

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON

TERESA KEELING and
KEVIN KEELING, in their own right and as
representatives of a class of persons similarly
situated;

Plaintiffs,

Civil Action No. 3:23-cv-00352
Judge Robert C. Chambers

v.

THE HUNTINGTON NATIONAL BANK,

Defendant.

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CLASS SETTLEMENT AND RELEASE AGREEMENT

1. PARTIES

This Class Settlement and Release Agreement (the “Agreement”) is made and entered into as of the Effective Date, as defined herein, by and between Plaintiffs Teresa Keeling and Kevin Keeling (“Plaintiffs”) acting individually and as representatives of the Settlement Class, as defined herein (the “Settlement Class” or “Class Members”) and Defendant The Huntington National Bank (“HNB” or “Defendant”) (collectively, the “Parties”) for the purpose of resolving by compromise and settlement of all claims, controversies and alleged liabilities arising out of the disputes as set forth below.

2. RECITALS

2.1 On August 8, 2023, Plaintiff Teresa Keeling filed her First Amended Class Action Complaint against Defendant, case number 3:23-cv-00352, in the Southern District of West Virginia, Huntington Division, entitled *Teresa Keeling, in her own right and as representative of a class of persons similarly situated v. The Huntington National Bank* (the “Teresa Keeling Action”). The First Amended Class Action Complaint asserted individual and class claims for violations of the West Virginia Consumer Credit Protection Act (“WVCCPA”).

2.2 Defendant filed its Answer and Affirmative Defenses to the First Amended Class Action Complaint on September 5, 2023. The Court entered a Scheduling Order on September 28, 2023. The parties exchanged initial disclosures under Fed. R. Civ. P. 26(a)(1) on October 10, 2023.

- 2.3 On December 4, 2023, Plaintiff Kevin Keeling filed his Complaint against Defendant The Huntington National Bank, case number 3:23-cv-00773, in the Southern District of West Virginia, Huntington Division (“Kevin Keeling Action”).
- 2.4 Defendant filed a Motion to Dismiss the Kevin Keeling Action on February 23, 2024.
- 2.5 By agreement of the parties, the Teresa Keeling Action and Kevin Keeling Action were consolidated (as consolidated, the “Action”) and the Motion to Dismiss the Kevin Keeling Action was denied without prejudice.
- 2.6 After extensive written discovery, third party discovery, and the noticing of depositions, the Parties agreed to mediate their claims with an experienced mediator, Steve Dalesio.
- 2.7 On August 23, 2024, the Parties moved to continue all scheduling order deadlines in light of their mediation session scheduled for September 27, 2024. The Court granted that motion on August 26, 2024.
- 2.8 The parties mediated their claims with Mr. Dalesio on September 27, 2024. As Mr. Dalesio reported to the Court following that session, the parties, through counsel, mediated for a full day and finally resolved Plaintiffs’ individual and class claims through arms’ length negotiations.
- 2.9 Defendant denies any and all allegations and claims asserted against it in the Action and denies any and all wrongdoing. Defendant has always maintained, and continues to maintain, that it has acted in accordance with governing law. Neither the fact nor the terms of this Agreement shall be used, offered or received in evidence against Defendant in any action or proceeding for any purpose, except for

purposes of carrying out the Parties' settlement and in an action or proceeding to enforce this Agreement. This Agreement shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of Defendant with respect to any claim by any of the Class Members, any fault, liability, wrongdoing or damage. Nor is this Agreement to be construed as, or deemed to be evidence of, a waiver of any defenses Defendant asserted.

2.10 Notwithstanding the above, solely in order to avoid the cost, burden, expense, and uncertainty of further litigation, the Parties desire to compromise and settle the Action and have reached this Agreement to resolve the disputes between them, pending approval of the Court, and to achieve complete peace.

2.11 This Agreement and all associated exhibits or attachments are made for the sole purpose of attempting to consummate settlement of this Action on a class-wide basis. This Agreement and the settlement described are made in compromise of disputed claims. Because the Action is pled as a class action, this settlement must receive preliminary and final approval by the Court. Accordingly, the Putative Class Representatives, as defined below, and Defendant enter into this Agreement and associated settlement on a conditional basis. In the event that Defendant or the Putative Class Representatives exercise a right herein to terminate or rescind this Agreement, the Court does not execute and file the Order Granting Final Approval of Settlement, or the associated Judgment does not become final for any reason, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever by anyone, and the negotiation, terms and entry of the Agreement shall remain

subject to the provisions of Federal Rule of Evidence 408, any and all state statutes of a similar nature, and the mediation privilege. Notwithstanding the foregoing, Defendant may use, offer, admit, or refer to the Agreement and to the settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding.

