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11 Special Counsel for Receiver
12 WILLIAM J. HOFFMAN

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 SECURITIES AND EXCHANGE
17 COMMISSION,
18 Plaintiff,
19 v.
20 NATIONWIDE AUTOMATED
SYSTEMS, INC.; JOEL GILLIS; and
21 EDWARD WISHNER,
22 Defendants,
23 OASIS STUDIO RENTALS, LLC;
OASIS STUDIO RENTALS #2, LLC;
24 and OASIS STUDIO RENTALS #3, LLC
25 Relief Defendants.

Case No. CV-14-07249-SJO (FFMx)
**DECLARATION OF MICHAEL R.
NEWHOUSE IN SUPPORT OF
MOTION FOR APPROVAL OF
SETTLEMENT OF RECEIVER'S
CLAIMS AGAINST CITY
NATIONAL BANK, MARK SOFFA,
BRIAN FITZWILLIAM AND BETTY
SALEH FITZWILLIAM**
Date: September 10, 2018
Time: 10:00 a.m.
Ctrm: 10C
Judge: Hon. S. James Otero

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1 I, Michael R. Newhouse, declare:

2 1. I am an attorney and principal of the firm of Newhouse Law Group PC,
3 the Court-appointed Special Counsel for William Hoffman ("Receiver"), the Court-
4 appointed receiver for Defendant Nationwide Automated Systems, Inc. ("NASI"),
5 Relief Defendants Oasis Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, and
6 Oasis Studio Rentals #3, LLC, and their subsidiaries and affiliates ("Receivership
7 Entities"). I make this declaration in support of the Receiver's Motion for Approval
8 of Settlement of Receiver's claims against City National Bank ("CNB"), Mark Soffa,
9 Brian Fitzwilliam and Betty Saleh Fitzwilliam. I am licensed to practice before the
10 courts of the State of California and the Federal District Court, Central District. I
11 have personal knowledge of the facts stated herein, and if called upon to do so, I
12 could and would personally and competently testify to them.

13 2. On May 3, 2016 this Court appointed the Newhouse Law Group
14 ("NLG") and Girardi | Keese ("GK") as special counsel to represent the Receiver in
15 his action against City National Bank and related parties "on the engagement terms
16 described in the Receiver's Supplemental Brief in Support of the Motion." Attached
17 hereto as Exhibit 1 is a true and correct copy of the Court's Amended Order
18 Granting the Receiver's Motion to pursue claims against CNB and to engage special
19 counsel. Dkt. No. 149.

20 3. Attached hereto as Exhibit 2 is a true and correct copy of the
21 Agreement between the parties in the Los Angeles Superior Court litigation.

22 I declare under penalty of perjury under the laws of the United States of
23 America that the foregoing is true and correct.

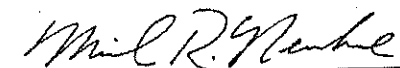
24 Executed this 25th day of July, 2018, at Los Angeles, CA.

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MICHAEL R. NEWHOUSE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

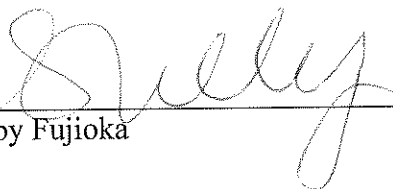
At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1126 Wilshire Boulevard, Los Angeles, CA 90017-1904.

On August 2, 2018, I served true copies of the following document(s) described as **DECLARATION OF MICHAEL R. NEWHOUSE IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT OF RECEIVER'S CLAIMS AGAINST CITY NATIONAL BANK, MARK SOFFA, BRIAN FITZWILLIAM AND BETTY SALEH FITZWILLIAM** on the interested parties in this action as follows:

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 2, 2018, at Los Angeles, California.



Shelby Fujioka

EXHIBIT 1

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 DAVID R. ZARO (BAR NO. 124334)
TIM C. HSU (BAR NO. 279208)
3 515 South Figueroa Street, Ninth Floor
Los Angeles, California 90071-3309
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
thsu@allenmatkins.com

FILED
CLERK, U.S. DISTRICT COURT
May 3, 2016.
CENTRAL DISTRICT OF CALIFORNIA
BY: VPC DEPUTY

6 EDWARD G. FATES (BAR NO. 227809)
7 501 West Broadway, 15th Floor
San Diego, California 92101-3541
8 Phone: (619) 233-1155
Fax: (619) 233-1158
9 E-Mail: tfates@allenmatkins.com

10 Attorneys for Receiver
WILLIAM J. HOFFMAN

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 NATIONWIDE AUTOMATED
19 SYSTEMS, INC.; JOEL GILLIS; and
EDWARD WISHNER,

20 Defendants,

21 OASIS STUDIO RENTALS, LLC;
22 OASIS STUDIO RENTALS #2, LLC; and
OASIS STUDIO RENTALS #3, LLC

23 Relief Defendants.
24

Case No. CV-14-07249-SJO

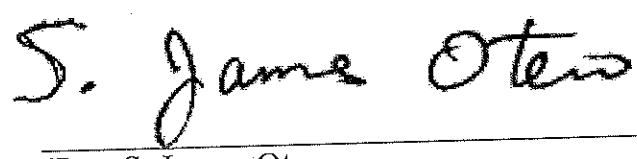
**AMENDED ~~PROPOSED~~ ORDER
GRANTING RECEIVER'S MOTION
FOR AUTHORITY TO (A) PURSUE
CLAIMS AGAINST CITY
NATIONAL BANK, AND
(B) ENGAGE SPECIAL COUNSEL**

Date: May 6, 2016
Time: 9:00 a.m.
Ctrm: 1 - 2nd Floor
Judge: Hon. S. James Otero

1 The Court, having considered William J. Hoffman's ("Receiver"), Court-
2 appointed permanent receiver for Defendant Nationwide Automated Systems, Inc.
3 ("NASI"), Relief Defendants Oasis Studio Rentals, LLC, Oasis Studio
4 Rentals #2, LLC, and Oasis Studio Rentals #3, LLC ("Relief Defendants"), and their
5 subsidiaries and affiliates (collectively "Receivership Entities"), Motion for
6 Authority to (A) Pursue Claims Against City National Bank, and (B) Engage
7 Special Counsel and Declarations in Support Thereof ("Motion"), and good cause
8 appearing therefor, hereby orders as follows:

- 9 1. The Receiver's Motion is granted.
- 10 2. The Receiver is authorized to pursue claims against City National Bank
11 and related parties ("CNB"), including filing such complaint or complaints and
12 taking such other actions as he determines are necessary and appropriate in the
13 pursuit of such claims.
- 14 3. The Receiver is authorized to engage Newhouse Law Group, PC and
15 Gerardi | Keese as co-special counsel to represent him in pursuing claims against
16 CNB on the engagement terms described in the Receiver's Supplemental Brief in
17 Support of the Motion.

18
19 Dated: May 3, 2016.



Hon. S. James Otero
Judge, United States District Court

EXHIBIT 2

SETTLEMENT AGREEMENT

This Agreement dated July XX, 2018 (the "**Settlement Agreement**" or "**Agreement**") is made and collectively entered into by and among the following Settling Parties to the Litigation: the Madison Plaintiffs, the Payne Plaintiffs, the Allison Plaintiffs, the Wilinsky Plaintiffs, the Nevada Plaintiffs, the Receiver, the Bank, the Fitzwilliams, and Soffa. Throughout this Agreement, terms with initial capital letters that are defined below have those defined meanings. This Settlement Agreement is intended by the Settling Parties fully, finally, and forever to resolve, discharge, and settle the Released Claims (defined below), upon and subject to the terms and conditions hereof. This Settlement Agreement is made pursuant to California Code of Civil Procedure § 382 and Rule 3.769 of the California Rules of Court ("CRC").

RECITALS

I. THE LITIGATION

A. On September 17, 2014, the Securities and Exchange Commission filed a complaint against Nationwide Automated Systems, Inc. ("**NASI**"), entitled *SEC v. Nationwide Automated Systems, Inc.*, No. cv-14-07249-SJO (C.D. Cal.) ("**SEC Litigation**"). In 2014, the United States District Court for

the Central District of California (the "District Court") placed NASI in receivership, and appointed William Hoffman as temporary and then permanent receiver for NASI (the "Receiver"). Subsequently, the District Court authorized the Receiver to pursue claims against City National Bank and related parties, including the engagement of special counsel to prosecute the action. The Receiver then filed, in Los Angeles Superior Court (the "Court"), the action entitled *Hoffman v. City National Bank, et al.*, No. BC 624542 (the "Receiver Litigation"), in which the Receiver seeks to recover for damages to all Persons who engaged in ATM sale/leaseback transactions with NASI and were Net Losers (defined below). The Receiver later filed an amended complaint. On February 6, 2018, the District Court approved procedures for the administration of claims by, among others, all Persons who engaged in ATM sale/leaseback transactions with NASI and were Net Losers, and for the distribution of funds held by the NASI Receiver to such Net Losers.

