challenges experienced by all members of the Settlement Class unify the class for commonality purposes.

3. **Typicality.**

“Typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large.” *Rosario-Guerro v. Orange Blossom Harvesting, Inc.*, 265 F.R.D. 619, 627 (M.D. Fla. 2010) (citing *Cooper v. Southern Co.*, 390 F.3d 695, 713 (11th Cir. 2004)). “Typicality is satisfied where the named plaintiff’s claims ‘arise from the same event or pattern or practice and are based on the same legal theory’ as the claims of the class.” *Smith*, 2010 U.S. Dist. LEXIS 67832, at *12 (quoting *Kornberg v. Carnival Cruise Lines Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984)). Plaintiffs, like the putative class, allege that: they were subjected to the same discriminatory job assignment, pay, and promotion policies, they suffered the same violations of Title VII and Section 1981, and they seek the same remedy through

declaratory and injunctive relief and an award of damages. Accordingly, Plaintiffs submit that typicality is met here.

4. Adequacy of Representation.

The final requirement of Rule 23(a) is that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This element of adequacy of representation is satisfied if (1) “plaintiffs’ counsel [is] qualified, experienced, and generally able to conduct the proposed litigation” and (2) named plaintiffs lack “interests antagonistic to those of the rest of the class.” *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 726 (11th Cir. 1987) (quoting *Griffin v. Carlin*, 755 F.2d 1516, 1532 (11th Cir. 1985)); see also *In re Checking Acct. Overdraft Litig.*, 275 F.R.D. at 659-60. Here, Plaintiffs and Settlement Class Members are in the same job title and position (Financial Advisors), and Plaintiffs contend that there is no evidence that Plaintiffs have interests that are at odds with those of Settlement Class Members. Additionally, Plaintiffs are represented by counsel who are experienced in litigating claims on behalf of classes of employees who allege employment law violations. See Klein Aff. ¶¶ 2-12; Shavitz Aff. ¶¶ 6-10.

5. Plaintiffs Submit That Certification Under Rule 23(b)(3) is Appropriate.

In addition to satisfying Rule 23(a), parties seeking class certification must show that the action is maintainable under Rule 23(b)(1), (2), or (3). *Amchem Prods. v. Windsor*, 521 U.S. 591, 623 (1997). Here, Plaintiffs seek certification for the purposes of the Settlement under Rule 23(b)(3), which allows class certification where: (1)

questions of law or fact common to the class members predominate over any questions affecting only individual members; and (2) a class action is superior to other methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). However, unlike in the usual Rule 23(b)(3) analysis, because Plaintiffs seek “settlement-only class certification,” the Court “need not inquire whether the case, if tried, would present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D).” *Id.* at 620.

First, predominance requires that “[c]ommon issues of fact and law . . . ha[ve] a direct impact on every class member’s effort to establish liability that is more substantial than the impact of individualized issues in resolving the claim or claims of each class member.” *In re Checking Acct. Overdraft Litig.*, 275 F.R.D. at 660 (quoting *Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1170 (11th Cir. 2010)). Where plaintiffs are unified by a common legal theory and by common facts, predominance is satisfied. *See Ferron v. Kraft Heinz Foods Co.*, No. 20 Civ. 62136, 2021 U.S. Dist. LEXIS 81589, at *8 (S.D. Fla. Jan. 18, 2021). Here, Plaintiffs believe that their common contention – that Merrill’s job assignment, pay, and promotion policies discriminated against African-American Financial Advisors based on their race and/or color – predominates over any issues affecting only individual class members.

Second, a superiority analysis probes whether resolution of hundreds of claims in one action is superior to individual lawsuits by promoting consistency and efficiency of adjudication. *See* Fed. R. Civ. P. 23(b)(3). This requires an examination of “the

relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs.” *Sacred Heart Health Sys.*, 601 F.3d at 1183-84 (internal quotation omitted). Here, Plaintiffs believe that certifying a class for settlement purposes will achieve economies of scale for Plaintiffs and the putative class, conserve judicial resources, and preserve public confidence in the judicial system by avoiding repetitive proceedings and preventing inconsistent adjudications.

For these reasons, Plaintiffs submit the Court may certify the Settlement Class for settlement under Rule 23(b)(3).

B. The Proposed Settlement Satisfies the Legal Standard for Preliminary Approval.

After determining that class certification is proper, courts engage in a preliminary fairness evaluation of the settlement. “A proposed settlement should be preliminarily approved if it is ‘within the range of possible approval’ or, in other words, [if] there is ‘probable cause’ to notify the class of the proposed settlement.” *Fresco*, 2007 U.S. Dist. LEXIS 37863, at *11-12. Preliminary approval is usually appropriate “[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.” *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D 186, 191 (S.D.N.Y. 2005) (citation omitted); *see also City of L.A. v. Bankrate, Inc.*, No. 14 Civ. 81323, 2016 U.S. Dist. LEXIS 115071, at *14-15 (S.D. Fla. Aug. 24, 2016) (granting preliminary settlement approval where “the proposed settlement was made after mediation was

conducted,” “[t]he negotiations appear to have been made in good faith and there do not appear to be any obvious deficiencies,” and the settlement amount “appears to be within the range of reasonableness”).

In evaluating the fairness of a class action settlement, courts in this circuit frequently analyze the six factors set forth in *Bennett v. Behring Corporation*, 737 F.2d 982 (11th Cir. 1984). These are: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Id.* at 986.

As will be set forth in greater detail in the Motion for Final Approval – and as demonstrated by the attached Agreement – all six factors are readily met here.

1. Likelihood of Success and Litigation Complexity Favors Settlement.

As to factors (1), (2), and (4), if the case were to be litigated, the litigation would likely be complex and expensive. While Plaintiffs and Plaintiffs’ Counsel are confident in the strength of their case, they are also pragmatic in their awareness of the various defenses available to Merrill, as well as the risks inherent to litigation. Klein Aff. ¶ 22. While Plaintiffs strongly believe that their claims have merit, and are suitable for class treatment, they also recognize that they would face significant legal, factual, and procedural obstacles to recovering damages on their claims. *Id.* Plaintiffs further recognize the possibility that the lawsuit, if not settled now, might not result in any

recovery or might result in a less favorable recovery to the putative class. *Id.* ¶ 23.

Even if Plaintiffs were successful, Merrill would inevitably seek interlocutory review of class certification rulings via Rule 23(f) in the Court of Appeals, delaying the progress towards trial. *Id.* The success of Plaintiffs' claims in future litigation turns on these and other questions that are certain to arise in the context of motions for summary judgment and at trial. *Id.* Protracted litigation carries inherent risks that would necessarily have delayed and endangered the class members' monetary recovery. Even if Plaintiffs prevailed at trial against Merrill, any recovery could be delayed for years by an appeal. *See Lipuma v. Am. Express*, 406 F. Supp. 2d 1298, 1322 (S.D. Fla. 2005) (holding likelihood that appellate proceedings could delay class recovery "strongly favor[s]" approval of a settlement).

2. Range of Possible Recovery and the Point On or Below the Range of Recovery at Which a Settlement Is Fair.

As to factor (3), when evaluating "the terms of the compromise in relation to the likely benefits of a successful trial . . . the trial court is entitled to rely upon the judgment of experienced counsel for the parties." *Cotton*, 559 F.2d at 1330. "Indeed, the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel." *Id.* Moreover, courts have determined that settlements may be reasonable even where class plaintiffs recover only part of their actual losses. *See Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate"). "The existence of strong defenses to the claims

presented makes the possibility of a low recovery quite reasonable.” *Lipuma*, 406 F. Supp. 2d at 1323.

Here, notwithstanding the obstacles outlined above, the overall settlement commits Merrill to pay a gross amount of \$19,950,000.00 to compensate the class and to undertake significant programmatic changes with a commitment period of programmatic relief of five years – a substantial result that will provide meaningful benefit to the putative class as well as current and future Merrill employees. The benefits are all the more significant given the strengths and weaknesses of the case, where failure at trial was certainly possible. Moreover, there was no fraud or collusion in the settlement. To the contrary, the Parties reached a settlement after more than three years of extensive, arm’s-length negotiations between Counsel with many decades of employment discrimination class experience, and with the assistance of an experienced and well-respected mediator. *Id.* ¶ 15.

3. More than Three Years of Facilitated Negotiations and Informal Discovery Support Settlement.

As to factor (6), courts consider the stage of proceedings at which settlement is achieved “to ensure that Plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation.” *Lipuma*, 406 F. Supp. 2d at 1324. The policy is to ensure that “the case settled at a stage of the proceedings where class counsel had sufficient knowledge of the law and facts to fairly weigh the benefits of the settlement against the potential risk of continued litigation.” *In re Equifax Customer Data Sec. Breach Litig.*, No. 17 Md 2800, 2020 U.S. Dist.

LEXIS 118209, at *176-77 (N.D. Ga. Mar. 17, 2020); *see also Tornes v. Bank of Am., NA (In re Checking Acct. Overdraft Litig.)*, 830 F. Supp. 2d 1330, 1349 (S.D. Fla. 2011) (approving class settlement where class counsel “developed ample information and performed extensive analyses from which to determine the probability of their success on the merits, the possible range of recovery, and the likely expense and duration of the litigation”) (internal quotation and citation omitted).

Where the parties are “well informed of the merits of the case through discovery, the exchange of mediation statements and hours of intensive negotiations conducted through the mediator,” “the Agreement is fair, reasonable, and adequate.” *Woznicki v. Radon Corp.*, No. 18 Civ. 2090, 2021 U.S. Dist. LEXIS 161400, at *19 (M.D. Fla. Aug. 25, 2021) (finding sixth *Bennett* factor satisfied); *see also Estate of Dolby v. Butler & Hosch, P.A.*, No. 3 Civ. 2246, 2006 U.S. Dist. LEXIS 102738, at *16 (M.D. Fla. Aug. 4, 2006) (“The proposed settlement is occurring early enough in the litigation that significant litigation fees and costs will be avoided, but not so early that counsel lacked sufficient information to make an informed decision.”).

Here, as outlined above, the Parties engaged in significant informal discovery relating to liability and class-wide damages, which allowed Plaintiffs and their counsel to fully assess the strengths and weaknesses of the claims. Klein Aff. ¶¶ 13-15. Plaintiffs’ Counsel believe that this settlement achieves the objectives of any potential litigation: monetary payments to current and former African-American Financial Advisors and

meaningful programmatic relief over a five-year period that addresses the heart of Plaintiffs' claims. *Id.*

4. The Court Can Gauge Any Opposition to the Settlement at the Fairness Hearing.

Lastly, as to factor (5), the Court will be able to fully analyze any opposition to the settlement after Notice is issued and Settlement Class Members have an opportunity to be heard. Nevertheless, the fact that Named Plaintiffs have expressed their support for the Agreement weighs in favor of preliminary approval at this early stage. The monetary and programmatic relief is comprehensive, and Plaintiffs' Counsel are confident that Settlement Class Members will respond favorably. *Id.* ¶ 24.

In sum, a preliminary review of the *Bennett* factors supports a finding that the proposed Settlement falls within the "range of reason," such that notice and a final hearing as to the fairness, adequacy, and reasonableness of the Settlement are warranted.

C. The Proposed Notice is the Best Practicable.

Under Rule 23(e), the Court should "direct notice in a reasonable manner to all class members who would be bound" by the proposed settlement. Fed. R. Civ. P. 23(e)(1). Notice of a proposed settlement to class members must be the "best notice practicable." Fed. R. Civ. P. 23(c)(2)(B). "[B]est notice practicable" means "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The best practicable notice is that which is "reasonably calculated, under all of the circumstances, to apprise interested

parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The proposed Notice comports with the requirements of Rule 23(e). The Notice clearly describes the terms of the Settlement, including identifying who is considered an eligible Settlement Class Member, the relief available to Settlement Class Members, and the procedures for opting out of or objecting to the settlement. *See generally* Ex. B (Notice). The Notice describes the fees and costs that Plaintiffs’ Counsel will seek. *Id.* at 12. The Notice also provides contact information for Plaintiffs’ Counsel and discloses the date, time, and place of the Final Approval Hearing. *Id.* at 12, 13. The Settlement Agreement further provides that the Settlement Administrator will mail the Notice to all eligible Settlement Class Members by first class United States mail, with a reminder postcard. Ex. A (Settlement Agreement) § 5.1.

D. Plaintiffs’ Counsel Should Be Appointed As Class Counsel.

O&G and Shavitz should be appointed as Class Counsel. Rule 23(g), which governs the standards and framework for appointing class counsel for a certified class, sets forth four criteria the district court must consider in evaluating the adequacy of proposed counsel: (1) “the work counsel has done in identifying or investigating potential claims in the action;” (2) “counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;” (3) “counsel’s knowledge of the applicable law;” and (4) “the resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A). The Court may also “consider any other matter pertinent to counsel’s ability to fairly and adequately represent the

interests of the class[.]” Fed. R. Civ. P. 23(g)(1)(B). The Advisory Committee has noted that “[n]o single factor should necessarily be determinative in a given case.” Fed. R. Civ. P. 23(g) advisory committee’s note to 2003 amendments.