- 2.12 The Parties expressly reserve all rights, claims and defenses and do not waive any such rights, claims or defenses in the event that the Agreement is not approved for any reason. The Parties agree that they each retain and reserve all rights and agree not to take a position to the contrary. The Putative Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Defendant could not contest class certification and/or proceeding collectively on any grounds if the Action were to proceed or that this Agreement is evidence of or constitutes an admission that class certification may be appropriate.

3. DEFINITIONS

As used herein, the following terms have the meanings set forth below.

- 3.1 “Action” means the Teresa Keeling Action and the Kevin Keeling Action, as consolidated.
- 3.2 “Administrative Costs” means all reasonable and authorized costs and expenses of disseminating and publishing the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and expenses associated with assisting Settlement Class Members, escrowing funds, and issuing and mailing Settlement Payments.

- 3.3 “Agreement” or “Settlement Agreement” means this Class Settlement and Release Agreement, including all exhibits thereto, which the Putative Class Representatives and Defendant understand and agree sets forth all material terms and conditions of the settlement of the Action between them and which is subject to Court approval. It is understood and agreed that Defendant’s obligations under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date and other conditions set forth in this Agreement.
- 3.4 “Attorney’s Fees and Expenses” means such funds as may be awarded to Class Counsel by the Court to compensate them for their fees and all expenses incurred by Plaintiffs or Class Counsel in connection with the Action pursuant to paragraph 8.6 of the Agreement.
- 3.5 “Cash Settlement Amount” or “Common Fund” means the \$535,000.00 in funds to be paid by HNB pursuant to Section 5 of this Agreement.
- 3.6 “Class Accounts” means the loan accounts corresponding to Defendant’s current or former borrowers identified in discovery that were assessed and/or paid a property inspection fee, were assessed and/or paid a fee coded as an attorney fee, or were sent demands for payment (including within billing statements) referencing an amount less than the previously accelerated full loan balance, all as identified by Defendant as belonging to the Settlement Class Members.
- 3.7 “Class Counsel” means the law firms of Bordas & Bordas, PLLC and Klein & Sheridan, LC.

- 3.8 “Class List” means the confidential list of individuals who are within the Settlement Class and mailing addresses for such individuals, as defined below, concerning the Class Accounts.
- 3.9 “Class Notice” or “Notice” means the program of notice described in Section 11 of this Agreement to be provided to potential Settlement Class Members, which will notify potential Settlement Class Members about, among other things, their rights to opt out or object to the Settlement, the preliminary approval of the Settlement, and the scheduling of the Final Approval Hearing.
- 3.10 “Complaint” or “First Amended Class Action Complaint” means the First Amended Class Action Complaint filed in the Action on September 5, 2023, and which is the operative complaint containing putative class claims in this Action.
- 3.11 “Court” means the United States District Court for the Southern District of West Virginia.
- 3.12 “Defendant” or “HNB” refers to The Huntington National Bank.
- 3.13 “Effective Date” is defined as set forth in Section 4 of this Agreement.
- 3.14 “Final Approval Hearing” means the hearing at which the Court shall (1) determine whether to grant final approval to this Settlement; (2) consider and rule on any timely objections to this Settlement and all responses thereto; and (3) consider and rule on requests for incentive awards to the Plaintiffs and for an award of attorney’s fees and expenses.
- 3.15 “Final Approval Order” means the order prepared and approved by the Parties approving the Settlement and certifying the Settlement Class as final to be entered

and filed by the Court entitled “Final Judgment and Order of Dismissal with Prejudice.”