B. John Walter Madison and other Madison Plaintiffs (defined below) filed the action entitled *Madison v. Gillis, et al.*, No. 5:16-cv-00502 in the United States District Court for the Central District of California. Thereafter, the parties to this federal action stipulated to its dismissal and the filing, on certain conditions, of a complaint in state court, with certain of the claims in the

state court complaint being treated as if they were filed earlier. The Madison Plaintiffs then filed the action entitled *Madison v. City National Bank*, No. BC 666719 (the “Madison Litigation”), pending in the Court. The Madison Plaintiffs also filed a First Amended Complaint. As further detailed in their First Amended Complaint, the Madison Plaintiffs seek to represent a class of all Persons (defined below) who engaged in ATM sale/leaseback transactions with NASI and were Net Losers.

C. The Allison Plaintiffs (defined below) filed the action entitled *Allison v. City National Bank, et al.*, No. BC 634285 (the “Allison Litigation”), pending in the Court. That complaint sought damages sustained by the named plaintiffs by virtue of ATM sale/leaseback transactions with NASI where each such named plaintiff was alleged to be a Net Loser. The Allison Plaintiffs also filed a First Amended Complaint.

D. The Receiver filed an action entitled *Hoffman v. Soffa, et al.*, No. BC 636780 (“Soffa Litigation”), pending in the Court, to recover alleged fraudulent transfers made to Soffa, and Soffa cross-claimed against NASI and the Bank. Soffa subsequently dismissed his claims against NASI. Soffa also filed an amended cross-complaint.

E. The Payne Plaintiffs filed the action entitled *Payne v. City National Bank, et al.*, No. BC 655806 (the “**Payne Litigation**”), pending in the Court. As further detailed in their First Amended Complaint, the Payne Plaintiffs seek to represent a class of all Persons who engaged in ATM sale/leaseback transactions with NASI and were Net Losers. The Payne Plaintiffs also filed an amended complaint.

F. The Receiver commenced a separate action entitled *Hoffman v. Fitzwilliam, et al.*, No. BC 659112 (“**Fitzwilliam Litigation**”), pending in the Court, to recover the alleged net profits received by the Fitzwilliams (defined below) and related persons and entities from ATM sale/leaseback transactions with NASI. By subsequent court order, the Fitzwilliam Litigation was abated.

G. Thomas Wilinsky and other Wilinsky Plaintiffs (defined below) filed the action entitled *Wilinsky v. City National Bank, et al.*, No. 17-cv-07463 (JGK) (the “**Wilinsky Litigation**”), pending in the United States District Court for the Southern District of New York. As further detailed in their First Amended Complaint, the Wilinsky Plaintiffs sought to represent a class of all Persons residing in states other than California who engaged in ATM sale/leaseback transactions with NASI and were Net Losers. The Wilinsky Plaintiffs later filed an amended complaint.

H. The Nevada Plaintiffs (defined below) filed the action entitled *Nevada Universal Pictures, Inc. v. City National Bank, et al.*, No. A-17-762461-C (the “Nevada Litigation”), pending in the 8th District Court of Nevada. As further detailed in their Complaint, the Nevada Plaintiffs sought to represent a class of all Persons residing in Nevada who engaged in ATM sale/leaseback transactions with NASI and were Net Losers.

II. CLAIMS OF THE PLAINTIFFS AND BENEFITS OF SETTLEMENT

A. The Plaintiffs have disputed and continue to dispute each and all of the defenses advanced by Defendants (defined below) in the Litigation. In reaching this settlement, Plaintiffs (defined below) and Plaintiffs’ Counsel (defined below) recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against the Defendants through trial and appeals. Plaintiffs and Plaintiffs’ Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially complex cases such as this one, as well as the difficulties and delays inherent in such litigation. While Plaintiffs and Plaintiffs’ Counsel believe the claims in their respective complaints have merit, Plaintiffs and Plaintiffs’ Counsel are also aware of the difficulties of proving the claims asserted against the Defendants, as well as the existence of possible defenses to those claims.

Plaintiffs and Plaintiffs' Counsel believe that the settlement set forth in this Agreement confers substantial benefits upon the Settlement Class (defined below). Based upon their evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the settlement set forth in this Agreement is in the best interests of the Settlement Class.

III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

A. The Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Litigation, including without limitation all charges of wrongdoing against them, and the allegations that the Plaintiffs or the Settlement Class were harmed by the conduct of the Defendants alleged in the Litigation.

B. Nonetheless, the Defendants have concluded that further conduct of the Litigation could be protracted and expensive, and that it is desirable that the claims against them in the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement, in order to limit further expense, inconvenience, and distraction to the Defendants. The Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially complex cases such as this one. This Agreement is not an admission of any liability or wrongdoing, but rather a compromise of

disputed claims. This Agreement shall not be treated in any manner as an admission of any liability or wrongdoing. The Defendants have therefore determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs and the Defendants that, upon and subject to the terms and conditions of this Agreement, the Madison Litigation, the Payne Litigation, the Allison Litigation, the Fitzwilliam Litigation, the Receiver Litigation, the Nevada Litigation, the Soffa Litigation, and the Wilinsky Litigation, shall, as to all Settling Parties and Released Persons, be finally and fully compromised, settled, released, and (except as to the Madison Litigation and the Payne Litigation, which shall be subject to the Court's retention of jurisdiction over the Settling Parties to enforce the terms of the Settlement Order and Final Judgment (defined below) pursuant to CRC Rule 3.769(h)) dismissed with prejudice.

1. DEFINITIONS

1.1 "Allison Plaintiffs" means Plaintiffs Peggy Allison, on behalf of the Allison Realtors Profit Sharing Plan; Aaron Berman and Rita Berman;

Adam Berman; David Berman; Arthur Berrick and Sharon Berrick; Sharon Berrick, IRA; Leroy Clark and Roberta Clark; Zahi Cohen; Israel Freeman and Marilyn Freeman; Freeman Management Group, LLC; Denne Goldstein and Anne Goldstein, as Trustees of the Goldstein Family Trust; Anne Goldstein, IRA; Anne Goldstein, as Custodian of Danielle Green; Stacey Goldstein; Aron Green; Jonah Green; Randi Green; Ira Goldstein, as Custodian of Zachary Goldstein; Ira Goldstein, as Trustee of the Ira Goldstein IRA; Ira Goldstein and Amber Goldstein; Wendy Greenberg; Aileen Gullihur; Charles Gullihur; Ellen Harris, as Trustee of the Ellen Harris IRA; Jeff Harris; Ron Harris, as Trustee of the Harris Family Living Trust dated October 1990; Ron Harris, as Trustee of the Ron Harris IRA; Dennis Huffman; Jeffrey Jacobson; Martin Jacobson; Merle Jacobson; Adam Kasower; Joel Krischer and Sharon Krischer; Aaron Levy; Michael Li-Paz and Monica Li-Paz, as Trustees of the Li-Paz Family Trust; Ron Li-Paz; Richard Massoth, as Trustee of the Massoth Maflamme Family Trust; Olagmo, LLC; Stephen Polacheck, on Behalf of S&A Polacheck & Associates Profit Sharing Plan; Ted Short, as Trustee of the Ted Short Living Trust; Dr. Debbie Schwartzberg; Jack Tiano; Marvin S. Waldman; Marvin S. Waldman, as Trustee of the Marvin S. Waldman Pension Plan; Jamie Warr; Katalin Warr; Russell Warr; and Barry Wolfe.

1.2 “Bank” means City National Bank, N.A.

1.3 “Claims Administrator” means the Receiver, William J. Hoffman, whom the Parties have agreed will provide Notice and administer the claims and distribution process.

1.4 “Defendants” means the Bank and the Fitzwilliams.

1.5 “Distribution Amount” means the balance of the Settlement Class Payment that remains to be distributed to the Participating Class Members (defined below) after subtracting from the Settlement Class Payment the amount that the Court designates for Plaintiffs’ Counsel’s attorneys’ fees and costs (including but not limited to the costs of administering the settlement).

1.6 “District Court Approval” means the entry of an order by the District Court in the SEC Litigation approving the Receiver entering into, and the receivership estate being bound by, this Agreement, including the release of claims by the Receiver on the terms and conditions set forth herein.

1.7 “Effective Date” means the first date by which all of the events and conditions specified in § 6.1 of this Agreement have been met and have occurred.

1.8 “Execution Date” means the first date by which this Agreement is executed by and on behalf of all Settling Parties.