Plaintiffs’ Counsel satisfy these criteria. Plaintiffs’ Counsel should be appointed as Class Counsel because they have already done substantial work identifying, investigating, prosecuting, and settling the claims; have substantial experience prosecuting and settling employment discrimination class actions; are well-versed in employment and class action law; and are well-qualified to represent the interests of the Class. *See* Klein Aff. ¶¶ 2-14; 13-15; Shavitz Aff. ¶¶ 6-10. Moreover, many courts have found Plaintiffs’ Counsel to be adequate class counsel in class actions in federal and state courts. Klein Aff. ¶¶ 4-6; Shavitz Aff. ¶ 10.

CONCLUSION

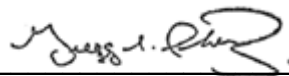
For these reasons, Plaintiffs respectfully request that the Court (1) grant preliminary approval of the Settlement Agreement; (2) certify the proposed settlement class for settlement purposes only; (3) appoint Plaintiffs as Settlement Class Representatives and Plaintiffs’ Counsel as Class Counsel; (4) approve the proposed Notice and authorize its distribution; (5) set a date and time for the final fairness hearing; and (6) enter the proposed Order.

CERTIFICATE OF GOOD FAITH

Plaintiffs’ Counsel certifies that, in conformance with Local Rule 3.01(g), Plaintiffs conferred with Defendants’ counsel about the issues raised in this Motion. Defendants do not oppose the relief requested herein.

Dated: May 24, 2024
Boca Raton, FL

Respectfully submitted,



SHAVITZ LAW GROUP, P.A.
Gregg I. Shavitz (Bar No. 11398)
Paolo Meireles (Bar No. 91551)
951 Yamato Rd. Suite 285
Boca Raton, Florida 33431
Telephone: (561) 447-8888

Adam T. Klein*
Chauniqua D. Young*
OUTTEN & GOLDEN LLP
685 Third Avenue, Floor 25
New York, New York 10017
Telephone: (212) 245-1000
Facsimile: (646) 509-2060

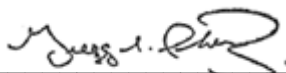
Courtney J. Hinkle*
OUTTEN & GOLDEN LLP
1225 New York Ave., Suite 1200B
Washington, D.C. 20005
Telephone: (202) 301-5509

Attorneys for Plaintiffs and the Putative Class

**Pro hac vice application forthcoming*

CERTIFICATION OF SERVICE

We hereby certify that on we electronically filed the foregoing with the Clerk of the Court using the Court's electronic filing portal. We also certify that the foregoing is being electronically served this day on all counsel of record via transmission of Notices of Electronic Filing generated by the Court's electronic filing portal.



Gregg I. Shavitz
Attorney for Plaintiffs and the Putative Class

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement” or “Settlement Agreement”) sets forth the full and final terms by which the Named Plaintiffs Lucinda Council, Ravynne Gilmore, Verna Maitland, and Hilari Ngufor (“Named Plaintiffs”), individually and on behalf of the Settlement Class (defined below), and Defendants Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) and Bank of America Corporation (collectively, “Defendants,” or the “Company”) (Defendants together with the Named Plaintiffs, the “Parties”) have settled and resolved all claims that have been or could have been raised in the mutually agreed upon Complaint that will be filed by the Named Plaintiffs in the U.S. District Court for the Middle District of Florida, Jacksonville Division for the purposes of settlement (the “Action”).

1. RECITALS AND BACKGROUND

WHEREAS, on October 9, 2020, Named Plaintiff Ravynne Gilmore filed a Charge of Discrimination against the Company with the Equal Employment Opportunity Commission (“EEOC”) alleging race discrimination on behalf of herself and other similarly situated African-American Financial Advisors (“FAs”), Financial Advisor Development Program Trainees (“FADPs”) (formerly known as Practice Management Development Trainees (“PMDs”)), and Financial Solutions Advisors (“FSAs”).

WHEREAS, on October 15, 2020, Named Plaintiff Hilari Ngufor filed a Charge of Discrimination against the Company with the EEOC alleging race discrimination on behalf of himself and other similarly situated African-American FAs and FADPs/PMDs.

WHEREAS, on September 22, 2020, Class Counsel (as defined below) sent Defendants a letter informing them of the Named Plaintiffs’ claims and invited pre-litigation discussions to explore the possibility of an early resolution.

WHEREAS, after a series of exchanges, the Parties entered into a Tolling Agreement in November 2020 and agreed to retain an experienced third-party neutral, Mediator David Rotman, to assist them in settlement discussions.

WHEREAS, in preparation for the mediation, Defendants produced Human Resources and compensation data, as well as teaming and compensation policies to allow the Parties to engage in informed and good-faith settlement discussions.

WHEREAS, on May 25, 2021, July 27, 2021, and September 28, 2021, the Parties attended good-faith, arms’-length mediations facilitated by Mediator David Rotman.

WHEREAS, the Parties did not resolve the claims during the May 25, July 27, or September 28, 2021 mediation sessions, but they continued to meet and confer over the next several months in an effort to resolve the claims. Specifically, the Parties held telephone calls, exchanged emails, and conducted multiple videoconferences, including on March 3, 2022, March 29, 2022, and July 13, 2022, to discuss the scope of the proposed monetary and injunctive relief.

WHEREAS, the Named Plaintiffs will file a Complaint in the U.S. District Court for the Middle District of Florida, Jacksonville Division for the purposes of settlement in which the Named Plaintiffs will collectively allege on behalf of themselves and the Settlement Class Members (defined below) that African-Americans who are, or were, employed as FAs, FADPs/PMDs, and FSAs with the Company have been, and are, afforded fewer business opportunities than comparable White FAs, FADPs/PMDs, and FSAs. The Named Plaintiffs collectively allege on behalf of themselves and Settlement Class Members (defined below) that they have experienced, and do experience, race and/or color discrimination in aspects of their employment, including, but not limited to, in compensation, teaming or pooling opportunities, distribution of accounts, career advancement, work assignments, termination, and/or other terms and conditions of employment.

WHEREAS, Defendants deny the allegations in the Named Plaintiffs' Charges of Discrimination and in the Complaint, including that the Named Plaintiffs or Settlement Class Members (defined below) are entitled to any relief. Defendants further deny any liability under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 1981 as amended ("Section 1981"), the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1, *et seq.*, Michigan Elliott-Larsen Civil Rights Act ("ELCRA"), MCL 37.2101, *et seq.*, the New York State Human Rights Law ("NYSHRL"), N.Y. Executive Law §§ 290, *et seq.*, the Florida Civil Rights Act of 1992 ("FCRA"), Fla. Stat. §§ 760, *et seq.*, or any other federal, state, or local statute, regulation, or principle of common law or equity, and specifically deny that the Company unlawfully discriminated against the Named Plaintiffs or any Settlement Class Members (defined below) on the basis of race and/or color. This Agreement is not, and shall not in any way be deemed to constitute, an admission or evidence of any wrongdoing or liability on the part of Defendants, nor of any violation of any federal, state, or local statute, regulation, or principle of common law or equity.

WHEREAS, Class Counsel (defined below) are experienced in litigating class action claims of the type involved in the Action.

WHEREAS, the Parties to this Agreement and their respective attorneys of record, taking into account the risks, uncertainties, and delay of litigation, as well as other relevant considerations, have concluded that it is in the best interest of all Parties to compromise and fully and finally settle the claims in the manner and upon the terms and conditions hereinafter set forth.

WHEREAS, the relief provided to the Named Plaintiffs and Settlement Class Members (defined below) and procedures for the distribution of relief provide a fair, speedy, and cost-effective settlement to the Settlement Class Members.

WHEREAS, Class Counsel (defined below) has analyzed and evaluated the merits of the claims asserted against Defendants and the impact of this Agreement on the Named Plaintiffs and Settlement Class Members (defined below). Based upon Class Counsel's analysis and evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that if not settled now, future litigation may not result in any recovery, or might

result in recovery that is less favorable and that would not occur for several years, as well as recognizing that the non-monetary elements of this Agreement are significant, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and this Agreement is in the best interest of the Named Plaintiffs and the Settlement Class Members.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to the following terms and conditions:

2. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 2.1 Action.** “Action” means the civil action described above that will be filed on a date mutually agreed upon by the Parties in the U.S. District Court for the Middle District of Florida, Jacksonville Division.
- 2.2 Complaint.** “Complaint” means the Complaint for the purposes of settlement described above and filed in the Action.
- 2.3 Acceptance Period.** “Acceptance Period” means the forty-five (45) day period in which Settlement Class Members may object or opt out of the Agreement.
- 2.4 Agreement.** “Agreement” or “Settlement” or “Settlement Agreement” means the terms and conditions set forth in this Settlement Agreement.
- 2.5 Allocated Settlement Amount.** “Allocated Settlement Amount” means a payment from the Net Settlement Fund to each Settlement Class Member to be distributed by the Settlement Administrator from the Net Settlement Fund.
- 2.6 Class Counsel or Plaintiffs’ Counsel.** “Class Counsel” and “Plaintiffs’ Counsel” shall mean Outten & Golden LLP (“O&G”) and the Shavitz Law Group (“SLG”).
- 2.7 Class Period.** “Class Period” is defined as the period from November 23, 2016, through December 23, 2022.
- 2.8 Court.** “Court” means the U.S. District Court for the Middle District of Florida, Jacksonville Division, where the Action will be filed for the purposes of settlement.
- 2.9 Cy Pres Designee.** “Cy Pres Designee” means the Association of African American Financial Advisors or other third-party organization to be mutually agreed upon by the Parties.
- 2.10 Days.** “Days” means business days (excluding federal holidays).
- 2.11 Defendants.** “Defendants” means Merrill Lynch, Pierce, Fenner & Smith Incorporated

and Bank of America Corporation and their predecessors or successors in interest.

- 2.12 Defendants' Counsel.** "Defendants' Counsel" or "Defense Counsel" means Morgan, Lewis & Bockius LLP.
- 2.13 Depository Bank.** "Depository Bank" means Bank of America, N.A., which will receive, hold, invest, and disburse the Settlement Fund, subject to the direction of the Settlement Administrator.
- 2.14 Effective Date.** "Effective Date" of the Settlement means the date on which all of the following have occurred: (a) the Court has finally approved this Settlement Agreement and has signed and entered an order so indicating; (b) the Court has entered an Order and Judgment dismissing the Action with prejudice, with continuing jurisdiction limited to enforcing this Settlement Agreement; and (c) the time for appeal has either run without an appeal being filed or any appeal (including any requests for rehearing, *en banc* review, petitions for certiorari, or other appellate review) has been fully satisfied.
- 2.15 Fairness Hearing.** "Fairness Hearing" means the hearing before the Court relating to the Motion for Final Approval.
- 2.16 Final Approval Order.** "Final Approval Order" means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement.
- 2.17 Financial Advisor.** "Financial Advisor" or "FA" means a person who is or was employed as a financial advisor by Merrill Lynch, Pierce, Fenner & Smith Incorporated or Bank of America Corporation.
- 2.18 Financial Advisor Development Program Trainee or Practice Management Development Trainee.** "Financial Advisor Development Program Trainee" or "FADP" or "Practice Management Development Trainee" or "PMD" means a person who is or was employed as a financial advisor trainee by Merrill Lynch, Pierce, Fenner & Smith Incorporated or Bank of America Corporation. "Financial Advisor Development Program Trainee" or "FADP" or "Practice Management Development Trainee" or "PMD" includes any person who is or was employed as a trainee in the Advisor Development Program.
- 2.19 Financial Solutions Advisor.** "Financial Solutions Advisor" or "FSA" means a person who is or was employed as a financial solutions advisor by Merrill Lynch, Pierce, Fenner & Smith Incorporated or Bank of America Corporation. "Financial Solutions Advisor" or "FSA" includes any person who is or was employed as a trainee in the Advisor Development Program, including as a "Financial Solutions Advisor" or "Merrill Financial Solutions Advisor."
- 2.20 Gross Settlement Fund.** "Gross Settlement Fund" means the Nineteen Million Nine Hundred Fifty Thousand Dollars and Zero Cents (\$19,950,000.00) transferred by the Company pursuant to Section 4 of this Settlement Agreement, including all interest

earned thereon, to be held, invested, administered, and disbursed pursuant to this Agreement.