- 3.16 “Lawsuit” or “Litigation” means the Action.
- 3.17 “Motion for Preliminary Approval” means the Motion that will be filed in accordance with Sections 4.4.1 and 10 of this Agreement and seeking that the Court enter the Order set forth in Subsection 3.20 below.
- 3.18 “Opt-out Deadline” means the date provided for a Settlement Class Member to opt out of the Class as provided in the Notice attached as **Exhibit A**.
- 3.19 “Parties” means the Putative Class Representatives, on behalf of themselves and the Settlement Class Members, and HNB.
- 3.20 “Preliminary Order” or “Preliminary Approval Order” means the order entered by the Court preliminarily approving the Settlement, provisionally certifying the Settlement Class, and approving notice to Settlement Class Members, substantially in the form attached hereto as **Exhibit B**.
- 3.21 “Protective Order” means the Order entered by the Court on January 16, 2024, appearing on the docket for the Action as ECF No. 33.
- 3.22 “Putative Class Representatives” or “Plaintiffs” mean Teresa Keeling and Kevin Keeling, the named plaintiffs and proposed class representatives in the Action who will remain Putative Class Representatives until the Court approves the class and appoints them as class representatives.
- 3.23 “Refunded Fees” means the attorney’s fees that HNB will refund to Settlement Class Members identified during discovery who paid a fee coded as an attorney’s

fee. The amount of Refunded Fees is approximately \$30,000. The refund will be accomplished in the manner set forth in Section 8.2.

- 3.24 “Released Claim” or “Released Claims” means any and all actions, causes of action, claims or demands, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorney’s fees, expenses, or liabilities of any kind whatsoever in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, equitable relief, as well as any and all claims for treble damages, penalties, interest, attorney’s fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that have been or could have been asserted in any form by Settlement Class Members, including the Plaintiffs, against HNB, whether statutory or regulatory violations, negligence, contractual in nature, equitable, or existing under common law and any damages (as set forth above) proximately caused by or otherwise attributable to, directly or indirectly, whether or not currently known, arising out of, based upon or related to the class claims set forth in the First Amended Class Action Complaint regarding property inspection fees, attorney’s fees or representations of amounts due following acceleration, or otherwise pertaining to the collection or attempted collection of the Released Fees.
- 3.25 “Releasees” means (1) HNB; (2) each of HNB’s past, present, or future subsidiaries, parent companies, divisions, affiliates, partners or any other organization units of any kind doing business under their names, or doing business

under any other names, or any entity now or in the past controlled by, controlling, or under the common control with any of the foregoing and doing business under any other names, and each and all of their respective affiliates and subsidiaries, and each of their respective predecessors, successors, and assigns; and (3) each of the present and former officers, directors, partners, shareholders, agents, employees, attorneys (including any consultants hired by counsel), advisors, independent contractors, representatives, beneficial owners, insurers, accountants, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns of any person or entities in subparts (1) or (2) hereof.

- 3.26 “Releasors” means the Putative Class Representatives, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.
- 3.27 “Released Fees” means property inspection fees or fees coded as attorney’s fees that were assessed and/or paid by HNB on the Class Accounts.
- 3.28 “Request to Opt Out” means the Notice required to be given by a Settlement Class Member who chooses to opt out of the Class as provided in Paragraph 14.2.
- 3.29 “Settlement” or “Stipulation of Settlement” means the settlement set forth in this Agreement.
- 3.30 “Settlement Administrator” means a third-party agent or administrator selected by Plaintiffs’ counsel with respect to whom HNB has a five-business-day right of refusal upon notification of selection and proffering of the proposed agreement with the Settlement Administrator by Plaintiffs’ counsel.

- 3.31 “Settlement Class” or “Class” means the collective group of persons that will be certified by the Court for settlement purposes only. This means all persons who do not properly and timely exclude themselves from Settlement, and thus means the collective group of all of the Settlement Class Members who will become bound by the judgment entered by the Court when the Effective Date occurs. The following persons and entities are excluded from the Settlement Class: (1) the trial judge presiding over this case; (2) Defendant, as well as any parent, subsidiary, affiliate or control person of Defendant, and the officers, directors, agents, servants or employees of Defendant; (3) any of the Released Parties; (4) the immediate family of any such person(s); (5) any member of the Settlement Class who has timely opted out of the Settlement; and (6) Class Counsel and their employees.
- 3.32 “Settlement Class Member” means any person who falls within the definition of the Settlement Class and who has not opted out of the Settlement Class.
- 3.33 “Settlement Class Recovery” means the amount of the Common Fund available for distribution to Settlement Class Members after payment of Administrative Costs and any Court-approved Attorney’s Fees and Expenses and incentive award.
- 3.34 “Settlement Payment” means the payment to be made from the Common Fund to Settlement Class Members.
- 3.35 “Total Settlement Amount” shall include the Cash Settlement Amount plus Waived Fees and Refunded Fees.
- 3.36 “Unknown Claims” mean any Released Claims which any Releasor does not know or suspect to exist in his or her favor at the time of the entry of the judgment entered by the Court when the Effective Date occurs (“Judgment”), and which, if known