1.9 “Final District Court Approval” means the date that the District Court Approval becomes final and from which no writ or appeal can be taken. Absent further events that alter the time when the order will become final and not reviewable, this is 60 days after the District Court Approval is entered pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, unless a request for a writ or Notice of Appeal is filed with respect to the District Court Approval, in which event Final District Court Approval means the date after which there is a ruling on the writ or appeal, and all deadlines for further appeal therefrom, or request for review thereof, have expired. The Receiver shall be responsible for obtaining Final District Court Approval and shall file a motion seeking District Court Approval at or around the same time as preliminary approval of this Agreement is sought from the Court. Twelve days before filing a motion seeking approval of this Agreement, the Receiver shall provide a draft of the motion for District Court Approval to counsel for the Bank and the Fitzwilliams and allow them six days to provide their comments and suggestions on that draft motion, which the Receiver shall in good faith consider before filing the motion.

1.10 “Final Receiver’s Claims Approval” means the date that the Receiver’s Claims Approval Order (defined below) becomes final and from which no writ or appeal can be taken. Absent further events that alter the time when the order will become final and not reviewable, this is 60 days after the Receiver’s Claims Approval Order is entered pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, unless a request for a writ or Notice of Appeal is filed with respect to the Receiver’s Claims Approval Order, in which event Final Receiver’s Claims Approval means the date after which there is a ruling on the writ or appeal, and all deadlines for further appeal therefrom, or request for review thereof, have expired.

1.11 “Final Settlement Approval” means the date that the Settlement Order and Final Judgment (defined below) containing, among other things, the provisions set forth in § 4.7 below becomes final and from which no writ or appeal can be taken. Absent further events that alter the time when the order will become final and not reviewable, this is 60 days after the Settlement Order and Final Judgment is entered and served on all parties in accordance with CRC Rule 8.104(a)(2), unless a request for a writ or formal appeal is filed, in which event Final Settlement Approval means the date after which there is a ruling on

or dismissal of the writ or appeal, and all deadlines for further appeal therefrom, or request for review thereof, have expired.

1.12 "Fitzwilliams" means defendants Patrick Brian Fitzwilliam and Betty Saleh Fitzwilliam.

1.13 "Litigation" means collectively the Madison Litigation, the Receiver Litigation, the Allison Litigation, the Payne Litigation, the Wilinsky Litigation, the Nevada Litigation, the Fitzwilliam Litigation, and the Sofa Litigation.

1.14 "Madison Plaintiffs" means Plaintiffs John Walter Madison; Michael Beresford and Henriette Beresford; Willard Gardner Bronson, as Trustee of the Willard Bronson Revocable Trust; Broyco Properties, LLC; Jo Ann Arlene Casso; Pamela Jean Caswell; Pamela J. Geremia; Sylvia Hahn; Sandra Kay Kronemeyer and Alan Roy Parness, as Trustees of the Parness Kronemeyer Revocable Trust; Sandra K. Kronemeyer, as Trustee of the Kronemeyer Family Revocable Trust; Thomas P. Madison; Randall L. Shaw; Sharyn Simmons, as Trustee of the Sharyn Lynn Simmons Living Trust; Kasia Stefanek, as Trustee of the Kasia Stefanek Revocable Trust; Alan Jacobson; June Mattson; James Vignola; Penny Barnett Lipp; Penny Lipp, as the Trustee of the Penny M. Lipp Family Trust; Warden Neil Skudder; Jennifer Fawn

Bolbat; Dyanne DiRosario Halsted; Christopher Halsted; Daniel DiRosario; Randolph H. Dodge; Marius Mazmanian; Jonathan Rosenthal; Patricia Waldo; Benjamin Schick; Alan Seplow; Barbara Seplow; Gene Siegrist; Fredric D. Chuckovich; Denis R. D'Amato; Sandra de Bruin; Rosemary Freskos; Veto Galati; Jennifer Gealy; Jennifer Gealy, as Trustee of the Gealy Separate Property Trust; Jennifer Gealy, as Trustee of the Ebert-Gealy Family Trust; Franklin Howard Kuhn; Daniel L. May; Charles Mazmanian; Linda Mazmanian; Mark C. Mazmanian; Michelle C. Mazmanian; Kathleen K. Nesbitt; Marina Resources I, LLC; Christopher Taddeo; Elena Taddeo; RBCT, LLC; Linda Gauthier; Robert E. Austin; Bryan Anthony; Marvin A. Blum; Marvin A. Blum, as Trustee of the Blum Family Trust; Le Pegasus, LLC; Marcus Fender; Joanne Fender; Paul A. Hefti; Denise Lebre Hefti; William Cameron; Kimberly Cameron; Charles Cohen; Robert Wilcox; H. Gilbert Jones; Wayne James; Ivy James; Gerald Selva; Rose Selva; Mark Beltzman; Beverly Lubin; Nicholas Fender, Nicholas Fender as Trustee of the Nicholas Fender Revocable Trust; Bernard Pregerson; Michael Coppert; Milana Coppert; J. Milmic Management Group, LLC; Alan D. Selleck; Snezana Adamovic; Mozaffar Afshar; Shayan Afshar; Dikran Ayarian; Jim Connolley; Peggy Minard; Robert Harner; Linda Harner; Nancy McCaffrey, as Trustee of the Donald Sass Special Needs Trust; Leonard Maisch; JoAnn Maisch, Joseph

Malinak; Antoniette Malinak; Albert T. Nassi, as Trustee of the Albert T. Nassi Living Trust; Del Curtis Quist; Michael Rainey; Gaye Rainey; Kathy Solomon; Ronald Tamillo; Nancy Tamillo; Nicolas Trabolsi; Ilene Trabolsi; Dennis Warren; Stoney Wilson; and Pamela J. Wilson.

1.15 “Net Loss” means the amount by which the total money invested by a Settlement Class Member in NASI ATM sale/leaseback transactions exceeds the total amount of money that the Settlement Class Member received from NASI, including, but not limited to any return on investment, monthly rent, return of principal (in connection with NASI’s repurchase of ATMs), commissions, assets in kind, fees, and other payments. The calculation of Net Loss shall not include any payments made by the Receiver as a distribution or part of monies the Receiver has paid to Net Losers from any sources of recovery. For purposes of this settlement, for each Participating Class Member, the Net Loss shall be the amount of the allowed claim as reflected in the Receiver’s Claims Approval Order, provided that such allowed claim does not include any investment in or monies provided to NASI that were not provided for the purpose of investing in NASI ATM sale/leaseback transactions. In the event that the amount of a Participating Class Member’s allowed claim as reflected in the Receiver’s Claims Approval Order includes investment in or

monies provided to NASI that were not provided for the purpose of investing in NASI ATM sale/leaseback transactions, the amount of such Participating Class Member's Net Loss shall be determined pursuant to a noticed motion brought by the Bank in both the *Madison* Litigation and the *Payne* Litigation.

1.16 "Net Loser" means any person or entity who has suffered a Net Loss (defined above).

1.17 "Nevada Plaintiffs" means Nevada Universal Properties, Inc.; Stephen M. Fait and Kathleen J. Fait, as Trustees of Fait Family Trust; Kathleen J. Fait; Stephen M. Fait; Julie Bairs; and John J. Longeway.

1.18 "Notice" means the notice of the settlement of the Litigation, substantially in the form of Exhibits A-1 and A-2 attached hereto, which shall include the general terms of the settlement set forth in this Agreement and the date of the Settlement Hearing (defined below).

1.19 "Notice Order" means the preliminary approval and notice order substantially in the form of Exhibit A attached hereto, providing for, *inter alia*, certification of the provisional Settlement Class, preliminary approval of the settlement set forth in this Agreement, and approval for the mailing and publication of the Notice, to the extent the Court requires publication of Notice.

1.20 "Opt-Out" means a Settlement Class Member who timely and validly requests exclusion from the Settlement Class, as described in the Notice substantially in the form of Exhibit A-1.

1.21 "Participating Class Member" means a Settlement Class Member (defined below) who is not an Opt-Out and who has timely submitted a fully executed and compliant Release Form by mailing it to the Claims Administrator by U.S. Mail, postmarked no later than thirty (30) calendar days after the Effective Date, unless the Bank and the Claims Administrator jointly agree in writing to extend that deadline, or the Court approves additional time for an individual Settlement Class Member on good cause shown.

1.22 "Payne Plaintiffs" means Plaintiffs Laszlo Hugo Bakos; Richard Rowack, individually and as Trustee of the Lucille Paolillo Trust; Stephen Green, individually and as Trustee of the Green Family Trust; and Alan Jeffery, individually and as Trustee of the Jeffery Family Trust.