- 2.21 Named Plaintiffs.** “Named Plaintiffs” means Lucinda Council, Ravynne Gilmore, Verna Maitland, and Hilari Ngufor.
- 2.22 Net Settlement Fund.** “Net Settlement Fund” means the “Gross Settlement Fund” minus Court-approved attorneys’ fees and expenses and the fees and costs of administering the settlement by the Settlement Administrator.
- 2.23 Notice or Notices.** “Notice” or “Notices” means the Notice of Class Action, Proposed Settlement Agreement, and Settlement Fairness Hearing that is to be mailed directly to Settlement Class Members as approved by the Court, substantially in the form mutually agreed to by the Parties.
- 2.24 Objector.** “Objector” means an individual who properly and timely files an objection to this Agreement, but does not include any individual who opts out of this Agreement.
- 2.25 Opt-out Statement.** “Opt-out Statement” is a written signed statement that an individual Settlement Class Member has decided to opt out and not be included in this Agreement.
- 2.26 Parties.** “Parties” are the Named Plaintiffs and Defendants.
- 2.27 Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court preliminarily approving the terms and conditions of this Agreement, and directing the manner and timing of providing Notices to the Settlement Class Members.
- 2.28 Programmatic Relief.** “Programmatic Relief” means the commitments intended to improve the opportunities available to African-American FAs, FADPs/PMDs, and FSAs agreed to by the Parties and set forth in Section 4.5 of this Agreement.
- 2.29 Released Claims.** “Released Claims” or “Release” mean the claims released in Section 6 of this Agreement.
- 2.30 Released Parties.** “Released Parties” means Bank of America Corporation, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and any of its or their subsidiaries, related companies, affiliates, and successors, and all of their current, former, and future officers, directors, employees, assigns, agents, plans and plan trustees, independent contractors, shareholders, attorneys, and representatives, jointly and individually.
- 2.31 Settlement Class Members.** “Settlement Class Members” or “Settlement Class” means the class that the Parties jointly seek to have certified, solely for the purposes of this Settlement Agreement, which is defined as all African-American employees and former employees who held the position(s) at the Company of Financial Advisor (“FA”), Financial Advisor Development Program Trainee (“FADP”) (formerly known as

Practice Management Development Trainee (“PMD”)), and Financial Solutions Advisor (“FSA”) at any time during the Class Period. “Settlement Class Members” and “Settlement Class” do not include any FAs, FADPs, PMDs, or FSAs who (i) did not pass the licensing exams required for the respective position; (ii) have executed a release of claims on or before the deadline for the Settlement Administrator to mail Notice to the Settlement Class releasing any claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims; or (iii) have obtained a final judgment or determination concerning any claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims.

2.32 Settlement Administrator. “Settlement Administrator” means the third-party claims administration firm to be mutually agreed to and retained by the Parties to administer the Settlement pursuant to this Agreement and the orders of the Court.

3. INITIAL PROCEDURAL ISSUES

3.1 Binding Agreement. This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Action.

3.2 Jurisdiction and Venue. The Parties agree that the Court has jurisdiction over the Parties and the subject-matter of the Action. The Parties also agree that venue is proper. The Court shall retain jurisdiction of the Action for five (5) years from the Effective Date of the Settlement Agreement solely for the purpose of entering all orders and judgments authorized in the Agreement that may be necessary to implement and enforce the relief provided therein.

3.3 Retention and Responsibilities of the Settlement Administrator. The Settlement Administrator will be jointly selected by the Parties to distribute the Notices, attorneys’ fees and costs, and settlement payments, and to otherwise administer the settlement. The Settlement Administrator’s fees and costs of administering the settlement shall be paid from the Gross Settlement Fund. The Settlement Administrator will be responsible for distributing the Notices and payment to Settlement Class Members in accordance with the Court’s Preliminary Approval Order, maintaining a website and email account to answer Settlement Class Member questions, collecting and verifying responses, and distributing settlement payments.

(A) The Settlement Administrator will provide regular reports to Class Counsel and Defendants’ Counsel, but no less frequently than every week, regarding the number of Notices distributed to Settlement Class Members, the number of Settlement Class Members, if any, who object to and/or opt out of the Settlement, the number of payments, and the dissemination of settlement payments.

(B) Defendants agree to reasonably cooperate with the Settlement Administrator to facilitate Defendants’ obligations in this Agreement, including to provide information to assist the Settlement Administrator in locating Settlement Class

Members, as specified in Section 5.1 below.

3.4 Preliminary Approval Motion.

- (A) The Parties will agree upon a form for written Notice of this Settlement Agreement to Settlement Class Members, subject to Court approval.
- (B) Class Counsel will file in Court on a date mutually agreed upon by the Parties, a Motion for Preliminary Settlement Approval and Incorporated Memorandum of Law, proposed Notice to Settlement Class Members, and Proposed Order (“Preliminary Approval Motion”), which is consistent with the Agreement. The Preliminary Approval Motion will seek to certify a settlement class, solely for the purposes of this Settlement Agreement.
- (C) The Preliminary Approval Motion also will seek the setting of date(s) for individuals to opt out of this Agreement or provide objections to this Agreement, which will be forty-five (45) days from the delivery of Notice to the Settlement Class Members, and for a Fairness Hearing for Final Approval of the Settlement before the Court at the earliest practicable date, but at least 30 days after the close of the Acceptance Period.
- (D) In the Preliminary Approval Motion, Class Counsel will seek to certify, solely for the purposes of this Settlement Agreement, a settlement class, with an opt-out right, and inform the Court of the intended process to obtain a Final Approval Order that will, among other things, seek to: (1) approve the Settlement as fair, adequate, and reasonable; (2) incorporate the terms of the Release, as described herein; (3) dismiss the matter with prejudice; and (4) award Class Counsel fees and costs. If the Court denies the Preliminary Approval Motion, the Parties will work together in good faith to address the Court’s concerns.
- (E) In the Preliminary Approval Motion, Class Counsel shall petition the Court for an order, pending a Final Approval Order, preliminarily enjoining each Settlement Class Member, including any members who make an irrevocable election to exclude themselves from the monetary relief provisions of the Settlement, from commencing, prosecuting, or maintaining in any court other than this Court any claim, action, or other proceeding that challenges or seeks review of or relief from any order, judgment, act, decision, or ruling in this matter in connection with this Settlement Agreement. Class Counsel shall further petition the Court for an order effective as of the date specified for Settlement Class Members to opt out of the Settlement, further enjoining any Settlement Class Member who has not made an irrevocable election to exclude themselves from the monetary relief provisions of the Settlement from commencing, prosecuting, or maintaining, either directly, representatively, or in any other capacity, claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims.

- (F) The Parties will work together, diligently and in good faith, to expeditiously obtain a Preliminary Approval Order, Final Approval Order, and all other aspects of the settlement approval process.

4. SETTLEMENT TERMS

4.1 Settlement Amount.

- (A) This is a common fund settlement in which Settlement Class Members will be paid pursuant to the Allocated Settlement Amount.
- (B) Defendants agree to transfer, within thirty (30) days of the Effective Date of this Settlement, the Gross Settlement Amount of Nineteen Million Nine Hundred Fifty Thousand Dollars and Zero Cents (\$19,950,000.00), which will be placed in a qualified settlement fund organized and existing under the laws of the State of Florida, intended by the Parties to be a “Qualified Settlement Fund” as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *eq. seq.* This payment is made to satisfy the claims of the Named Plaintiffs and the Settlement Class Members, as well as for the other purposes described in this Section. The Gross Settlement Amount shall constitute the total settlement cash outlay by Defendants in connection with (1) the resolution of this Action; (2) this Settlement Agreement; and (3) the dismissal of this Action. This sum is inclusive of payment for: (a) all amounts paid to Settlement Class Members; (b) all attorneys’ fees and costs awarded by the Court, including those in connection with securing court approval of the Settlement Agreement, the claims process, and monitoring of the Settlement Agreement; (c) all costs in connection with administration of the Gross Settlement Fund, including, but not limited to, those related to notice, claims processing, legal advice obtained by the Fund Administrator relating to the establishment of the Qualified Settlement Fund and tax treatment and tax reporting of the awards, and preparation of the Fund’s tax returns; and (d) applicable federal, state, and local income taxes (which are expected to be withheld from any amounts characterized as wages), all applicable FICA taxes (where the employee share of FICA taxes is expected to be withheld from any amounts characterized as wages), and all federal and state unemployment taxes or other social insurance or similar state or local taxes required by law to be withheld and/or paid by Defendants. All federal, state, and local income taxes paid to the Fund will be calculated with reference to the expected total wages for the year. Notwithstanding the foregoing, the costs for implementing the Programmatic Relief in Section 4.5 of this Agreement shall be paid by Defendants. This commitment includes the funding of any work of the Labor Economist.
- (C) The Settlement Administrator shall pay itself its costs from the Gross Settlement Fund no later than ten (10) days after Defendants’ transfer of the Gross Settlement Fund to the Depository Bank.

- (D) Within thirty (30) days of the last check going stale, any remaining uncashed amounts shall be distributed to a *Cy Pres Designee*.

4.2 Class Definition.

- (A) The Settlement Class is comprised of all African-American employees and former employees who held the position(s) at the Company of FA, FADP, PMD, or FSA during the Class Period. The Settlement Class does not include any FAs, FADPs, PMDs, or FSAs who (i) did not pass the licensing exams required for the respective position; (ii) have executed a release of claims on or before the deadline for the Settlement Administrator to mail Notice to the Settlement Class releasing any claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims; or (iii) have obtained a final judgment or determination concerning any claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims.

4.3 Settlement Class Member Monetary Relief.

- (A) **Scope.** Each Settlement Class Member will be eligible to receive a Monetary Award.
- (B) **Monetary Award.** A settlement payment will be made to each eligible Settlement Class Member by the Settlement Administrator from the Net Settlement Fund. The monetary award available for each Settlement Class Member will be calculated by the Settlement Administrator based on an assignment of points to each Settlement Class Member according to the Settlement Class Member's length of tenure (e.g., weeks worked) between November 23, 2016 and the date of the Preliminary Approval Order as an FA, FSA, or PMD/FADP. Fifty percent (50%) of the Net Settlement Fund shall be allocated to Settlement Class Members who worked as an FA during the Class Period. Fifty percent (50%) of the Net Settlement Fund shall be allocated to Settlement Class Members who worked as an FSA or PMD/FADP during the Class Period.
 - (1) Tenure points shall be allocated based on workweeks worked between November 23, 2016 and the date of the Preliminary Approval Order.
 - (2) The Settlement Administrator will total the points attributable to each Settlement Class Member between November 23, 2016 and the date of the Preliminary Approval Order and divide each Settlement Class Member's points by the total points to obtain the Settlement Class Member's share of the Net Settlement Fund. The Settlement Administrator will multiply each Settlement Class Member's share by the Net Settlement Fund to determine the Allocated Settlement Amount.

- (3) Weeks are based on calendar weeks in the year, and Settlement Class Members will receive credit for the week if the Settlement Class Member was employed as an FA, PMD/FADP, or FSA for any part of that week, including if the Settlement Class Member was out on leave, or using sick or vacation days during the week.
- (4) The Settlement Administrator's determination shall be final. Defendants, Counsel for Defendants, and Class Counsel shall have no responsibility, and may not be held liable, for any determination reached by the Settlement Administrator.

(C) Tax Treatment of Settlement Payments.

- (1) The Parties recognize that the monetary awards will be subject to applicable tax withholding and reporting, which will be handled as follows:
 - i. The Settlement Administrator shall serve as trustee of the Gross Settlement Fund and shall act as a fiduciary with respect to the handling, management, and distribution of the Settlement, including the handling of tax-related issues and payments.
 - ii. The Parties agree that fifty percent (50%) of each Settlement Class Member's allocation shall be treated as wages and fifty percent (50%) for alleged emotional distress, interest, and punitive damages for tax purposes. The amounts paid for alleged emotional distress, interest, and punitive damages shall not be subject to withholding and shall be reported to the IRS on Form 1099-MISC.
 - iii. The Settlement Administrator shall be responsible for issuing settlement payments to each Settlement Class Member, less required withholdings and deductions (including Employer Payroll Taxes), and disbursing the settlement payments and IRS Forms, and for making all tax reporting, deposits, and withholdings with respect to all amounts payable.
 - iv. All federal, state, and local income tax withholding will be collected at the applicable rate. All FICA and federal and state unemployment taxes, and any state or local social insurance or similar taxes will be calculated after taking into account each Settlement Class Member's wages for the payment year, which will be separately paid by the Company (which information will be provided by Defendants to the Settlement Administrator within thirty (30) days before the settlement payments are made).

Subject to the Settlement Administrator's obligation to comply with applicable laws, the Parties anticipate that any amounts designated as interest shall not be subject to withholding and shall be reported, if required, to the IRS on Form 1099-INT. The amounts paid for attorneys' fees and costs shall not be subject to withholding and shall be reported to the IRS on Form 1099-MISC.