by him or her might have affected his or her settlement with and release of the Releasees, or might have affected his or her decision to opt out of the Settlement Class or to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the Putative Class Representatives shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have to the fullest extent allowed by law, waived the provisions, rights, and benefits of any statute or principle of common law which provides that general releases do not extend to claims which the debtor does not know or suspect 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 creditor. Each Releasor may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but the Releasors, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released to the fullest extent allowed by law any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, contract, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Putative Class Representatives acknowledge, and the Settlement Class Members shall be deemed by operation of

the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material term of the settlement of which this release is a part.

3.37 “Waived Fees” means the property inspection fees and the attorney’s fees that HNB has waived or will waive and agrees not to collect from Settlement Class Members who were assessed property inspection fees or attorney’s fees as identified during discovery. The amount of Waived Fees is approximately \$158,000.

3.38 The plural of any defined term includes the singular, and the singular of any defined term includes the plural.

3.39 Other terms are defined in the text of this Agreement and shall have the meaning given to those terms in the text. In all documents related to the Settlement, capitalized terms shall have the meanings given to them in this Agreement.

4. CONDITIONS AND EFFECTIVENESS OF AGREEMENT.

4.1 This Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. The Effective Date of this Agreement shall be the date when all of the following actions and events listed in this Section have occurred.

4.2 The Parties have signed the Agreement.

4.3 Class Action Fairness Act. This Settlement shall be administered as if governed by 28 U.S.C. § 1715. Defendant provides the notices required by 28 U.S.C. § 1715 to all appropriate federal and state officials within ten (10) days after the Motion for Preliminary Approval is filed, but in no event shall the Final Approval Hearing take place prior to the provision of effective notices and the expiration of the statutory time. The Final Approval Order shall make a finding that 28 U.S.C. § 1715 was fully complied with.

4.4 Court Approval. The Court approves this Agreement in accordance with the following steps:

4.4.1 Motion for Preliminary Approval. After good faith consultation with Defense Counsel, Class Counsel will present a Motion for Preliminary Approval to the Court within twenty (20) days of execution of this Agreement including the Class Notice, in substantially the form of **Exhibit A** (Class Notice) and **Exhibit C** (Motion for Preliminary Approval Order) hereto, and the Preliminary Approval Order, in substantially the form of **Exhibit B** hereto.

4.4.2 Certification of Class for Settlement Purposes. In connection with the proceedings for Preliminary and Final Approval, the Putative Class Representatives shall seek orders (Preliminary and Final, respectively) certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure for purposes of this Settlement only.

4.4.3 Entry of Preliminary Approval Order. The Court shall enter a Preliminary Approval Order in substantially the form of that attached as **Exhibit B** hereto.

4.5 Class Notice. The Settlement Administrator shall cause the Class Notice to be mailed pursuant to the Preliminary Approval Order and the terms of this Agreement.

4.6 Final Approval Order. The Court shall enter the Final Approval Order in substantially the form of a proposed order prepared by and approved by the Parties and submitted to the Court.

4.7 Finality of Judgment. The Final Approval Order has become final, including expiration of the time for filing any appeal or other form of objection to the Final Approval Order, full and final resolution of any appeal or objection that may be filed, and expiration of the time for seeking review of that disposition through an appeal, *en banc* hearing, or higher level of review.

5. **SETTLEMENT CLASS MEMBERS**

5.1 The Settlement Class consists of three subclasses defined as follows:

- Property Inspection Subclass: those borrowers identified in discovery to whom HNB assessed one or more property inspection fees. Discovery has revealed and the parties agree that HNB charged property inspection fees to approximately 1,600 accounts from April 24, 2019 through September 30, 2023.
- Post Acceleration Statements Subclass: those borrowers identified in discovery to whom HNB, after accelerating their loan, issued a demand or billing statement that contained an amount due of less than the full accelerated balance of the loan. Discovery has revealed and the parties agree that approximately 200 such accounts were impacted during this period from April 24, 2019 through November 15, 2023.
- Attorney Fees Subclass: those borrowers identified in discovery to whom HNB assessed fees coded as attorney's fees. Discovery has revealed and the parties agree that HNB charged attorney's fees to approximately 80 accounts from April 24, 2019 through September 30, 2023.