1.23 "Person" means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, IRA or other savings or investment account or vehicle, unincorporated association, government or any political subdivision or

agency thereof, and any other business or legal entity, as well as the spouses, heirs, predecessors, successors, representatives, or assignees thereof.

1.24 (i) "Payne Plaintiffs' Counsel" means collectively Ward & Hagen, LLP, 440 Stevens Avenue, Suite 350, Solana Beach, California 92075, and the Law Offices of Julio J. Ramos, 35 Grove Street, Suite 107, San Francisco, California 94102.

(ii) "Madison Plaintiffs' Counsel" means Robert L. Brace, Esq., and Hollister & Brace, by Michael P. Denver.

(iii) "Allison Plaintiffs' Counsel" means Foley Bezek Behle & Curtis, LLP, 15 West Carrillo Street, Santa Barbara, California 93101.

(iv) "Wilinsky Plaintiffs' Counsel" means Golenbock Eiseman Assor Bell & Peskoe LP, by Michael S. Devorkin.

(v) "Nevada Plaintiffs' Counsel" means Karczag & Associates PC, by Justin P. Karczag.

(vii) "Receiver's Counsel" means Michael R. Newhouse, Esq. and Ruth L. Seroussi, Esq. of Newhouse Law Group, P.C. and Thomas V. Girardi, Esq., Robert W. Finnerty, Esq., and David N. Bigelow, Esq. of Girardi | Keese.

(viii) "Plaintiffs' Counsel" means collectively Payne Plaintiffs' Counsel, Madison Plaintiffs' Counsel, Allison Plaintiffs' Counsel, Wilinsky Plaintiffs' Counsel, Nevada Plaintiffs' Counsel, and Receiver's Counsel.

1.25 "Plaintiffs" means collectively the Madison Plaintiffs, the Receiver, the Allison Plaintiffs, the Payne Plaintiffs, the Wilinsky Plaintiffs, the Nevada Plaintiffs, and Sofa, and their respective successors.

1.26 "Pro Rata Share" means the percentage that the Net Loss of a particular Participating Class Member represents as a proportion of the total dollar amount of the cumulative Net Losses of all Participating Class Members.

1.27 "Qualified Settlement Fund" means a fund compliant with § 468B of the Internal Revenue Code and Treasury Regulations. The Qualified Settlement Fund shall also be an interest bearing account.

1.28 "Receiver" means William J. Hoffman, in his capacity as the receiver for NASI and related entities, appointed in the SEC Litigation, or his successor as NASI receiver.

1.29 "Receiver's Claims Approval Order" means the Order of the District Court on the Receiver's Claims Approval Motion setting the amount of

each allowed claim, including the amount of each Settlement Class Member's Net Loss, as described in Section 3.1 below.

1.30 "Related Parties" shall collectively mean any and all of a Defendant's past or present directors, officers, employees, general or limited partners or partnerships, members, principals, underwriters, controlling shareholders, attorneys, accountants, agents, auditors, insurers, financial advisors, banks, investment bankers, consultants, legal representatives, predecessors, successors, parents, subsidiaries, related or affiliated entities, divisions, joint ventures, assigns, spouses, heirs, executors, administrators, any entity in which any Defendant has a controlling interest or which has a controlling interest in any Defendant, any member of any Defendant's immediate family, and any trust of which any Defendant is the settlor or which is for the benefit of any individual Defendant or any member(s) of any Defendant's family. For avoidance of doubt, the Bank's "Related Parties" include but are not limited to Royal Bank of Canada and all of its wholly or partially owned subsidiaries. "Related Parties" shall not include any businesses or entities solely in their capacities as individual retirement account administrators for any Participating Class Members, including, but not limited to, The Entrust Group, Inc., Pensco Trust Company LLC, IRA Administrators,

Inc. Premier Trust, Inc., Polycom Trust Company, and each of their successors, directors, officers or employees.

1.31 "Release Form" means the document substantially in the form of Exhibit C to this Agreement, which is required to be executed by each Settlement Class Member to receive a Pro Rata Share of the Distribution Amount.

1.32 "Released Claims" shall collectively mean any and all actions, causes of action, claims, suits, demands, debts, obligations, liabilities, damages, dues, accounts, bonds, covenants, contracts, agreements, judgments, losses, costs, and expenses whatsoever, including, but not limited to, claims for violations of California Corporations Code §§ 25400 and 25401, fraud, breach of fiduciary duty, violation of California Business and Professions Code § 17200, negligent misrepresentation, negligent supervision, conversion, fraudulent transfer, financial elder abuse, violation of Penal Code § 496, negligence, and violations of any other statutes, rules, or regulations, and aiding and abetting or conspiracy to commit any of the above, whether known or unknown, suspected or unsuspected, that have been, could have been, or could hereafter be, asserted by any of the Plaintiffs, any of the entities placed in receivership by an order entered in the SEC Litigation, or any Settlement Class

Member who is not an Opt-Out, or that Plaintiffs, any of the entities placed in receivership by an order entered in the SEC Litigation, or any Settlement Class Member who is not an Opt-Out, ever had, now have, or may or could hereafter have against any or all of the Defendants and Related Parties, whether under state or federal law, at law or in equity, of any kind and nature whatsoever and whether arising directly, indirectly, derivatively, individually, or in any other capacity, that in any way concern, arise out of, relate to, or are connected to investment in or business or employment transactions with NASI or any acts, omissions, facts, matters, transactions, occurrences, conduct, statements, or representations concerning or relating in any way to the subject matter of, or any allegations or assertions in any papers filed in, the Litigation or any related lawsuit. Without limiting any of the above, Released Claims shall expressly include any claim for any such actions, causes of action, claims, suits, demands, debts, obligations, liabilities, damages, dues, accounts, bonds, covenants, contracts, agreements, judgments, losses, costs, and expenses (including but not limited to any portion or all of the Net Loss of Settlement Class Members who are not Opt-Outs, or their other assertable losses from interactions with NASI) that might be sought to be recovered from one or more of the Defendants by any other Person or entity, including but not limited to the Receiver. The Released Claims include the Receiver's claims against the Fitzwilliams and

related Persons and entities in the Fitzwilliam Litigation. Notwithstanding any provision of this Agreement, Released Claims shall not bar any claims by any Settlement Class Member who has a dispute with the Bank or any of the Bank's Related Parties on any matter unrelated to NASI nor bar any claims to enforce the terms of this Agreement.

Without limitation, Released Claims include the unknown or unsuspected claims against Defendants that in any way concern, arise out of, relate to, or are connected to investment in or through NASI or any acts, omissions, facts, matters, transactions, occurrences, conduct, statements, or representations concerning or relating in any way to the subject matter of, or any allegations or assertions in any papers filed in, the Litigation or any related lawsuit, referred to above, and each Plaintiff and Settlement Class Member specifically releases claims of which he, she, or it does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons which, if known by him, her, or it, might have affected his, her, or its decision not to object to or opt out of this settlement.

1.33 "Released Persons" means each and all of the Defendants and their Related Parties.

1.34 "Settlement Class" means the provisional class created by this Settlement Agreement consisting of all Net Losers, but excluding any governmental entities, any judge, justice or judicial officer presiding over this matter and the members of his or her immediate family, the Defendants, along with their respective corporate parents, subsidiaries and/or affiliates, the legal representatives, heirs, successors, and attorneys of any excluded Person or entity referenced above, and any Person acting on behalf of any excluded Person or entity referenced above. For elimination of any ambiguity, any Person whose claim with respect to his, her or its Net Loss has already been dismissed on motion by one or more Defendants and has had a judgment of dismissal entered and which has not been reversed on appeal by the date of the Preliminary Approval Order, is excluded from the Settlement Class. Currently, those people are Robert Nairn, Carol Van Horst, Barbara Ortwein and Piruz Khorvash. For the avoidance of doubt, Robert Nairn, Carol Van Horst, Barbara Ortwein and Piruz Khorvash are not Plaintiffs or Settling Parties as those terms are used herein.

1.35 "Settlement Class Member" means a Person who falls within the definition of the Settlement Class (defined above).

1.36 "Settlement Hearing" means the hearing at which the Settling Parties' counsel shall request that the Court finally approve the settlement reflected in this Agreement and enter the Settlement Order and Final Judgment (defined below).

1.37 "Settlement Order and Final Judgment" means the order to be rendered by the Court, substantially in the form attached hereto as Exhibit B, and including but not limited to the provisions set forth in Sections 2 and 3 of this Agreement.

1.38 "Settling Parties" means, collectively, each of the Defendants and the Plaintiffs on behalf of themselves and, for those who are putative class representatives, on behalf of the Settlement Class and its Members.