- v. The Settlement Administrator shall be responsible for the timely reporting and remitting of the Employer Payroll Taxes to appropriate taxing authorities and shall indemnify the Company for any penalty arising out of any failure to remit taxes to the appropriate taxing authorities, any failure to appropriately withhold taxes, or an incorrect calculation, and/or interest with respect to late payment of the same, unless such failure is the result of the Company's failure to fulfill its obligations in a timely manner. The Settlement Administrator will send the Company copies of the payroll tax and information returns that it files reporting these payments, as confirmation that the requisite withholdings were collected, employment taxes were paid, and IRS Forms and tax returns were filed.
- vi. The Company shall have no withholding, reporting, or any other tax reporting or payment responsibilities with respect to the Settlement Fund or its distribution to the Settlement Class Members. The Settlement Administrator shall indemnify the Company against any liability relating to the Settlement Administrator's failure to pay timely any taxes, penalties, or other obligations relating to the payments or distributions from the Gross Settlement Fund.
- vii. Class Counsel and Defendants' Counsel do not intend this Settlement Agreement to constitute legal or tax advice regarding any federal, state, or local tax issue. To the extent that this Settlement Agreement, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state, or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties. The tax issues for each Settlement Class Member are unique to him/her, and each Settlement Class Member is advised to obtain tax advice from his/her own tax advisor with respect to payment resulting from this Settlement.

4.4 Attorneys' Fees and Costs.

- (A) Fourteen (14) days after filing the Preliminary Approval Motion, Class Counsel

will request that the Court approve an award of attorneys' fees in the amount of one third of the Gross Settlement Fund, plus reasonable out-of-pocket costs and expenses, which, if approved by the Court will be deducted from the Gross Settlement Fund.

- (B) Attorneys' fees and costs shall be wired to Plaintiffs' Counsel by the Settlement Administrator from the Gross Settlement Fund no later than ten (10) days after Defendants' transfer of the Gross Settlement Fund to the Depository Bank.
- (C) Payments of attorneys' fees and costs pursuant to this Section shall be made without withholding and reported by the Settlement Administrator to the IRS and the payee under the payee's name and taxpayer identification number, which such payee shall provide for this purpose, on an IRS Form 1099.

4.5 Programmatic Relief.

- (A) **Purpose of the Programmatic Relief.** The purpose of the Programmatic Relief set forth in this Agreement is to reinforce the Company's commitment to equal employment opportunity for all employees, irrespective of race, color, or any other category protected by federal, state, or local law, and to foster a workplace culture that embraces diverse perspectives and is inclusive of all employees.
- (B) **Duration of the Programmatic Relief.** The Parties agree that the Programmatic Relief embodied in this Agreement shall be in effect for a period of five years (60 months) from the date of the Final Approval Order. Nothing in this Agreement prevents Merrill Lynch from extending the Programmatic Relief in this Agreement beyond five years (60 months). Nor does anything in this Agreement require Merrill Lynch to extend the Programmatic Relief in this Agreement beyond five years (60 months).
- (C) **Diversity and Inclusion Training.** Merrill Lynch will make available Diversity & Inclusion training to Merrill Lynch Wealth Management employees, including managers. The training shall include, to the extent permitted by law, the following topics: (1) preventing employment discrimination and harassment; (2) how to recognize implicit or unconscious bias; and (3) how to create an inclusive work environment that will evaluate employees and candidates fairly. The format of the Diversity & Inclusion training may vary from jurisdiction to jurisdiction depending on the relevant legal requirements.
- (D) **Analysis of Diversity Metrics.** Merrill Lynch will conduct a confidential and attorney-client privileged analysis of the following diversity metrics for African-American financial advisors on at least an annual basis: (1) rates of African Americans entering and exiting any financial advisor training program that prepares individuals to be fully licensed financial advisors; (2) the rates of African American financial advisor hiring and retention; and (3) the ability of African American financial advisors to grow their business, including growth in

production credits, households, and revenue. The purpose of analyzing the diversity metrics is to facilitate the programmatic relief herein. Merrill Lynch is committed to these goals and has considered the significant input from Class Counsel on these topics throughout the settlement phase of this case.

- (E) **Team Approval.** Merrill Lynch will continue to maintain its practice whereby prior to approving a team, Wealth Management managers will allow financial advisors to consider a variety of potential teammates, offer suggestions at an early point in the formation process, and instruct that decisions to team or not to team may not be made on the basis of a legally protected characteristic. To facilitate this policy, Merrill Lynch will maintain its current optional database that identifies individuals who are interested in joining or forming a team.
- (F) **Non-Binding Team Dispute Resolution.** Merrill Lynch will continue to offer an internal dispute resolution process concerning any disputes related to (i) team dissolution; and (ii) account redistributions.
- (G) **Development Opportunities.** Merrill Lynch will continue developing workplace initiatives designed to attract diverse financial advisors and to retain them, and enhance their success, including targeted mentoring and training. Training and mentoring may include but is not limited to training conference calls, online courses, and in person seminars. Merrill Lynch will continue to make available an FA Playbook for financial advisors that includes tips and skills for navigating various facets of Wealth Management, Techniques, and How To. Merrill Lynch has and will continue to consider the significant input from Class Counsel on these topics throughout the settlement phase of this Action.
- (H) **Further Actions.** Merrill Lynch shall review its current and past diversity programs and initiatives and determine whether it is necessary to augment these programs and initiatives in ways that better (1) promote equal employment opportunities; (2) foster recruitment, sponsorship and allyship programs, and employment advancement; (3) provide support for attendance at Diversity Events (e.g., ELC, Odyssey Media); (4) provide support for attendance at Industry Events (e.g., Barrons, IMCA); and (5) continue to create and support employee resource and affinity groups that provide paid time given for participation.
- (I) **Appointment of a Labor Economist.** Merrill Lynch will continue to retain a Labor Economist to perform the Pay Equity Analysis described in this Section. The Labor Economist shall be external to Merrill Lynch, although he/she will be reasonably compensated by Merrill Lynch. In the event that the Labor Economist becomes unable or unwilling to serve, he/she shall be replaced by Merrill Lynch within thirty (30) days.

The Labor Economist shall perform the Pay Equity Analysis at the direction of Merrill Lynch's legal counsel on an annual basis, and at all times will work under the Attorney-Client Privilege for the purpose of helping to provide legal advice to

Merrill Lynch. The Labor Economist can make reasonable requests for non-privileged documents and information consistent with the scope of his/her responsibilities. The Labor Economist will sign a Confidentiality Agreement, and when assessing and using Merrill Lynch documents and information, the Labor Economist will take all steps necessary to ensure the appropriate privilege, confidentiality, and compliance with regulatory requirements.

In performing the Pay Equity Analysis, the Labor Economist may use any independent variables/controls that he or she deems appropriate, including, but not limited to, months employed, year, years in company, years in job, potential prior years of experience, group name, and job code. The Labor Economist may also group job titles together as he or she deems appropriate.

Pay Equity Analysis. The Labor Economist shall conduct an annual analysis relating to the compensation paid to African-American and to White financial advisors and trainees.

5. CLASS PROCEDURAL ISSUES

5.1 Notice to Settlement Class Members.

- (A) **Class List.** Defendants will provide to the Settlement Administrator a class list containing the following information for each Settlement Class Member: names, social security number, last known address, last known telephone number, dates of employment in the covered position, and job title as soon as practicable, but no later than thirty (30) days from Preliminary Approval of the Settlement. The Settlement Administrator shall utilize Settlement Class Members' social security numbers only for the purpose of locating and identifying Settlement Class Members. The Settlement Administrator will maintain the class list and the information contained therein and derived therefrom in a confidential manner, and shall not provide such list or other information to any other entity or person without prior written consent of Defendants. After receipt of the Settlement Class Members' information from Defendants, the Settlement Administrator will perform a search and update using the National Change of Address Database to correct any known or identifiable address changes for Settlement Class Members.
- (B) **Notice Procedure.** Within thirty (30) days of receipt of the Settlement Class Members' information from Defendants, the Settlement Administrator shall cause a copy of the Notice, containing information instructing Settlement Class Members of their right to object or opt out of the Agreement, to be distributed, as approved by the Court, by first class United States Mail to the Settlement Class Members. The Parties agree that the Notice, sent by first class United States Mail, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice of the pendency of the proposed Settlement and a final approval hearing to all persons entitled to notice in full compliance with due process under the United States Constitution and state law.

- (C) **Acceptance Period.** Any Settlement Class Member sent a Notice that is not returned as undeliverable shall have forty-five (45) days from the date of mailing or any re-mailing by the Settlement Administrator to object to or opt out of the Agreement pursuant to the instruction set forth in Sections 5.2 and 5.3 and as instructed in the Notice.
- (D) The Settlement Administrator will take all reasonable steps to obtain the correct address of any Settlement Class Members or potential Settlement Class Members for whom a Notice is returned by the post office as undeliverable and shall attempt to re-mail the Notice to the updated address. The Settlement Administrator will notify Class Counsel and Defendants' Counsel if any Notice sent to a Settlement Class Member or potential Settlement Class Member is returned as undeliverable after the first mailing, as well as if any such Notice is returned as undeliverable after any subsequent mailing(s).
- (E) The Settlement Administrator shall cause settlement checks to be distributed to Settlement Class Members no later than ten (10) days after Defendants' transfer of the Gross Settlement Fund to the Depository Bank.
- (F) Each Settlement Class Member shall have ninety (90) days from the date of mailing by the Settlement Administrator to deposit or cash his or her settlement check.
- (G) The Settlement Administrator will send out a reminder postcard, by first class United States Mail halfway through the ninety (90) day period, reminding Settlement Class Members of their opportunity to cash their settlement checks.
- (H) Within thirty (30) days of the last check going stale, any remaining uncashed amounts shall be distributed to a *Cy Pres Designee*.

5.2 Settlement Class Member Opt-Out Statements.

- (A) Any Settlement Class Member who chooses to opt out of the Settlement as set forth in this Agreement must mail via first class United States Mail, postage prepaid, a written, signed statement to the Settlement Administrator that states their name, address, email address(es), and telephone number(s) and that states, "I opt out of the Merrill Lynch Financial Advisor Race Discrimination Settlement. I understand that by opting out, I will receive no money from the Settlement Agreement," or an alternate, unambiguous statement indicating an intent to opt out of the Settlement ("Opt-out Statement").
- (B) For each Settlement Class Member who properly and timely opts out of the Settlement Agreement, the allocated award and pro rata share of attorneys' costs and fees shall revert to Defendants.

- (C) The end of the time period to opt out of the Settlement (“Opt-out Period”) shall be forty-five (45) days after the day on which the Settlement Administrator mails a Notice to a Settlement Class Member.
- (D) The Settlement Administrator will provide the Parties with copies of all Opt-out Statements as soon as they are received by the Settlement Administrator. At the request of the Parties, and in preparation of the declaration that the Settlement Administrator will submit as part of the Final Approval Motion, the Settlement Administrator will send a list of the names of all individuals who submitted Opt-out Statements to the Parties. The final list will be submitted by Plaintiffs’ Counsel, with redaction of any personal identifying information, along with the declaration of the Settlement Administrator, as an exhibit to the Final Approval Motion. The Settlement Administrator will retain the stamped originals of all Opt-out Statements and originals of all envelopes accompanying Opt-out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.
- (E) Any Settlement Class Member who does not properly submit an Opt-out Statement pursuant to this Agreement will be deemed to have accepted the Settlement and the terms of this Agreement, and will be eligible to participate as a Settlement Class Member.
- (F) If the number of Settlement Class Members who properly and timely opt out of the Settlement equals or exceeds twelve percent (12%) of the Settlement Class Members, then Defendants shall have the right, for thirty (30) days after the deadline for Settlement Class Members to opt out, to either withdraw from and fully terminate this Settlement Agreement by providing written notice to Class Counsel and the Court, or not to withdraw from this Settlement Agreement and take the opt out credit described in this Section. The opt out credit to which Defendants are entitled shall be a pro rata share of the Settlement Fund based on the number of Settlement Class Members who have opted out in relation to the total number of Settlement Class Members, including the pro rata portion of attorneys’ costs and fees associated therewith. Regardless of the number of Settlement Class Members who opt out, Defendants shall also have no obligation to pay the employer’s share of taxes and contribution pertaining to such opt outs.
- (G) If Defendants exercise their option to withdraw from the Settlement, any judgment or orders entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*. The Settlement Fund shall be returned to Defendants, including the interest earned by the Settlement Fund through the date of termination (after deducting all costs of providing Notice to the Settlement Class Members that were paid or incurred by the Settlement Administrator as to the date of the termination).
- (H) The Named Plaintiffs shall not be permitted to submit Opt-out Statements.