6. **SETTLEMENT AMOUNT**

6.1 Within thirty (30) days after the Court's entry of the Preliminary Approval Order, HNB, its successors, and assigns will pay five hundred thirty-five thousand dollars (\$535,000.00), the Cash Settlement Amount, to a Common Fund in full settlement of all class claims that were asserted or could have been asserted in the Action. In no event shall the Cash Settlement Amount or Common Fund exceed \$535,000.00.

6.2 The “Total Settlement Amount” shall include the Cash Settlement Amount plus approximately \$158,000 in Waived Fees and approximately \$30,000 in Refunded Fees for a total amount of approximately \$723,000.

6.3 The Total Settlement Amount is an “all-in” payment. In no event shall HNB be liable for any payment greater than the Cash Settlement Amount or waiver or refund of any fees greater than the Waived Fees and Refunded Fees.

7. COMMON FUND

7.1 The Common Fund shall be maintained as set forth in Section 6.1 and established by HNB within thirty (30) days of the Court’s entry of the Preliminary Approval Order. The Parties shall have joint control of the Common Fund.

7.2 The Court shall retain continuing jurisdiction over the Common Fund sufficient to satisfy the requirements of 26 C.F.R. § 1.468B-1. The Settlement Administrator shall at all times seek to have the Common Fund treated as a “qualified settlement fund” as that term is defined in 26 C.F.R. § 1.468B-1. The Settlement Administrator shall cause any taxes imposed on the earnings of the Common Fund, if any, to be paid out of such earnings and shall comply with all tax reporting and withholding requirements imposed on the Common Fund under applicable tax laws. The Settlement Administrator shall be the “administrator” of the Common Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3).

7.3 Should the Settlement fail to become effective, in whole or in part, for any reason, including without limitation because the Court fails to approve all or part of it, then all monies placed into the Common Fund shall be returned to HNB.

7.4 Should the Settlement be approved, and any monies remain in the Common Fund after disbursement of funds in accordance with the terms of this Agreement, the remaining principal funds shall not revert to HNB. Any such remaining funds shall be donated as a *cy pres* award to one or more nonprofit organization, school, university, college or foundation chosen by Class Counsel.

8. WAIVER, REFUND, AND DISTRIBUTION OF TOTAL SETTLEMENT AMOUNT

The Total Settlement Amount shall be distributed as follows:

8.1 HNB shall cause all Waived Fees to be waived within sixty (60) days of the Effective Date and shall cease collection of the Waived Fees. The parties agree the total amount of Waived Fees is approximately \$158,000.

8.2 HNB shall cause all Refunded Fees to be refunded in full within thirty (30) days of the Effective Date by either credit, direct deposit, or check, at Defendant's election and dependent on the status of the Class Accounts that qualify for a refund. Payments will be made in accordance with Paragraph 8.5 if there are co-borrowers. The parties agree the total amount of Refunded Fees is approximately \$30,000. HNB shall provide a list of borrowers receiving refunds and a summary of pertinent information describing the amount and manner of refunds to the Administrator within three days of Class Notice being issued to Settlement Class Members. With respect to Plaintiffs, the sum of one thousand five hundred fifty dollars (\$1,550.00) (the "Refund Funds"), which is attributable to attorney's fees applied to Plaintiffs' loan as borrower recoverable, was deposited into the trust account of the foreclosure trustee, Pill & Pill, PLLC. Pill & Pill, PLLC has released the Refund Funds to

Plaintiffs. Plaintiffs expressly agree that any obligations HNB may have had with respect to the Refund Funds have been satisfied.

- 8.3 Each Settlement Class Member shall receive a flat rate distribution on a pro rata basis per account after payment of Plaintiffs' Attorney's Fees and Expenses, Administrative Costs, and the incentive awards to the Putative Class Representatives.
- 8.4 No interest shall be included as an element of, or be payable or paid on, any Settlement Payment.
- 8.5 Co-borrowers shall be treated as a single Settlement Class Member and receive a single, shared Settlement Payment. Whenever possible, the Settlement Administrator shall issue payment jointly to co-borrowers. Settlement Class Members who receive a Settlement Payment shall be solely responsible for distributing or allocating such payment between or among all co-borrowers.
- 8.6 As payment for Attorney's Fees and Expenses, Plaintiffs' counsel shall apply to the Court for a distribution of one third (33.33%) of the Total Settlement Amount, plus expenses, which sum (one-third of the Total Settlement Amount plus expenses) shall include all Attorney's Fees and Expenses incurred by Plaintiffs. The amount of Attorney's Fees and Expenses is subject to Court approval and shall not affect the validity or enforceability of this Agreement. Defendant will not object to this request. For the avoidance of doubt, Defendant shall not be liable for payment to the Common Fund other than the Cash Settlement Amount. Attorney's Fees and Expenses will be paid only out of the Cash Settlement Amount.