1.39 "Settlement Payment" refers to the total settlement fund that the Bank shall pay in consideration for the releases as to the Released Persons contained in this Agreement, consisting of the amounts described in (i) and (ii) below:

(i) The "Soffa Payment" in the amount of \$1,000,000, which is allocated as follows: \$450,000 to Soffa, and \$550,000 to the Receiver for distribution to the holders of allowed claims against the NASI receivership as

defined by the Receiver's Claims Approval Order, without deduction of any Plaintiffs' Counsel attorneys' fees.

(ii) The "Settlement Class Payment," which shall equal \$33,000,000, reduced proportionally by 1.03 times the percentage that the cumulative Net Losses of Opt-Outs of Settlement Class Member represents as a portion of the cumulative Net Losses of all Settlement Class Members. For example, if the sum of the Net Losses of Opt-Outs constitutes 2% of the sum of the Net Losses of all Settlement Class Members, the amount of the Settlement Class Payment will be reduced by 2.06% (i.e., \$679,800) and shall be \$32,320,000. Thus, the Bank would then pay a Settlement Class Payment of \$32,320,200.

(iii) All Plaintiffs' Counsel further agree and acknowledge that any designated role by any Plaintiffs' Counsel as defined herein shall not serve to enhance nor serve as a bar against any Plaintiffs' Counsel applying or receiving an award for attorneys' fees or costs from the Settlement Class Payment at a later date.

1.40 "Soffa" means Mark Soffa.

1.41 "Wilinsky Plaintiffs" means Plaintiffs Thomas B. Wilinsky, Trustee of the Jennifer Wynne Reeves Trust; Steve Rubin; Gail Johnson;

Susan J. Katz and Marvin A. Katz, as Trustees of the Susan J. Katz Revocable Trust and the Marvin A. Katz Revocable Trust; the Katz Family Limited Partnership; Leo Latini and Margaret Latini, on behalf of themselves and the Leo Latini IRA and the Margaret Latini IRA; Kenneth Fox; Joanne Rothblum; Alan Sherman; Marianne Sirott; JoAnn Sourek; Charles Sourek; CSJS Holdings LLC; Mark Wineberg; Gary Zeal; Mark Zeal; Christopher St. John; David St. John; DCNA Properties, LLC; Susan St. John, as Trustee of the Hayden St. John Trust; HBH, Inc.; John Davies; Sharon Davies; Peter Gluklick; Helen Ross; Robert Starks; Carol Starks; Stevie Bahama LLC; Dena Lowenbach, on behalf herself and the Dena Lowenbach IRA; Gena Aveni; Steven Kutnick; Salvatore Mercurio; Rosemarie Mercurio; Clare Pinto; John Shaughnessy; Howard Vorder Bruegge; Susan Stafford; Robert Newton; Bonnie Newton; Carlo Casoria; Marie Casoria; Susan Fielding; Georgia Griffis; Roderick Griffis; Melora Griffis; Barbara Ann Phillips, as Trustee of the Barbara Phillips 2006 Living Trust dated January 31, 2006; Kimihiro Sato; International Database LLC; Glen Soss; Karle Meyer, on behalf of himself and the Karle Meyer Roth IRA, and as Trustee of the Meyer Inter Vivos Trust; Linda Brown; Carol Hershman; Ruth Moran; Dina Moskowitz; Dennis Singer; Czeslawa Winski; Glenn Johnson, on behalf of the Glenn Johnson IRA; Vivien Johnson; Kris Noland and Sue Noland, as

Trustees of the Kris and Sue Noland Trust of 2007; Harold W. Smith, as Trustee of the Harold W. Smith Trust; the Jonathan M. Smith Foundation; Deborah Smith, as Trustee of the Deborah S. Smith Trust; Deborah Summerson; Todd Summerson; Lou Meiss, as Trustee of the Meiss Trust; Carol Patton; Jimmy Patton; Jose J. Velazquez, on behalf of himself and the Jose J. Velazquez 401K; Gloria Wong; Capri Enterprises LLC; CAJEM Services Inc.; Stryker Group, Inc.; San Marino Services, Inc; ATMax LLC; Michael Lee Eberlein; Sherman Kent Turner; Nancy Turner; K&N Management; Lisandre Rockenbach; and Stavroula Demopoulos.

2. THE SETTLEMENT

2.1 In consideration for the releases herein, Final District Court Approval, Final Settlement Approval, and the other terms and conditions of this Agreement, within 10 business days of the Effective Date, the Bank and/or one or more of the Bank's insurers shall pay the Settlement Payment as follows: (i) the Settlement Class Payment to an account to be established by the Claims Administrator to be a Qualified Settlement Fund; (ii) \$550,000 to the Receiver; and (iii) \$450,000 to Soffa. The date of the last payment shall be the "**Payment Date**." The Settlement Payment represents the entire amount the Bank will pay in consideration for the settlement of the

Litigation. The Settlement Class shall not receive anything further from any of the Defendants, whether for payment of Plaintiffs' Counsel's fees and costs, costs of administration, notice, any participation awards to any named plaintiff, or otherwise.

2.2 Notwithstanding any other provisions of this Agreement, in the event that (i) the number of Settlement Class Members opting out of the settlement constitutes more than 3% of the total number of Settlement Class Members (as listed in the Receiver's Claims Approval Order) or (ii) the cumulative Net Losses of the Settlement Class Members opting out of the settlement represent more than \$3,000,000 of the total Net Losses of the Settlement Class Members (based on the Net Loss figures listed on the Receiver's Claims Approval Order), the Bank has the right to terminate the settlement in its entirety by written notice to counsel for all other Settling Parties, sent by email no later than fifteen (15) calendar days after the Bank has received from the Claims Administrator the report referenced in Section 6.4 and copies of all requests for exclusion from the Settlement Class.

2.3 The termination shall be effective on the earlier of (i) fifteen (15) calendar days after delivery of such notice or (ii) two (2) court days before any action to be taken by the Court or the District Court with respect to this

settlement. During the time period described in the preceding sentence, the Bank and the other Settling Parties may discuss in good faith the issue of the opt-outs.

3. ALLOCATION OF THE SETTLEMENT AMONG CLASS MEMBERS

3.1 The Settling Parties are informed that the Receiver has undertaken an accounting and has begun a claims filing and allowance procedure described in the Receiver's Renewed Motion for Approval of Procedures for the Administration of Investor and Creditor Claims Against the Receivership Estate, filed January 9, 2018 ("Procedures Approval Motion"), which procedure was approved and ordered by the District Court, Judge Otero presiding, on February 6, 2018 (the "Receiver's Claims Procedures"). Pursuant to the Receiver's Claims Procedures, the Receiver will endeavor to determine and calculate the amount of claims against the receivership estate, including the Net Loss of each Settlement Class Member. The Receiver has given or will endeavor to give notice to every NASI investor (with exceptions identified in the Procedures Approval Motion) of his or her calculated Net Loss. The Receiver has an approved methodology for attempting to locate investors with Net Losses whose claim forms are returned undeliverable. The Receiver has given the Settlement Class Members notice with 60 days to

contest the Receiver's calculated Net Loss. An approved dispute resolution methodology utilizing retired judges and overseen by the District Court may also be used, at the discretion of the District Court, to make a final determination of an investor's Net Loss. For good cause shown, each Settlement Class Member shall have an additional thirty (30) days from the date the is Notice required to be provided to the Settlement Class pursuant to Section 4.1(ii) hereof to contest the Receiver's calculated Net Loss, and shall follow the Receiver's Claims Procedures. In accordance with the Receiver's Claims Procedures, the Receiver will file a motion for approval of all proposed allowed claim amounts ("Claims Approval Motion"). Each Settlement Class Member who disputes the amount that the Receiver seeks to have the District Court confirm as that Settlement Class Member's Net Loss will have an opportunity to oppose the Claims Approval Motion in that regard. The amount of all allowed claims, including the amount of each Settlement Class Member's Net Loss, will be decided by the District Court in the Receiver's Claims Approval Order. For each Participating Class Member, the amount of his allowed claim as reflected in the Receiver's Claims Approval Order shall be deemed to be his Net Loss, subject to the exception contained in the last two sentences of the definition of Net Loss set forth above.

3.2 Each Participating Class Member's Net Loss shall be used as the basis for calculating the distribution to that Participating Class Member. Each Participating Class Member is to receive that Participating Class Member's Pro Rata Share of the Distribution Amount.

3.3 Each Participating Class Member's Pro Rata Share of the Distribution Amount will be paid to the Participating Class Member by the Claims Administrator within 60 days of the Effective Date of this Agreement. Distributions to each Participating Class Member will be paid as a single lump sum. Within 20 days after the Claims Administrator completes the distribution of cash payments to Participating Class Members, it will provide to the Settling Parties an appropriate declaration documenting the distribution.