5.3 Objections to Settlement.

- (A) Settlement Class Members who wish to present objections to the proposed Settlement at the Fairness Hearing must first do so in writing. To be considered, such statement must be mailed to the Settlement Administrator via first class United States Mail, postage prepaid, and be received by the Settlement Administrator by a date certain forty-five (45) days after the Settlement Administrator mails a Notice to such Settlement Class Member. The statement must include all reasons for the objection; and any reasons not included in the statement will not be considered. The statement must also include the name, address, email(s), and telephone number(s) for the Settlement Class Member making the objection. No one may appear at the Settlement Hearing for the purpose of objecting to the Settlement Agreement without first having filed and served his or her objection(s) in writing forty-five (45) days after the Notice was mailed to the Settlement Class Member. The Settlement Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and Defendants' Counsel as soon as they are received. The final list will be submitted by Plaintiffs, with redaction of any personal identifying information, along with the declaration of the Settlement Administrator, attached to the Final Approval Motion.
- (B) An individual who files objections to the Settlement ("Objector") also has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing in his or her written objections at the time he or she submits his or her written objections. An Objector may withdraw his or her objections at any time. A Settlement Class Member who has submitted an Opt-out Statement may not submit objections to the Settlement.
- (C) The Parties may file with the Court written responses to any filed objections no later than three (3) days before the Fairness Hearing.

5.4 Fairness Hearing and Motion for Final Approval and Dismissal.

- (A) At the time established by the Court via the Preliminary Approval Motion, or on a date mutually agreed upon by the Parties, Plaintiffs' Counsel will file with the Court a Motion for Final Approval of Settlement, and a Proposed Order Approving the Settlement and Dismissing the Action with prejudice ("Final Approval Motion") that is consistent with this Agreement.
- (B) At the Fairness Hearing and in the Motion for Final Approval of Settlement, Class Counsel will request that the Court, among other things: (1) certify the Class for purposes of settlement; (2) approve the Settlement and Agreement as fair, reasonable, adequate, and binding on all Settlement Class Members who have not timely opted out of the Settlement; (3) order that attorneys' fees and costs be paid to Class Counsel; (4) order the dismissal with prejudice of all claims

asserted or that could have been asserted in the Action and the claims of all Settlement Class Members who did not opt out; (5) order entry of Final Judgment in accordance with this Agreement; and (6) retain jurisdiction as necessary for the purpose of facilitating the Settlement and other relief pursuant to this Agreement.

If the Court does not enter a Final Approval Order in accordance with this Agreement, or if the Final Approval Order is set aside on appeal, the Parties will work together in good faith to address the Court's concerns.

6. RELEASE

6.1 Release.

- (A) **Scope of Release.** By operation of the entry of Final Approval, Named Plaintiffs and all Settlement Class Members who do not properly and timely opt out of this Settlement (including their heirs, administrators, representatives, executors, successors, and assigns), fully, finally, and irrevocably waive, release, and discharge the Released Parties from any and all actions, causes of action, suits, demands, liabilities, and claims of any nature whatsoever, whether known or unknown, arising at any time up to and including the date of the Preliminary Approval Order and arising out of the same factual predicate as the class claims asserted in the Complaint. Specifically included in this release are any and all employment discrimination claims or benefits claims that were or could have been asserted arising out of the same transactions, series or connected transactions, occurrences, or nucleus of operative facts that form the basis of the class claims asserted in Complaint, including, but not limited to, claims for race and/or color discrimination under Title VII, Section 1981, LAD, ELCRA, NYSHRL, FCRA, or any other federal, state, local, or common law statute, regulation, or principle of common law or equity that may apply to such discrimination in employment or employee benefit claims. Furthermore, this Release includes claims that were or could have been asserted for monetary damages, injunctive, declaratory, or equitable relief, and costs and attorneys' fees, whether arising under Title VII, Section 1981, LAD, ELCRA, NYSHRL, FCRA, or any other federal, state, local, or common laws or regulations relating to or arising out of the same transactions, series of connected transactions, occurrences, or nucleus of operative facts that form the basis of the class claims set forth in the Complaint. By way of example only, and without any intent to limit the scope of the release, the Settlement Class Members will release all claims in the Complaint and all claims, whether known or unknown, for discrimination, harassment, and retaliation relating to compensation, training, deferred compensation, incentive compensation, long-term contingent awards, retention bonus payments, production, assets, production credits, account distributions, team or pool formation and dissolutions, strategic partnership formation and dissolutions, the allocation of leads and/or referrals, the allocation of business opportunities, promotion, termination, and any pay disparity in

existence up to the date of Preliminary Approval. Termination and promotion claims for race and/or color discrimination arising out of low production, failure to satisfy position requirements, failure to satisfy requirements of the training program, production-related reductions-in-force, other production-based performance-related terminations, and any claims for constructive discharge shall also be released.

- (B) Every Named Plaintiff and Settlement Class Member shall be deemed to and shall have knowingly and voluntarily waived, released, discharged, and dismissed the Released Claims, as applicable, with full knowledge of any and all rights that each has, and hereby assumes the risk of any mistake in fact in connection with true facts involved, or with regard to any facts which are now unknown to each.
- (C) The Parties and Settlement Class Members acknowledge that the covenants and promises made by the Company herein constitute adequate consideration in exchange for the Release.

6.2 Waiver of Unknown Claims. Settlement Class Members and Named Plaintiffs who do not properly and timely opt out (including their heirs, administrators, representatives, executors, successors, and assigns) expressly waive any and all provisions, rights, and benefits conferred under or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to, Cal. Civ. Code § 1542, 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.

6.3 Materiality of the Release. The terms of the Release are a material part of this Settlement Agreement and are hereby incorporated as if fully set forth in this Settlement Agreement. If this Release is not finally approved by the Court, or the Settlement Agreement cannot become effective for any reason, then the Release shall terminate *nunc pro tunc* and be of no force and effect.

7. GOVERNMENT EXCEPTION

7.1 Reports to Government Entities. Nothing in this Agreement, including the Release of Claims, restricts or prohibits any Settlement Class Member, Named Plaintiff, or Plaintiffs' Counsel from initiating communications directly with, responding to any inquiry from, volunteering information to, or providing testimony before, the Securities and Exchange Commission, the Department of Justice, FINRA, any other self-regulatory organization, or any other governmental, law enforcement, or regulatory authority, regarding this Agreement and its underlying facts and circumstances, or any reporting of, investigation

into, or proceeding regarding suspected violations of law. Settlement Class Members, Named Plaintiffs, or Plaintiffs' Counsel are not required to advise or seek permission from the Company before engaging in any such activity. Settlement Class Members, Named Plaintiffs, or Plaintiffs' Counsel recognize that, in connection with any such activity, they must inform such authority that the information they are providing is confidential. Despite the foregoing, Settlement Class Members or Named Plaintiffs are not permitted to reveal to any third party, including any governmental, law enforcement, or regulatory authority, information they came to learn during the course of their employment with the Company that is protected from disclosure by any applicable privilege, including, but not limited to, the attorney-client privilege, attorney work product doctrine, and/or other applicable legal privileges. The Company does not waive any applicable privileges or the right to continue to protect its privileged attorney-client information, attorney work product, and other privileged information. Additionally, Settlement Class Members, Named Plaintiffs, or Plaintiffs' Counsel recognize that their ability to disclose information may be limited or prohibited by applicable law and the Company does not consent to disclosures that would violate applicable law. Such applicable laws include, without limitation, laws and regulations restricting disclosure of confidential supervisory information¹ or disclosures subject to the Bank Secrecy Act (31 U.S.C. §§ 5311-5330), including information that would reveal the existence or contemplated filing of a suspicious activity report. Settlement Class Members and Named Plaintiffs are waiving their right to receive any individual monetary relief resulting from any such claims that would otherwise be released under the terms of this Agreement, regardless of whether they or another party have filed them, and in the event any Settlement Class Member or Named Plaintiff obtains such monetary relief, the Company will be entitled to an offset for the payments made pursuant to this Agreement, except where such limitations are prohibited as a matter of law. Whistleblower awards from the SEC are specifically exempted from this provision.

8. NO ADMISSION, NO DETERMINATION

- 8.1** This Settlement Agreement does not, and is not intended to constitute, nor shall it be deemed to constitute, an admission by any party as to the merits, validity, or accuracy of any of the allegations, claims, or defenses of any party in this Action. By entering into this Agreement, Defendants do not admit or concede, expressly or impliedly, but deny that they have in any way violated Title VII, Section 1981, LAD, ELCRA, NYSHRL, FCRA, or any other federal, state, or local statute, regulation, or principle of common law or equity. Neither the Court, nor any other court, has made any findings or expressed any opinion concerning the merits, validity, or accuracy of any of the allegations, claims, or defenses in the Action.
- 8.2** Nothing in this Settlement Agreement, nor any action taken in the preparation or implementation thereof, is intended by the Parties to, nor shall any of the foregoing, constitute or be introduced, be used, or be admissible in any way in this Action or in any

¹ Confidential supervisory information includes any information or materials relating to the examination and supervision of the COMPANY by applicable bank regulatory agencies, COMPANY materials responding to or referencing non-public information relating to examinations or supervision by bank regulatory agencies, and correspondence to or from applicable banking regulators.

other judicial, arbitral, administrative, investigative, or other proceeding as evidence of discrimination, harassment, or retaliation, or as evidence of any violation of Title VII, Section 1981, LAD, ELCRA, NYSHRL, FCRA, or any other federal, state, or local statute, regulation, or principle of common law or equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in the Court or in mediation or arbitration to enforce or implement any provision of this Settlement Agreement or to implement any orders or judgments of the Court entered into in connection herewith.

9. TERMINATION OF SETTLEMENT

9.1 In the event that (i) this Settlement Agreement is not approved in its entirety by the Court, excluding Court-ordered modifications that Defendants determine in their reasonable and good-faith judgment not to be material modifications; (ii) the Defendants exercise their option to withdraw from the Settlement Agreement; (iii) this Settlement Agreement is terminated, cancelled, declared void, or fails to become effective in accordance with its terms; or (iv) Judgment does not become a Final Judgment, then no payments shall be made by Defendants to anyone in accordance with the terms of this Settlement Agreement, and the parties will each bear their own costs and fees with regard to the Action, the Settlement, and efforts to obtain Court approval. In such events, this Settlement Agreement (except for this Section and those provisions relating to No Admission, No Determination, and Confidentiality, set forth in Sections 8, 10) shall be deemed null and void, its terms and provisions shall have no further force and effect with respect to the Parties, and any judgment or orders entered by the Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*. No party shall be deemed to have waived any procedural or substantive claims, objections, rights, defenses, legal arguments, or legal positions, including, but not limited to, claims or objections to class certification and claims and defenses on the merits. The Parties agree that they retain these rights and will not take any positions to the contrary. Neither this Settlement Agreement, nor the Court's Preliminary Approval Order or Final Approval Order shall be admissible in this Action or in any other judicial, arbitral, administrative, investigative, or other proceeding regarding the propriety of class certification or regarding any other issue or subject (except for the purpose of enforcing this Settlement Agreement). This Settlement Agreement will not be considered an admission of liability by Defendants.

9.2 No order of the Court reducing the amount of any attorneys' fees or costs to be paid to Class Counsel shall constitute grounds for cancellation or termination of this Settlement Agreement or grounds for limiting any other provision of the Judgment.

10. CONFIDENTIALITY

10.1 Confidentiality of Settlement Negotiations. Other than necessary disclosures made to the Court, the content of the Parties' settlement negotiations and all related information shall be held confidential by Class Counsel and Defense Counsel.

10.2 Public Comment. The Parties further agree that they shall not make any comment(s) to the media regarding this Action or any of the claims related to this Action, either

affirmatively or in response to a media inquiry.

10.3 Documents and Information Produced By Defendants' Counsel and Class Counsel.

All proprietary and confidential documents, data, or other information that have previously been provided to either Defendants' Counsel or Class Counsel as of the date of Preliminary Approval, or which were produced by Defendants' Counsel or Class Counsel pursuant to this Settlement Agreement, shall, unless otherwise agreed to, be treated as, and thereafter remain, confidential. Nothing in this Paragraph shall preclude any party from responding to a subpoena or court order; provided, however, that the party against whom such discovery is sought or such subpoena or order is directed agrees to provide prompt notice in writing and a copy of the same by overnight mail and electronic mail to counsel for the other party in this Settlement Agreement.

11. INTERPRETATION, PUBLICITY, AND ENFORCEMENT

11.1 Cooperation Between the Parties; Further Acts. Plaintiffs shall use reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. The Parties shall reasonably cooperate with each other, and each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

11.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement. This Settlement Agreement does not impose any obligations on the Parties beyond the terms and conditions stated herein.