3.4 If, after 180 days following complete distribution to Participating Class Members, there is money remaining in the fund that (1) has not been distributed to Participating Class Members (i.e., uncashed checks), and (2) has not been used to pay attorneys' fees, costs, or administrative costs, then Class Counsel shall move the Court for an order to distribute residual funds to Participating Class Members within 240 days following the initial distribution to Participating Class Members. However, notwithstanding the

above, if the total amount of these residual funds is \$50,000 or less, the full remaining amount of residual funds shall be transferred to the receivership estate to be distributed to all holders of allowed claims in the SEC Litigation in accordance with the distribution of receivership estate funds approved by the District Court.

3.5 All Plaintiffs and Plaintiffs' Counsel agree and acknowledge that the Settlement Class Payment constitutes a common fund and/or substantial benefit fund, achieved by the efforts of Plaintiffs' Counsel in the Litigation. All Plaintiffs' Counsel further agree and acknowledge that any designated role by any Plaintiffs' Counsel provided herein shall not itself serve to enhance nor serve as a bar against any Plaintiffs' Counsel applying for attorneys' fees or costs from the Settlement Class Payment at a later date. By way of example, but not limitation, no designation as counsel for the Settlement Class ("Class Counsel") shall enhance any claim for attorneys' fees submitted by any Plaintiffs' Counsel so designated. Plaintiffs' Counsel may each submit to the Court their respective application for the payment from the Settlement Class Payment of their respective attorneys' fees, costs, and expenses arising from or related to the payments made to the Class pursuant to this Settlement Agreement, irrespective of who is appointed by

the Court to serve as Class Counsel. Each of the Plaintiffs' Counsel reserves the right to seek fees and costs. Each of the Plaintiffs' Counsel, Plaintiffs, and Settlement Class Members, reserves all rights to object to or respond to each Plaintiffs' Counsel's application for fees and costs. The Court will determine the procedure by which the final amount of each application for such attorneys' fees and costs shall be determined under applicable law. Plaintiffs, the Settlement Class Members, and Plaintiffs' Counsel agree that all amounts awarded for any Plaintiffs' Counsel's attorneys' fees, costs, and expenses shall be paid solely from the Settlement Class Payment, and that Defendants shall not be responsible for payment of any funds other than the Settlement Payment (defined above). Plaintiffs' Counsel each may seek costs associated with the Litigation, which Plaintiffs' Counsel estimates are collectively not in excess of \$316,100. Plaintiffs' Counsel will only seek reasonable costs associated with the Litigation. In addition, Plaintiffs' Counsel agree that the Court shall not award for the total collective amount of attorneys' fees (not including costs) for all of them more than thirty (30%) percent of the fund created by the Settlement Class Payment. If the Court awards collectively to Plaintiffs' Counsel fees less than 30% of the Settlement Payment, the difference shall be available for distribution to Settlement Class Members. Payment of attorneys' fees and costs may be

made immediately after the Settlement Class Payment has been paid, or such subsequent date ordered by the Court. The effectiveness of this Agreement is not conditioned upon and will not be delayed by the Court's failure to approve any application for attorneys' fees and costs by any or all Plaintiffs' Counsel.

3.6 For purposes of this settlement only and provided that Final Settlement Approval occurs, the Settling Parties agree to the certification of a provisional Settlement Class. In the event that this Agreement is not finally approved by the Court, or Final District Court Approval does not occur, or Final Settlement Approval does not occur, or the settlement is terminated for any reason, then this Agreement shall be void and the Settling Parties reserve all rights, positions, and arguments on, among other points, the issues of whether a class should be certified in any of the cases comprising the Litigation, and whether dispositive motions should be granted and attorneys' fees awarded; all claims, issues, defenses, filed Complaints, and causes of action are preserved and restored, without prejudice, as if this Agreement had never been executed; and the Settling Parties remain free to pursue the lawsuits that were pending prior to this Agreement subject to all available defenses and claims. In the event the settlement is terminated, this

Agreement shall neither be admissible nor be utilized as evidence regarding class certification or otherwise in further proceedings in the Litigation.

3.7 All Plaintiffs are bound by this Agreement, agree not to become Opt-Outs, and agree to have their cases and claims subject to the Settlement Order and Final Judgment.

4. NOTICE ORDER AND SETTLEMENT HEARING

4.1 Motion for Preliminary Approval - CRC Rule 3.769 (c) and (d). The *Madison* and *Payne* Plaintiffs and the Bank shall jointly agree on the form and content of a motion for preliminary approval (after considering comments from the Fitzwilliams' counsel on a draft of the motion) seeking to have the Court: (i) find preliminarily that this settlement is a fair, adequate, and reasonable compromise of the Released Claims; (ii) order that Notice of the settlement substantially in the form of Exhibits A-1 and A-2 attached hereto be provided to the Settlement Class within 30 days after the Notice Order has been entered; (iii) declare that the content of the proposed Notice and the mechanisms of communicating such Notice meet the requirements of CRC Rule 3.769(f); (iv) schedule a date by which each Settlement Class Member must submit an executed Release Form in order to receive a Pro Rata Share of the Distribution Amount; (v) schedule a date no later than 60

days after the deadline set to mail and/or publish the Notice by which any Settlement Class Member may opt out of the settlement; (vi) schedule a date by which any Settlement Class Member who objects to the terms of this Agreement may file and serve written objections to the Agreement and may request a copy of or serve written objections to any application of any of Plaintiffs' Counsel for payment of fees and costs, together with a deadline by which any Settling Party may file a brief in opposition to any such objection; and (viii) schedule a Settlement Hearing date pursuant to CRC Rule 3.769(g) at which any Settlement Class Member who is not an Opt-Out and who meets other requirements established by the Court, may appear in order to object to the fairness, adequacy or reasonableness of this Agreement. The *Madison* and *Payne* Plaintiffs and/or the Bank shall file the motion for preliminary approval as soon as reasonably practicable after the Execution Date, and in no event later than July 31, 2018. The motion for preliminary approval shall seek to schedule the Settlement Hearing on final approval of this Agreement before the Court for a date no later than one hundred twenty (120) days after the earlier of mailing and/or publication of the Notice. For the avoidance of doubt, (1) by the date scheduled pursuant to subsection (vi) of this section, Settlement Class Members may request a copy of any fee application of any of Plaintiffs' Counsel, and (2) at the Settlement Hearing, Settlement Class

Members may make any oral objections to the terms of the Agreement that relate to Plaintiffs' Counsel, and to the specific application of any of Plaintiffs' Counsel for payment of fees.

4.2 Each of the Plaintiffs' Counsel may file its own motion to be Class Counsel, if they cannot agree on a joint motion.

4.3 The Claims Administrator shall help implement the terms of the Agreement. The Claims Administrator shall a) provide Notice to the Settlement Class in accordance with the Notice Order; b) provide Release Forms to the Settlement Class in accordance with the Notice Order; c) receive and catalogue all Opt-Outs; d) receive and catalogue all Release Forms; e) make any additional mailings required under the terms of this Agreement; f) distribute payments to Participating Class Members; g) deliver by electronic form to all Settling Parties' Counsel all timely received Release Forms at least five calendar days prior to distribution of any portion of the Class Settlement Payment; h) deliver to the Bank's counsel the originals of any Release Forms received by mail by the Claims Administrator at least five calendar days prior to distribution of any of portion of the Class Settlement Payment; and i) otherwise assist with the administration of the Agreement (collectively, (a)-(i) are the "Claims Administrator's Duties"). The Claims

Administrator shall bear the initial costs of the Notice. All out of pocket costs and fees of the Claims Administrator in performing the Claims Administrator's Duties shall be borne by the Claims Administrator, subject to the possible reimbursement provided for in this Agreement. Plaintiffs' Counsel having shown good cause to the Receiver, the Receiver shall provide Plaintiffs' Counsel the list of Settlement Class Members and their contact information. All reasonable fees and out of pocket costs actually incurred by the Claims Administrator in administering the settlement and distributing the Distribution Amount (but not the Receiver's attorneys' fees to defend contested claims in the receivership claims administration process in the District Court), including the cost for providing Notice, shall be reimbursed from the Settlement Class Payment funds, if approved by the Court, after reasonable notice to Settling Parties' counsel and a reasonable opportunity to object. The costs for performing the Claims Administrator's Duties shall not exceed \$270,000. At least five (5) business days prior to the Settlement Hearing, the Claims Administrator shall provide a declaration to be filed with the Court and served on Defendants detailing the preparation and mailing of the Notice to the Settlement Class.

4.4 The Notice to Settlement Class Members shall also specifically include provisions that Settlement Class Members who so desire may exercise the right to exclude themselves from the Settlement Class (i.e., to opt out), but only if they comply with the requirements for doing so as set forth in the Notice. The Notice shall further provide that any Settlement Class Member who does not properly and timely request exclusion from the Settlement Class shall be bound by any and all judgments, releases, and settlements entered or approved by the Court, whether favorable or unfavorable to the Settlement Class. The Notice shall provide that no Settlement Class Member may simultaneously object to the settlement and opt out.