11.3 Binding Effect. This Agreement shall be binding upon the Parties and, with respect to Named Plaintiffs and all Settlement Class Members, their representatives, heirs, dependents, administrators, executors, beneficiaries, conservators, trustees, attorneys, successors, and assigns. This Settlement Agreement shall not inure to the benefit of any third party.

11.4 Arms'-Length Transaction; Materiality of Terms. The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.

11.5 Captions. The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

11.6 Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not

intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

- 11.7 Governing Law.** This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Florida without regard to its conflict of laws principles.
- 11.8 Enforcement.** Enforcement of this Settlement Agreement shall be prosecuted by Class Counsel or Defense Counsel only, not by third parties. Class Counsel shall meet and confer with Defense Counsel prior to commencement of any enforcement proceedings.
- 11.9 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated thereby.
- 11.10 Waivers, Modifications, or Amendments in Writing.** No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid and binding unless in writing, signed by or on behalf of Plaintiffs and Defendants by persons with the requisite authority, and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval.
- 11.11 Failure to Insist Upon Strict Compliance.** Any failure by a Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 11.12 When Agreement Becomes Binding; Counterparts.** This Agreement shall become valid and binding upon its complete execution other than as to any act or obligation that is required or contemplated to occur prior to the Court's decision whether to preliminarily or finally approve the settlement. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 11.13 Facsimile and Email Signatures.** Any signature, including an electronic signature, made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.

[Remainder of page left blank intentionally]

WE AGREE TO THESE TERMS,

Dated: May 24, 2024

OUTTEN & GOLDEN LLP

By: 
Adam T. Klein
Chauniqua D. Young
685 Third Avenue, 25th Floor
New York, NY 10017
atk@outtengolden.com
cyoung@outtengolden.com

Attorneys for Named Plaintiffs and the Class

Dated: May 24, 2024

SHAVITZ LAW GROUP, P.A.

By: 
Gregg I. Shavitz
Paolo Meireles
951 Yamato Rd., Suite 285
Boca Raton, FL 33431
gshavitz@shavitzlaw.com
pmeireles@shavitzlaw.com

Attorneys for Named Plaintiffs and the Class

Dated: MAY 23, 2024

MORGAN, LEWIS & BOCKIUS LLP

By: Sam Shaulson (48)

Sam S. Shaulson
600 Brickell Avenue, Suite 1600
Miami, FL 33131-3075
sam.shaulson@morganlewis.com

Grace E. Speights
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
grace.speights@morganlewis.com

Michael S. Burkhardt
2222 Market Street
Philadelphia, PA 19103-3007
michael.burkhardt@morganlewis.com

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

LUCINDA COUNCIL, RAVYNNE
GILMORE, VERNA MAITLAND, and
HILARI NGUFOR, individually and on behalf
of all others similarly situated,

Plaintiffs,

- against -

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED and BANK OF
AMERICA CORPORATION,

Defendants.

Case No. 3:24-cv-00534

**NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT AGREEMENT,
AND SETTLEMENT FAIRNESS HEARING**

**If you are receiving this Notice and are part of the class defined in Section 3 herein,
then you could receive a payment from a proposed class action settlement.**

The U.S. District Court for the Middle District of Florida has authorized this Notice.

This is not a solicitation.

This is not a lawsuit against you, and you are not being sued.

Your legal rights are affected whether you act or do not act.

This Notice relates to a proposed settlement in a class action lawsuit which alleges that Defendants Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) and Bank of America Corporation (collectively, “Defendants,” or the “Company”) discriminated and retaliated against African-American Financial Advisors (“FAs”), Financial Advisor Development Program Trainees (“FADPs”) (formerly known as Practice Management Development Trainees (“PMDs”)), and Financial Solutions Advisors (“FSAs”) based on their race and/or color. FADP, PMD, and FSA include Financial Solutions Advisors, Merrill Financial Solutions Advisors, and any other trainees in the Advisor Development Program.

- There has not been any Court finding or determination of discrimination or retaliation. Defendants deny liability and that they violated the law in any way

whatsoever. The parties have, however, agreed to resolve the lawsuit through a Court-supervised class action settlement.

- On [*date of Preliminary Approval Order*], the Honorable [*Assigned Judge*] of the United States District Court for Middle District of Florida granted preliminary approval of a proposed class action settlement in the matter of *Council, et al. v. Merrill Lynch, Pierce, Fenner, & Smith, Inc., et al.*, No. 3:24-cv-00534. The Court has authorized the dissemination of this Notice to inform you of your options under the Settlement.
- The proposed Settlement will pay a Gross Settlement Amount of Nineteen Million Nine Hundred Fifty Thousand Dollars and Zero Cents (\$19,950,000.00) for a class of African-American FAs, FADPs/PMDs, and FSAs to resolve any claims of race and/or color discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 1981 as amended (“Section 1981”), the New Jersey Law Against Discrimination (“LAD”), N.J.S.A. 10:5-1, *et seq.*, Michigan Elliott-Larsen Civil Rights Act (“ELCRA”), MCL 37.2101, *et seq.*, the New York State Human Rights Law (“NYSHRL”), N.Y. Executive Law §§ 290, *et seq.*, the Florida Civil Rights Act of 1992 (“FCRA”), Fla. Stat. §§ 760, *et seq.*, or any other federal, state, or local statute, regulation, or principle of common law or equity that may apply to such discrimination in employment or employee benefit claims. The proposed settlement would also provide programmatic relief intended to improve opportunities available to current African-American FAs, FADPs/PMDs, and FSAs.
- To qualify to receive a monetary award, you must be African-American and you must have been employed by the Company as an FA, FADP/PMD, or FSA at any time from November 23, 2016 through December 23, 2022 and satisfy the Settlement Class definition, as explained below.
- You are receiving this Notice because the Company’s records indicate that you self-identify as African-American and you were employed by the Company as an FA, FADP/PMD, or FSA at any time from November 23, 2016, through December 23, 2022 and satisfy the Settlement Class definition. Accordingly, based on the available information, we believe you are a Settlement Class Member, and as long as you meet the Settlement Class Member definition, you can participate in this Settlement.
- As a Settlement Class Member, your legal rights are affected whether you act or not. Read this Notice carefully. For additional information, contact Class Counsel or the Settlement Administrator listed below, or go to [*website of Settlement Administrator*].

| Your Legal Rights and Options in this Settlement: | |
|--|---|
| Do Nothing | If you do nothing and the Court grants final approval of the Settlement, you may be eligible to receive money from the Settlement and you will give up your rights to sue the Company separately for the legal claims covered by this Settlement. |
| Exclude Yourself (Opt-Out) | If you do not wish to participate in the settlement, you must request to opt-out, or be excluded from the settlement. By opting out, you will not be eligible to receive money from the Settlement or to object to the Settlement. You will keep any rights you might have to sue the Company separately for the legal claims covered by this Settlement. |
| Object | If you do not opt-out, you may write to the Court about your view on the Settlement or why you do not think the Settlement is fair to the class. |

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this lawsuit still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

What This Notice Contains

TABLE OF CONTENTS

| | | |
|-----|---|----|
| 1. | Purpose Of This Notice | 4 |
| 2. | Background: About The Lawsuit | 4 |
| 3. | Class Definition | 5 |
| 4. | Summary Of Settlement Terms | 6 |
| 5. | How to Proceed: Your Options | 8 |
| 6. | How Will My Settlement Award Be Calculated? | 9 |
| 7. | Release | 10 |
| 8. | Are There Tax Consequences For Any Money I Might Get? | 11 |
| 9. | The Lawyers Representing You And The Class | 12 |
| 10. | Terms And Payments Specific To The Named Plaintiffs | 12 |
| 11. | The Final Approval Hearing | 13 |
| 12. | Getting More Information | 13 |

1. Purpose Of This Notice

The purpose of this Notice is to inform you about: (i) this lawsuit, (ii) the Settlement and Settlement Class definition that the Court has preliminarily approved, and (iii) your legal rights and options in connection with the Settlement and a hearing to be held before the Court on [*date of Final Approval Hearing*] to consider the fairness, reasonableness, and adequacy of the Settlement and related matters. This Notice also describes the steps to be taken by those who wish to opt-out from the Settlement Class or to object to the Settlement.

2. Background: About The Lawsuit

On October 9, 2020, Ravynne Gilmore filed a Charge of Discrimination against the Company with the Equal Employment Opportunity Commission (“EEOC”) alleging race discrimination on behalf of herself and other similarly situated African-American FAs, FADPs/PMDs, and FSAs. On October 15, 2020, Hilari Ngufor filed a Charge of Discrimination against the Company with the EEOC alleging race discrimination on behalf of himself and other similarly situated African-American FAs and FADPs/PMDs. On September 22, 2020, Class Counsel (as defined below) sent the Company a letter informing them of the claims and invited pre-litigation discussions to explore the possibility of an early resolution.

After a series of emails, telephone calls, videoconferences, and mediation sessions spanning a period of two years, the Parties entered into a Settlement Agreement. On May [redacted], 2024, Lucinda Council, Ravynne Gilmore, Verna Maitland, and Hilari Ngufor (“Named Plaintiffs”) filed a Complaint in the U.S. District Court for the Middle District of Florida for the purposes of settlement in which they collectively

alleged on behalf of themselves and the Settlement Class Members that African-Americans who are, or were, employed as FAs, FADPs/PMDs, and FSAs with the Company have been, and are, afforded fewer business opportunities than comparable White FAs, FADPs/PMDs, and FSAs. The Named Plaintiffs collectively alleged on behalf of themselves and Settlement Class Members, among other things, that they have, and do, experience race and/or color discrimination in aspects of their employment, including, but not limited to, in compensation, teaming or pooling opportunities, distribution of accounts, career advancement, work assignments, termination, and/or other terms and conditions of employment.

The Company denies the allegations in the Named Plaintiffs' Charges of Discrimination and in the Complaint, including that the Named Plaintiffs or Settlement Class Members are entitled to any relief. Defendants further deny any liability under Title VII, Section 1981, the LAD, ELCRA, NYSHRL, FCRA, or any other federal, state, or local statute, regulation, or principle of common law or equity, and specifically deny that the Company unlawfully discriminated against the Named Plaintiffs or any Settlement Class Members on the basis of race and/or color.

The Court has not made and will not make any determination on the merits of this matter or decide who is right and who is wrong. The Parties believe that the proposed Settlement is fair, reasonable, and adequate and in the best interests of the class. The Parties agree that by entering into the proposed Settlement, the Company does not admit any wrongdoing or liability.

The Court has reviewed the Settlement and has preliminarily approved it as being fair, adequate, and reasonable. Before deciding whether to give the Settlement final approval, the Court wishes to inform the Class of the general terms of the Settlement and of the right of Settlement Class Members to opt-out of (be excluded from participating in) or object to the Settlement.

3. Class Definition

You are a member of the Settlement Class affected by the Settlement if you fit within this definition:

All African-American employees and former employees who held the position(s) at the Company of FA, FADP, PMD, or FSA at any time from November 23, 2016 through December 23, 2022. The Settlement Class does not include any FAs, FADPs, PMDs, or FSAs who (i) did not pass the licensing exams required for the respective position; (ii) have executed a release of claims on or before the deadline for the Settlement Administrator to mail Notice to the Settlement Class releasing any claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims; or (iii) have obtained a final

judgment or determination concerning any claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims.

If you received this Notice in a mailing addressed to you, the Company's records show that you are a Settlement Class Member (*i.e.*, that you fit the definition above). If so, you have legal rights and options that you can exercise before the Court finally approves the Settlement.

4. Summary Of Settlement Terms

The Company has agreed to pay a Gross Settlement Amount of Nineteen Million Nine Hundred Fifty Thousand Dollars and Zero Cents (\$19,950,000.00) (the "Gross Settlement Fund"). The Gross Settlement Fund will cover payments to Settlement Class Members, Class Counsel's attorneys' fees and costs, and the fees and costs of administering the settlement by the Settlement Administrator.

In addition to paying the Gross Settlement Fund, the Company has agreed to Programmatic Relief in order to reinforce the Company's commitment to equal employment opportunity for all employees, irrespective of race, color, or any other category protected by federal, state, or local law, and to foster a workplace culture that embraces diverse perspectives and is inclusive of all employees.

Below is a summary of the Programmatic Relief that the Company has agreed to take during the five-year (60-month) period of this Settlement:

(A) Diversity and Inclusion Training.

Merrill Lynch will make available Diversity & Inclusion training to Merrill Lynch Wealth Management employees, including managers.

(B) Analysis of Diversity Metrics.

Merrill Lynch will conduct a confidential and attorney-client privileged analysis of certain diversity metrics for African-American financial advisors on at least an annual basis.

(C) Team Approval.

Merrill Lynch will continue to maintain its practice whereby prior to approving a team, Wealth Management managers will allow financial advisors to consider a variety of potential teammates, offer suggestions at an early point in the formation process, and instruct that decisions to team or not to team may not be made on the basis of a legally protected

characteristic. To facilitate this policy, Merrill Lynch will maintain its current optional database that identifies individuals who are interested in joining or forming a team.

(D) Non-Binding Team Dispute Resolution.

Merrill Lynch will continue to offer an internal dispute resolution process concerning any disputes related to (i) team dissolution; and (ii) account redistributions.

(E) Development Opportunities.

Merrill Lynch will continue developing workplace initiatives designed to attract diverse financial advisors and to retain them, and enhance their success, including targeted mentoring and training.

(F) Further Actions.

Merrill Lynch shall review its current and past diversity programs and initiatives and determine whether it is necessary to augment these programs and initiatives in ways that better (1) promote equal employment opportunities; (2) foster recruitment, sponsorship and allyship programs, and employment advancement; (3) provide support for attendance at Diversity Events (e.g., ELC, Odyssey Media); (4) provide support for attendance at Industry Events (e.g., Barrons, IMCA); and (5) continue to create and support employee resource and affinity groups that provide paid time given for participation.

(G) Appointment of a Labor Economist.

Merrill Lynch will continue to retain an external Labor Economist to conduct a confidential and attorney-client privileged annual analysis relating to the compensation paid to African-American and to White financial advisors and trainees.

5. How to Proceed: Your Options

Option A: Do Nothing

If you do nothing in response to this Notice, and the Court grants final approval of the Settlement, the Settlement Administrator will determine the amount you may be eligible for from the Gross Settlement Fund and distribute that amount to you. Under this option, all claims covered by this Settlement through [*date of Preliminary Approval Order*] will be barred by this Settlement. That is, you will release or give up your rights to sue the Company separately for the legal claims covered by this Settlement.

Option B: Opt-out and Exclude Yourself from the Settlement

If you do not wish to participate in the Settlement and wish to retain your rights to sue the Company separately for the legal claims covered by this Settlement, you must request to opt-out of, or be excluded from, this Settlement. If you opt-out, you will not be eligible for any monetary award as part of this Settlement. However, you will keep any rights you might have to sue the Company separately for the legal claims covered by this Settlement.

Any Settlement Class Member who wishes to opt-out must mail via first class United States Mail, postage prepaid, a written, signed statement to the Settlement Administrator, at the address listed below, that states his/her name, address, email address(es), and telephone number(s). To be effective, this opt-out statement must be postmarked on or before _____ [*45 days after Notice is mailed*], and must include the following language:

“I opt-out of the Merrill Lynch Financial Advisor Race Discrimination Settlement. I understand that by opting out, I will receive no money from the Settlement Agreement.”

The address of the Settlement Administrator is:

[*Address of Settlement Administrator*]

Settlement Class Members who submit timely and valid requests for exclusion will have no right to object to the Settlement in Court and will no longer be represented by Class Counsel.

You may not opt-out of the Programmatic Relief to be provided as part of this Settlement.

Option C: Comment On Or Object To The Settlement

The Court must assess the overall fairness and reasonableness of the Settlement to the Settlement Class. Settlement Class Members *who have not opted-out* of the Settlement may object to the Settlement.

In order to have your objection to the Settlement considered by the Court or to speak at the Final Approval Hearing, you must first mail via first class United States Mail, postage prepaid, a written, signed statement to the Settlement Administrator, at the address listed below, that states your name, address, email address(es), and telephone number(s). The statement must include all reasons for the objection; and any reasons not included in the statement will not be considered. The statement must also indicate whether you intend to appear at the Fairness Hearing. In order to be effective, this statement must be received by the Settlement Administrator by _____ [*a date certain 45 days after Notice is mailed*]. You do not need to be represented by separate counsel to comment on or object to the Settlement.

The address of the Settlement Administrator is:

[*Address of Settlement Administrator*]

6. How Will My Settlement Award Be Calculated?

Each Settlement Class Member may be eligible for a monetary award from the Gross Settlement Fund.

The monetary award available for each Settlement Class Member will be calculated by the Settlement Administrator based on an assignment of points to each Settlement Class Member according to the Settlement Class Member's length of tenure (e.g., weeks worked) between November 23, 2016 and the date of the Preliminary Approval Order as an FA, FADP/PMD, or FSA.

Tenure points shall be allocated based on workweeks worked during the Class Period. The Settlement Administrator will total the points attributable to each Settlement Class Member between November 23, 2016 and the date of the Preliminary Approval Order and divide each Settlement Class Member's points by the total points to obtain the Settlement Class Member's share of the Net Settlement Fund. The Net Settlement Fund is the Gross Settlement Fund minus Court-approved attorneys' fees and expenses and the fees and costs of administering the settlement by the Settlement Administrator. Fifty percent (50%) of the Net Settlement Fund shall be allocated to the FA Settlement Class Members. The remaining fifty percent (50%) of the Net Settlement Fund shall be allocated to the FADP/PMD and FSA Settlement Class Members. The Settlement Administrator will multiply each Settlement Class Member's share by the Settlement Fund to determine the Settlement Class Member's

Allocated Settlement Amount. Weeks are based on calendar weeks in the year, and Settlement Class Members will receive credit for the week if the Settlement Class Member was employed as an FA, FADP/PMD, or FSA for any part of that week, including if the Settlement Class Member was out on leave, or using sick or vacation days during the week.

The Settlement Administrator's determination shall be final. Defendants, Counsel for Defendants, and Class Counsel shall have no responsibility, and may not be held liable, for any determination reached by the Settlement Administrator.

7. Release

If the Court grants final approval of the Settlement, then all Settlement Class Members who do not opt-out will fully, finally, and irrevocably waive, release, and discharge Bank of America Corporation, Merrill Lynch, Pierce, Fenner & Smith Incorporated, and any of its or their subsidiaries, related companies, affiliates, and successors, and all of their current, former, and future officers, directors, employees, assigns, agents, plans and plan trustees, independent contractors, shareholders, attorneys, and representatives, jointly and individually, from any and all actions, causes of action, suits, demands, liabilities, and claims of any nature whatsoever, whether known or unknown, arising at any time up to and including the date of the Preliminary Approval Order arising out of the same factual predicate as the class claims asserted in the Complaint.

Specifically included in this release are any and all employment discrimination claims or benefits claims that were or could have been asserted arising out of the same transactions, series or connected transactions, occurrences, or nucleus of operative facts that form the basis of the class claims asserted in Complaint, including, but not limited to, claims for race and/or color discrimination under Title VII, Section 1981, LAD, ELCRA, NYSHRL, FCRA, or any other federal, state, local, or common law statute, regulation, or principle of common law or equity that may apply to such discrimination in employment or employee benefit claims.

Furthermore, this Release includes claims that were or could have been asserted for monetary damages, injunctive, declaratory, or equitable relief, and costs and attorneys' fees, whether arising under Title VII, Section 1981, LAD, ELCRA, NYSHRL, FCRA, or any other federal, state, local, or common laws or regulations relating to or arising out of the same transactions, series of connected transactions, occurrences, or nucleus of operative facts that form the basis of the class claims set forth in the Complaint.

By way of example only, and without any intent to limit the scope of the release, the Settlement Class Members will release all claims in the Complaint and all claims,

whether known or unknown, for discrimination, harassment, and retaliation relating to compensation, training, deferred compensation, incentive compensation, long-term contingent awards, retention bonus payments, production, assets, production credits, account distributions, team or pool formation and dissolutions, strategic partnership formation and dissolutions, the allocation of leads and/or referrals, the allocation of business opportunities, promotion, termination, and any pay disparity in existence up to the date of Preliminary Approval. Termination and promotion claims for race/color discrimination arising out of low production, failure to satisfy position requirements, failure to satisfy requirements of the training program, production-related reductions-in-force, other production-based performance-related terminations, and any claims for constructive discharge shall also be released.

To “release” a claim means that you cannot sue the Company for any of the claims covered by the release. Unless you opt-out of the Settlement, you will be covered by the release, even if you do not receive a monetary award.

8. Are There Tax Consequences For Any Money I Might Get?

Yes, any award you receive from the Settlement Fund will have tax consequences for you. Fifty-percent (50%) of each award shall be treated as wages and fifty-percent (50%) for alleged emotional distress, interest, and punitive damages for tax purposes. The amounts paid for alleged emotional distress, interest, and punitive damages shall not be subject to withholding and shall be reported to the IRS on Form 1099-MISC.

The Settlement Administrator shall be responsible for issuing settlement payments to each Settlement Class Member, less required withholdings and deductions (including Employer Payroll Taxes), and disbursing the settlement payments and IRS Forms, and for making all tax reporting, deposits, and withholdings with respect to all amounts payable.

All federal, state, and local income tax withholding will be collected at the applicable rate. All FICA and federal and state unemployment taxes, and any state or local social insurance or similar taxes will be calculated after taking into account each Settlement Class Member’s wages for the payment year.

Defendants’ Counsel and Class Counsel are not tax advisors and cannot give you advice on any tax matters. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue. Defendants’ Counsel and Class Counsel urge you to consult your tax advisor for answers to any questions you may have about the tax implications of any potential award. The tax issues for each Settlement Class Member are unique to him/her, and each Settlement Class Member is advised to obtain tax advice from his/her own tax advisor with respect to any potential award.

9. The Lawyers Representing You And The Class

As a Settlement Class Member, you are represented in this litigation by Class Counsel:

Outten & Golden LLP

Adam T. Klein
Chauniqua D. Young
Nantiya Ruan
Courtney Hinkle
685 Third Avenue, 25th Floor
New York, NY 10017
atk@ottengolden.com
cyoung@outtengolden.com
nr@outtengolden.com
chinkle@outtengolden.com

Shavitz Law Group, P.A.

Gregg I. Shavitz
Paolo Meireles
951 Yamato Rd., Suite 285
Boca Raton, FL 33431
gshavitz@shavitzlaw.com
pmeireles@shavitzlaw.com

Unless you elect to opt-out of the Settlement, you will continue to be represented by Class Counsel in connection with implementation of the Settlement at no cost to you. Although it is not necessary, you may, if you wish, retain your own attorney at your own expense.

How Will Class Counsel Be Paid?

Class Counsel have pursued these claims on behalf of the Named Plaintiffs and the Settlement Class without receiving any compensation for their services or reimbursement of the expenses they incurred. If you are a Settlement Class Member and receive an award from the Settlement Fund, you will not owe any fees or expenses to the lawyers who have represented you as part of the Settlement Class. Class Counsel will ask the Court to award them attorneys' fees in the amount of one third of the Gross Settlement Fund (*i.e.*, Six Million Six Hundred Fifty Thousand Dollars and Zero Cents (\$6,650,000)), plus reimbursement of their reasonable out-of-pocket costs and expenses. The Court will decide how much to award Class Counsel for fees and expenses, which will be paid from the Settlement Fund.

10. Terms And Payments Specific To The Named Plaintiffs

As a Settlement Class Member, you have also been represented in this litigation by Named Plaintiffs Lucinda Council, Ravynne Gilmore, Verna Maitland, and Hilari Ngufor. The Named Plaintiffs may receive settlement payments just like any other Settlement Class Member.

11. The Final Approval Hearing

The Final Approval Hearing on the Settlement will be held at _____ a.m./p.m. on _____, in the courtroom of the Honorable [*Assigned Judge*], in the United States District Court for the Middle District of Florida at [*Address*]. At this hearing, the Court will determine whether the proposed Settlement is fair, reasonable, and adequate and whether it should be approved. The Court will also consider the amount of fees and expenses to award to Class Counsel, and whether, in accordance with the Settlement, an order and judgment should be entered bringing the lawsuit to an end.

Do I Have To Come To The Final Approval Hearing?

No. You are not required to come to the hearing, but you are welcome to come at your own expense. Class Counsel will appear at the Final Approval Hearing on behalf of all Settlement Class Members, at no cost to you. If you file an objection, you do not have to come to Court to talk about it. As long as you did not opt-out and you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. If the Court gives final approval to this Settlement, the Court's judgment will be final and binding on all Settlement Class Members who have not timely opted out.

12. Getting More Information

If you have further questions or still are not sure whether you are included in the Class, you can get free help at [*website of Settlement Administrator*], by calling the Settlement Administrator at [*telephone number of Settlement Administrator*], or by calling or writing to Class Counsel in this case at the contact number/address listed in paragraph 9.

This Notice contains only a summary of the terms of the Settlement. For further information, the complete terms of the Settlement Agreement and numerous other documents connected with the Settlement are available for review and/or downloading at [*website of Settlement Administrator*].