4.5 The Notice shall further provide that any objections to (i) the settlement proposed by this Agreement and (ii) entry of the Settlement Order and Final Judgment approving the settlement, and any papers submitted in support of said objections, shall be considered by the Court at the Settlement Hearing only if, on or before the date specified in the Notice, Persons making any such objections shall, as set forth in the Notice, file and serve on the Settling Parties written objections (which shall set forth each objection and the basis therefore) and copies of any papers in support of their positions.

Counsel for any Settling Party may file a brief in opposition to any such objection in accordance with deadlines for service and filing as set forth in the Notice.

4.6 The Notice Order and Notice shall also state that, pending final determination of whether the settlement contained in this Agreement should be approved, and with the exception of such proceedings as are necessary to implement, effectuate, and grant final approval to the terms of the Settlement Agreement, the Plaintiffs and other Settlement Class Members shall not commence or prosecute any action or proceeding in any court or tribunal asserting any of the Released Claims against the Released Persons, either directly, indirectly, derivatively, individually, representatively, or in any other capacity, unless the Settlement Class Member has previously and timely submitted a valid Request for Exclusion as defined in the Settlement Agreement.

4.7 Final Settlement Approval Hearing - CRC Rule 3.769 (e), (f) & (g). At the Settlement Hearing, the Settling Parties' counsel shall request that the Court finally approve the settlement reflected in this Agreement and enter the Settlement Order and Final Judgment which shall, among other things,

- a. Provide final approval of the settlement contemplated by this Agreement as being a fair, reasonable, and adequate settlement for, and in the best interests of the Settlement Class Members;
- b. Determine that the settlement has been made in good faith, according to the terms of California Code of Civil Procedure §§ 877 and 877.6;
- c. Direct that the settlement be consummated pursuant to its terms and conditions;
- d. Discharge and release the Defendants from all Released Claims;
- e. Overrule any objections to the settlement reflected in the Agreement, although the Bank in its sole discretion may decide to proceed with the settlement if one or more objections to the settlement is sustained;
- f. Find that the Notice provided in this Agreement (i) constitutes reasonable and the best practicable notice, (ii) is reasonably calculated to apprise the Settlement Class Members of the pendency of this Litigation, the terms of settlement, the right to object to this Agreement, and the right to appear at the Settlement

Hearing, (iii) constitutes due, adequate, and sufficient notice to all Persons or entities to receive such notice, and (iv) meets the requirements of due process, the California Code of Civil Procedure, the California Rules of Court, and any other applicable law or rules of the Court;

- g. Reserve continuing and exclusive jurisdiction over the settlement for all purposes, including its administration, consummation, and any disputes that may arise concerning it; and
- h. Effect the required dismissal on the Effective Date of the Allison Litigation, the Fitzwilliam Litigation, the Sofa Litigation, and the Receiver Litigation.

5. RELEASES AND DISMISSALS

5.1 (a) Upon the Payment Date and payment of the Settlement Payment pursuant to Section 2.1, each of the Plaintiffs shall have, and each of the Settlement Class Members who are not Opt-Outs shall be deemed to have, and by operation of the Settlement Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons, and covenanted not to sue the Released Persons on the Released Claims.

(b) Furthermore, with respect to the Released Claims, the Settling Parties stipulate and agree that, upon the Payment Date and payment of the Settlement Payment pursuant to Section 2.1, the Plaintiffs shall expressly, and each of the Settlement Class Members shall be deemed to have, and by operation of the Settlement Order and Final Judgment shall have, waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides:

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

(c) Furthermore, each Plaintiff and Settlement Class Member, upon the Payment Date and payment of the Settlement Payment pursuant to Section 2.1, shall be deemed to have, and by operation of the Settlement Order and Final Judgment shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code as to Released Persons. Plaintiffs and

Settlement Class Members may hereafter discover facts in addition to or different from those which, he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiffs and each Settlement Class Member, upon the Payment Date and payment of the Settlement Payment pursuant to Section 2.1, shall be deemed to have, and by operation of the Settlement Order and Final Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future against the Released Persons, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge that the foregoing waiver was bargained for and is a key element of the settlement of which this release is a part.

5.2 The releases in this Section 5 shall not affect any claims to enforce the terms of this Agreement or any orders, agreements, or rights arising therefrom.

5.3 Nothing contained in this Agreement is intended to diminish the rights of any Settlement Class Member to receive distribution(s) from the receivership estate in the SEC Litigation.

5.4 Within five court days of the Effective Date, the respective Plaintiffs' Counsel in the Litigation shall file any remaining necessary papers to dismiss the lawsuits filed therein (except with respect to the Madison Litigation and the Payne Litigation), including but not limited to filing a Notice of Dismissal with prejudice of the entire action in each of the Wilinsky Litigation, the Nevada Litigation, the Receiver Litigation, the Fitzwilliam Litigation, and the Allison Litigation. Further, within five court days of the Effective Date, the Receiver shall file a Notice of Dismissal with prejudice of the complaint in the Soffa Litigation, and Soffa shall file a Notice of Dismissal with prejudice of the pending cross-complaint in the Soffa Litigation.

6. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

6.1 The Effective Date of the Settlement shall be conditioned on the occurrence of all of the following events:

- a. The Court has entered the Notice Order, as required by § 4 hereof;

- b. The Notice has been given pursuant to the Notice Order;
- c. The Court has entered the Settlement Order and Final Judgment, or an order substantially in the form of Exhibit B attached hereto;
- d. Final District Court Approval has occurred;
- e. Final Settlement Approval has occurred;
- f. Final Receiver's Claims Approval has occurred; and
- g. The Bank has not exercised its right to terminate the Settlement Agreement pursuant to §§ 2.2 and 2.3 of this Agreement.

6.2 This Agreement will be enforceable only upon signature by all the Settling Parties, unless the Bank waives this requirement in writing as to particular Plaintiffs. Further, this Agreement shall be void if any of the Plaintiffs purport to opt out of the settlement, unless the Bank waives this requirement in writing as to particular Plaintiffs.

6.3 If (i) the Court fails to enter the Notice Order or the Settlement Order and Final Judgment in substantially the form submitted herewith, or either of such orders is reversed, vacated, or modified upon appeal; or (ii) any of the other conditions specified in § 6.1 are not met, then this Agreement

shall be terminated, become void and have no further force and effect, unless Plaintiffs' Counsel and counsel for the Bank mutually agree in writing to proceed with this Agreement, except for §6.5, the second and third sentences of § 3.6, and the first sentence of § 7.6, which shall remain in full force and effect.

6.4 Within fifteen (15) business days after the time period for Settlement Class Members to exclude themselves from the settlement has ended, the Claims Administrator shall serve on Defendants' Counsel and file with the Court a report stating the total number of Persons that have submitted timely and valid Requests for Exclusion from the Settlement Class, and the names of such Persons, and shall email to Defendants' Counsel a copy of each request for exclusion and each executed Release Form received to that date. (Plaintiffs' Counsel may attempt to cause retraction of any requests for exclusion.)

6.5 In the event this Agreement is cancelled, terminated or withdrawn, the Settling Parties shall be restored to their respective positions in the Litigation as of May 1, 2018. In such event, the terms and provisions of this Agreement, or any documents or exhibits related thereto, shall have no further force and effect with respect to the Settling Parties and shall not be

used in any proceeding for any purpose, and any judgment or order entered by the Court under the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

7. MISCELLANEOUS PROVISIONS

7.1 The Settling Parties: (i) acknowledge that it is their intent to consummate this agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable efforts to accomplish the foregoing terms and conditions of this Agreement, and to obtain dismissal with prejudice of the Litigation, except that the disposition of the Madison Litigation and Payne Litigation shall be in accordance with CRC Rule 3.769(h). Plaintiffs shall dismiss each action they have filed against Defendants in its entirety, the Receiver shall dismiss the complaint in the Sofa Litigation, and Sofa shall dismiss the pending cross-complaint in the Sofa Litigation, within five court days of the Effective Date.

7.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed or treated as an admission by any Settling Party as to any

liability or the merits of any claim or defense. The Settling Parties agree that the settlement was negotiated in good faith and reflects a settlement that was reached voluntarily after consultation with experienced legal counsel. All communications (whether oral or in writing) between any of the Plaintiffs or Plaintiffs' Counsel, on the one hand, and any of the Defendants or Defendants' Counsel, on the other hand, or between any Defendant or his, her or its counsel, on the one hand, and any other Defendant or his, her or its counsel, on the other hand, relating to, concerning, or in connection with this Agreement shall be governed and protected in accordance with Federal Rule of Evidence 408 and California Evidence Code Sections 1119 and 1152 to the fullest extent permitted by law.