Again, the important deadlines are:

Last Day To Opt-out Of The Settlement Class: _____ [*45 days after mailing Notice*]

Last Day To Object To The Settlement: _____ [*a date certain 45 days after Notice is mailed*]

Final Approval Hearing: _____ [*To be set by the Court*]

PLEASE DO NOT CALL OR CONTACT THE COURT, THE OFFICE OF THE CLERK OF COURT, OR THE COMPANY WITH QUESTIONS REGARDING THIS NOTICE.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

LUCINDA COUNCIL, RAVYNNE
GILMORE, VERNA MAITLAND, AND
HILARI NGUFOR, individually and on behalf
of all others similarly situated,

Plaintiffs,

- against -

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED and BANK OF
AMERICA CORPORATION,

Defendants.

Case No. 3:24-cv-00534

[PROPOSED] PRELIMINARY APPROVAL ORDER

Upon consideration of the Motion for Preliminary Approval of Class Action Settlement and Support Memorandum (the “Motion”), and the supporting materials filed by the Parties, including the Settlement Agreement and the proposed Notice of Class Action, Proposed Settlement Agreement, and Settlement Fairness Hearing (“Notice”), under Rule 23 of the Federal Rules of Civil Procedure, it is ordered that the Motion is **GRANTED**.

Having reviewed the Motion and supporting materials, the Court further makes the following findings and rulings:

I. DEFINITIONS

This Order incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used herein shall have the same meaning as set forth in the Settlement Agreement.

II. JURISDICTION

This Court has jurisdiction over the subject matter of the Action and over all Parties to this Action, including all members of the Settlement Class as defined below.

III. NO DETERMINATION

The Settlement Agreement, Motion, this Preliminary Approval Order, the fact of a settlement, or any related negotiations, statements, or proceedings shall not be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession by Defendants Merrill Lynch, Pierce, Fenner & Smith Incorporated and Bank of America Corporation or the Released Parties of any liability or wrongdoing whatsoever. This Order is not a finding of the merits, validity, or accuracy of any of the allegations, claims, or defenses in the Action, and by entering this Order, the Court does not make any determination as to the merits of the case. In no event shall this Order, the Settlement Agreement, the fact that a settlement was reached and filed, or any of the Settlement Agreement's provisions, negotiations, statements, or proceedings be introduced, used, offered, or admissible in any way in the Action, in any other action, or in any other judicial, administrative, investigative, or arbitral (including but not limited to proceedings before FINRA, AAA, or JAMS) or other proceeding, or in any proceeding as evidence of discrimination, harassment,

or retaliation, or as evidence of any violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981 as amended, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et seq.* (“LAD”), Michigan Elliott-Larsen Civil Rights Act, MCL 37.2101, *et seq.* (“ELCRA”), the New York State Human Rights Law, N.Y. Executive Law §§ 290, *et seq.* (“NYSHRL”), the Florida Civil Rights Act of 1992, Fla. Stat. §§ 760, *et seq.* (“FCRA”), or any other federal, state, or local statute, regulation, or principle of common law or equity, or in support of class or collective treatment or class certification, by any person or entity. Notwithstanding the foregoing, the Parties may use the Settlement Agreement in a proceeding in the Court or in mediation or arbitration to enforce or implement any provision of the settlement, and the Company may use, offer, admit, or refer to the Settlement Agreement and to the settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, investigatory, arbitral, regulatory, or other proceeding.

IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

The Court finds that the proposed Class meets the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). Accordingly, for purposes of settlement only, and pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), the Court conditionally certifies a Settlement Class composed of:

All African-American employees and former employees who held the position(s) at the Company of FA, FADP, PMD, or FSA at any time from November 23, 2016 through December 23, 2022. The Settlement Class does not include any FAs, FADPs, PMDs, or FSAs who (i) did not pass the licensing exams required for the respective position; (ii) have executed a release of claims on or before the deadline for the Settlement Administrator to mail Notice to the Settlement Class releasing any claims that would or could have been alleged in

the Action, including race and/or color discrimination, harassment, or retaliation claims; or (iii) have obtained a final judgment or determination concerning any claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims.

The Settlement Class Members allege claims for race or color discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, 42 U.S.C. § 1981, LAD, ELCRA, NYSHRL, and FRCA, as amended.

V. APPOINTMENT OF SETTLEMENT CLASS REPRESENTATIVES AND CLASS COUNSEL

For the purposes of settlement only, the Court finds that Named Plaintiffs and their Counsel are adequate representatives of the Class and appoints Lucinda Council, Ravynne Gilmore, Verna Maitland, and Hilari Ngufor as Settlement Class Representatives. In addition, and also for the purposes of settlement only, the Court appoints the law firms of Outten & Golden, LLP and Shavitz Law Group, P.A. as Class Counsel.

VI. EFFECT OF TERMINATION OF SETTLEMENT AGREEMENT OR NON-OCCURRENCE OF THE EFFECTIVE DATE

The conditional certification of the Settlement Class and appointment of the Settlement Class Representatives and Class Counsel are solely for the purposes of effectuating the Settlement. In the event that (i) the Settlement Agreement is not approved in its entirety by the Court, excluding Court-ordered modifications that Defendants determine in their reasonable and good-faith judgment not to be material modifications; (ii) the Defendants exercise their option to withdraw from the Settlement Agreement; (iii) the Settlement Agreement is terminated, cancelled,

declared void, or fails to become effective in accordance with its terms; or (iv) Judgment does not become a Final Judgment, the foregoing conditional certification of the Settlement Class and appointment of Settlement Class Representatives and Class Counsel shall be void and this Order shall be treated as vacated, *nunc pro tunc*. In such events, the Settlement Agreement (except for Sections 8-10) shall also be deemed null and void, its terms and provisions shall have no further force and effect, and the Parties to the Settlement shall be returned to the status each occupied before execution of the Settlement Agreement and entry of this Order, without prejudice to any procedural or substantive claims, objections, rights, defenses, legal arguments, or legal positions, including, but not limited to, claims or objections to class certification and claims and defenses on the merits.

VII. PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

A. The Court has reviewed the terms of the Settlement Agreement, including the Programmatic Relief provisions and the plan of allocation for the Gross and Net Settlement Funds (“Settlement Funds”), and the Motion and supporting materials. Based on a review of those papers and supporting materials, the Court concludes that the Settlement Agreement is fair, reasonable, adequate, and the result of extensive, arms’-length negotiations between experienced Counsel and Parties. The assistance of an experienced mediator in the settlement process also confirms that the Settlement is not collusive. Based on the Court’s review, the Court concludes that the Settlement Agreement is fair, reasonable, adequate, and within the range of preliminary settlement approval such that notice to the Settlement Class is appropriate.

B. The Settlement Agreement is therefore PRELIMINARILY APPROVED. Final approval and entry of the Settlement Agreement is subject to the hearing of any objections of Settlement Class Members to the Settlement Agreement.

VIII. APPOINTMENT OF SETTLEMENT ADMINISTRATOR

A. The Court will appoint a Settlement Administrator jointly selected and retained by the Parties to serve as the Settlement Administrator, whose duties are set forth in the Settlement Agreement.

IX. APPROVAL OF THE FORM AND MANNER OF DISTRIBUTING CLASS NOTICE

A. The Court approves the substance and form of the attached Notice as reasonable, and adopts and incorporates them herein. The Court also approves the proposed plan for distributing the Notice, which the Court finds is a reasonable method calculated to reach all Settlement Class Members.

B. The Notice fairly, plainly, accurately, and reasonably informs Settlement Class Members of appropriate information about: (1) the nature of this Action, the Settlement Class, the identity of Class Counsel, and the essential terms of the Settlement Agreement, including Programmatic Relief and the plan of allocating the Settlement Funds; (2) Class Counsel's application for attorneys' fees, and other payments that will be deducted from the Settlement Funds; (3) how to participate in the Settlement; (4) how to exclude themselves, or opt-out, of the Settlement, if they wish to do so; (5) how to challenge or object to the Settlement, if they wish to do so; (6) that their rights are affected whether they act or do not act; and (7) this Court's

procedures for final approval of the Settlement, and Settlement Class Members' right to appear if they wish to do so.

C. Similarly, the proposed process whereby the Settlement Administrator will determine the Settlement Class Members' monetary award based on an assignment of points to each Settlement Class Member according to the Settlement Class Member's length of tenure (e.g., weeks worked) during the Class Period provides a full and fair opportunity to receive a payment in connection with the Settlement.

D. The Court finds and concludes that the proposed plan for distributing the Notice will provide the best notice practicable, satisfies the notice requirements of Federal Rule of Civil Procedure 23(e), and satisfies all other legal and due process requirements.

E. Accordingly, the Court hereby ORDERS as follows:

1. The form of the Notice is approved;
2. The manner of distributing the Notice is approved;
3. Promptly following the entry of this Order, the Settlement Administrator shall prepare final versions of the Notice, incorporating into them the relevant dates and deadlines set forth in this Order;
4. No later than thirty (30) days after entry of this Order, the Company shall provide the Settlement Administrator the names, social security number, last known address, last known telephone

number, dates of employment in the covered position, and job titles of Settlement Class Members;

5. After receipt of the Settlement Class Members' information from the Company, the Settlement Administrator will perform a search and update using the National Change of Address Database to correct any known or identifiable address changes for Settlement Class Members;
6. No later than thirty (30) days after receiving the Settlement Class Member information from the Company, the Settlement Administrator shall cause a copy of the Notice, containing information instructing Settlement Class Members of their right to object or opt out of the Agreement, to be distributed, as approved by this Court, by first class United States Mail to the Settlement Class Members; and
7. The Settlement Administrator shall take all other actions in furtherance of claims administration as specified in the Settlement Agreement.

X. PARTICIPATION IN THE SETTLEMENT

The Notice accurately sets forth the procedures Settlement Class Members must follow to participate in the monetary portion of the Settlement Agreement. If at the Fairness Hearing, this Court grants Final Approval to the Settlement, Named Plaintiffs and each individual Settlement Class Member who do not timely opt-out or request exclusion from the settlement will release claims, as set forth in the Settlement Agreement by operation of this Court's entry of the Judgement and Final Approval.

XI. REQUESTS TO OPT OUT OR FOR EXCLUSION FROM THE SETTLEMENT

The Notice accurately set forth the procedures Settlement Class Members must follow to opt out or exclude themselves from the monetary benefits of the Settlement. Any request for exclusion must follow the procedures in the Settlement Agreement and Notice and be postmarked on or before forty-five (45) days after the Notice is mailed to Settlement Class Members. The Settlement Administrator will provide the Parties with copies of all Opt-out Statements as soon as they are received by the Settlement Administrator. The final list will be submitted by Class Counsel, with redaction of any personal identifying information, along with the declaration of the Settlement Administrator, as an exhibit to the Final Approval Motion.

XII. COMMENTS OR OBJECTIONS TO THE SETTLEMENT

The Notice accurately sets forth the procedures Settlement Class Members must follow to comment on or object to the terms of the Settlement Agreement. Any

comment or objection must follow the procedures in the Settlement Agreement and Notice and must be received by the Settlement Administrator by forty-five (45) days after the Notice is mailed to Settlement Class Members. The Settlement Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and Defendants' Counsel as soon as they are received. The final list will be submitted by Class Counsel, with redaction of any personal identifying information, along with the declaration of the Settlement Administrator, attached to the Final Approval Motion.

XIII. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT

A. Motion for Final Approval. The deadline for Class Counsel to file a Motion for Final Approval of Class Action Settlement and to address any objections to the Settlement Agreement, is _____ [*a date set by the Court*].

B. Fairness Hearing. A hearing shall be held at _____ in Courtroom _____, at _____ a.m./p.m. on _____ [*a date and time set by the Court at least 30 days after the close of the opt-out period*], to consider the Motion for Final Approval of Class Action Settlement, and Class Counsel's motion for an award of attorneys' fees and costs. The procedures for Settlement Class Members to comment on and/or object to the Settlement Agreement and to appear at the Fairness Hearing are set forth in the Notice. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement Agreement. The Court may approve the Settlement, with such

modification as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

XIV. CONFIDENTIALITY

The Court enjoins disclosure to third parties of the documents and information discussed or exchanged during the Parties' confidential settlement negotiations and mediation.

XV. OTHER CASES ENJOINED

A. Pending Final Approval, the Court preliminarily enjoins each Settlement Class Member, including any members who make an irrevocable election to exclude themselves from the monetary relief provisions of the Settlement, from commencing, prosecuting, or maintaining in any court other than this Court any claim, action, or other proceeding that challenges or seeks review of or relief from any order, judgment, act, decision, or ruling in connection with this Action.

B. The Court further preliminarily enjoins any Settlement Class Member who has not made an irrevocable election to exclude themselves from the monetary relief provisions of the Settlement from commencing, prosecuting, or maintaining either directly, representatively, or in any other capacity claims that would or could have been alleged in the Action, including race and/or color discrimination, harassment, or retaliation claims.

SO ORDERED this _____ day of _____ 202__.

District Judge