7.3 Pending final determination of whether the settlement contained in this Agreement should be approved, the Plaintiffs shall not prosecute any action or proceeding in any court or tribunal asserting any of the Released Claims against any of the Released Persons, either directly, indirectly, derivatively, individually, representatively, or in any other capacity. With the exception of dates contained in this Agreement or any of its Exhibits, all litigation dates in the Litigation set prior to the Execution Date are vacated; all further discovery is stayed; and, except as necessary or expeditious to

consummate this settlement, all other proceedings in the Litigation are stayed.

7.4 Notwithstanding any other provision herein, counsel for Wilinsky Plaintiffs may file in the United States District Court for the Southern District of New York any motion for dismissal of the Wilinsky Litigation that he deems required by Rule 23(e), Federal Rules of Civil Procedure, and appropriate papers to inform that Court about the status of the litigation.

7.5 Except as provided in the next sentence, no Plaintiff or his, her, or its counsel shall make or continue to make any public statement regarding the Litigation, any part of it or this settlement. The following statements are permitted: (i) required filings with the IRS or in IRS-related proceedings; (ii) statements by counsel to courts and governmental agencies to qualify for appointment or retention that do not disparage or criticize the Defendants, their conduct or their practices; (iii) oral statements to friends and family that are not made available to the broader public; (iv) statements on counsel's website that do not mention or disparage the Defendants, their conduct or their practices and that accurately and fairly represent the Settlement; and (v) required court filings in this matter which shall neutrally describe the Plaintiffs' allegations and which shall avoid unnecessarily characterizing,

disparaging, or criticizing the Defendants, their conduct, or their practices. Nothing herein shall preclude any Party or its agents, representatives or counsel from making any good-faith response to any inquiries under oath or in response to a government inquiry, or from making non-public, privileged communications with persons in the Settlement Class with regard to the Settlement. This provision does not apply to absent class members.

7.6 Neither this Agreement nor the settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of the Defendants; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Notwithstanding anything stated elsewhere in this Agreement, any of Defendants may file this Agreement and/or the Settlement Order and Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

7.7 All of the Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

7.8 This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their successors in interest.

7.9 This Agreement and the Exhibits attached hereto constitute the entire agreement among the Settling Parties and supersede all prior and contemporaneous oral and written agreements and discussions. No representations, warranties, or inducements have been made to any Settling Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

7.10 Except as otherwise provided herein, each Settling Party shall bear his, her or its own fees, expenses, and costs.

7.11 All agreements relating to the confidentiality of documents shall remain in effect by their terms, notwithstanding this Agreement or the dismissal of the Litigation.

7.12 With the exception that all Plaintiffs must sign this Agreement (subject to the Bank's right, referenced above, to waive this provision for specific Plaintiffs), Plaintiffs' Counsel represent that they, on behalf of the Plaintiffs, are expressly authorized to take all appropriate actions required or permitted to be taken by the Plaintiffs pursuant to this Agreement to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Plaintiffs that they deem appropriate.

7.13 Each counsel executing this Agreement or any of its Exhibits hereby warrants that he or she has the full authority of his or her clients to do so. Each Person executing this Agreement or any of its Exhibits on behalf of any Settling Party that is not a natural person hereby warrants that such Person has the full authority to do so.

7.14 This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court. For this purpose, a copy of an executed signature page or of the Agreement, including those that are transmitted by email or facsimile, shall be deemed and treated in all manner

and respects as an original signature page or as an original Agreement, and shall have the same binding legal effect as if it were the original thereof delivered in person.

7.15 This Agreement shall be binding upon, and inure to the benefit of, the Settling Parties and their representatives, agents, executors, heirs, spouses, partners, corporate parents, affiliates, beneficiaries, successors, and assigns.

7.16 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

7.17 This Agreement and the Exhibits attached hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the Settling Parties shall be construed and enforced in accordance with, and governed by, the internal substantive laws of the State of California without giving effect to that State's conflict of laws principles.

7.18 None of the Settling Parties has heretofore assigned, encumbered, hypothecated, transferred, or pledged, or purported to assign, encumber, hypothecate, transfer, or pledge, voluntarily, involuntarily, by operation of law, or by way of subrogation, to any person or entity, any interest in any of the Released Claims or other matters released by this Agreement.

7.19 Each of the Settling Parties has cooperated in the drafting and preparation of this Agreement and therefore this Agreement shall not be construed for or against any Settling Party. Descriptive headings are used herein for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement. As used herein, and unless otherwise provided, the singular shall include the plural, and the plural shall include the singular, and the masculine, feminine, and neuter genders are used interchangeably, as the context may require.

7.20 Each Party acknowledges that he, she, or it has entered into this Agreement voluntarily and of his, her, or its own free choice and that he, she, or it has had the opportunity, if he, she, or it so desires, to seek the advice of independent counsel of his, her, or its own choosing with respect to this Agreement.

7.21 Time is expressly of the essence to the performance of all obligations, conditions, and covenants contained herein.

7.22 No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall any such asserted waiver constitute a continuing waiver.

7.23 Although the Settling Parties intend the Settlement Class Payment and any bank account receiving the Settlement Class Payment to comprise a Qualified Settlement Fund, none of the Settling Parties take a position as to the taxability of any payments hereunder or as to any taxes which may be owed by any Participating Class Members as a result of this settlement. Defendants shall have no liability of any kind for the taxes or tax-related expenses related to the administration of the Settlement Class Payment, the qualification of the account receiving the Settlement Class Payment as a Qualified Settlement Fund, any bank account receiving the Settlement Class Payment, or any entity receiving any portion of the Settlement Class Payment.

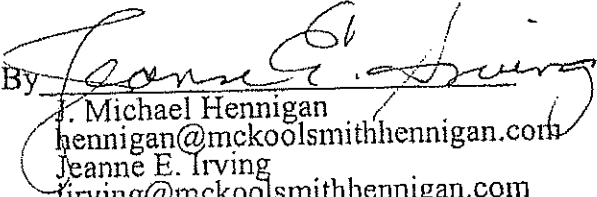
7.24 All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period

of time prescribed or allowed by this Agreement or by order of any court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which conditions have made the office of the Clerk of the Court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section, "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Lincoln's Birthday, Washington's Birthday, César Chávez Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a federal or California holiday.

7.25 All provisions in the Agreement apply to each Settlement Class Member, unless otherwise specifically stated.

DATED: July 9, 2018

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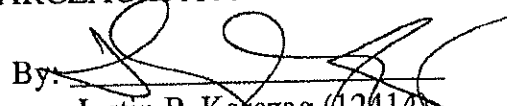
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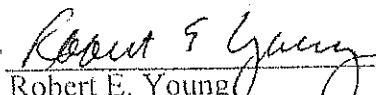
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Attorney for Mark Soffa

DATED: July __, 2018

CITY NATIONAL BANK

By _____
Jared Wolff
General Counsel

DATED: July __, 2018

Patrick Brian Fitzwilliam

DATED: July __, 2018

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and

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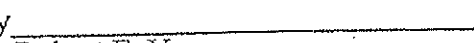
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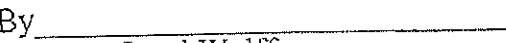
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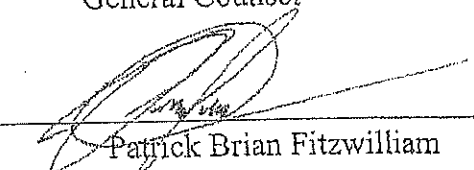
DATED: July __, 2018

CITY NATIONAL BANK


By


Jared Wolff
General Counsel

DATED: July 20th, 2018


Patrick Brian Fitzwilliam

DATED: July 20th, 2018



Betty Saleh Fitzwilliam

DATED: July __, 2018

Mark Soffa

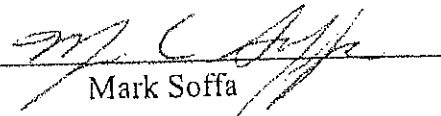
DATED: July __, 2018

William J. Hoffman
Receiver for Nationwide Automated
Systems, Inc. and Related Entities

DATED: July __, 2018

Betty Saleh Fitzwilliam

DATED: July 26, 2018



Mark Soffa

DATED: July __, 2018

William J. Hoffman
Receiver for Nationwide Automated
Systems, Inc. and Related Entities


DATED: July __, 2018

Betty Saleh Fitzwilliam

DATED: July __, 2018

Mark Soffa

DATED: July 14, 2018



William V. Hoffman
Receiver for Nationwide Automated
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