8.7 Plaintiffs will each receive an incentive award of two thousand five hundred dollars (\$2,500), subject to approval by the Court, in addition to their distribution of the Settlement Class Recovery articulated in Section 7 of this Agreement. Plaintiffs' incentive awards shall be paid out of the Cash Settlement Amount. Defendant will not object to this request.

9. RETENTION OF SETTLEMENT ADMINISTRATOR AND COSTS

9.1 The Parties agree that a Settlement Administrator selected by Plaintiffs will process claims, field calls and correspondence from Settlement Class Members, and disburse amounts from the Common Fund. The Settlement Administrator and Plaintiffs' Counsel will receive the Class List, subject to the protections of the Protective Order.

9.2 All the costs associated with providing notice to the Settlement Class Members and disbursement of the Common Fund ("Administrative Costs"), including all costs and expenses related to class notice, distribution of settlement proceeds, reasonable measures to locate Settlement Class Members, and retaining any class or claims administrator will be paid from the Common Fund. HNB's only responsibility regarding such costs is to fund the Common Fund pursuant to Section 6.1 with the Cash Settlement Amount.

9.3 Because the information about Settlement Class Members that will be provided to the Settlement Administrator will consist of confidential information, non-public personal information, and information protected by privacy laws, the Settlement Administrator will execute a non-disclosure agreement and agree to indemnify the parties should any such information be improperly used or maintained. The

Settlement Administrator will further agree to take all reasonable steps to ensure that any information provided to it by HNB will be used solely for the purpose of effecting this Settlement and otherwise shall comply with HNB vendor and information security requirements.

9.4 The Settlement Administrator shall administer the Settlement in a cost-effective and timely manner. Without limiting any of its other obligations as stated herein, the Settlement Administrator shall be responsible for mailing the class notice, as defined below, administration of the Common Fund, and providing all other related support, reporting, and administration as further stated in this Agreement.

9.5 The Parties will coordinate with the Settlement Administrator to provide the class notice to the potential Settlement Class Members, as provided in this Settlement Agreement.

9.6 W-9 Forms. The Settlement Administrator shall complete and provide to HNB any W-9 forms as to the Common Fund necessary for HNB to implement this Settlement.

10. PRELIMINARY APPROVAL MOTION

Plaintiffs will submit to the Court a Motion for Preliminary Approval of Class Settlement and Entry of Scheduling Order (“Preliminary Approval Motion”) no later than seven (7) days after full execution of this Agreement. The Preliminary Approval Motion will request that the Court:

10.1 Preliminarily certify the proposed Class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only;

10.2 Find that the Putative Class Representatives, and Settlement Class counsel, fairly and adequately represent the interests of the Settlement Class;

- 10.3 Find preliminarily that the Agreement is fair, reasonable and adequate to the Settlement Class;
- 10.4 Direct the Settlement Administrator, promptly after entry by the Court of the Preliminary Approval Order, to mail the Notice to each individual on the Class List by first-class mail;
- 10.5 Establish a procedure for Members of the Class to exclude themselves and set a date, approximately twenty-eight (28) days before the Final Approval Hearing, after which no Settlement Class Member shall be allowed to opt out of the Settlement and shall be bound to the terms of the Settlement;
- 10.6 Schedule a Final Approval Hearing one hundred twelve (112) days after entry of the Preliminary Approval Order granting the Preliminary Approval Motion;
- 10.7 Approve the form of notice to be provided to members of the Settlement Class, substantially in the form of **Exhibit A**.
- 10.8 Establish a procedure for Settlement Class Members to appear and/or object to the Settlement and set a date, approximately twenty-eight (28) days before the Final Approval Hearing, after which no Settlement Class Member shall be allowed to object;
- 10.9 Require any attorneys representing Settlement Class Members, at the Settlement Class Member's expense, to file a notice of appearance;
- 10.10 Stay all proceedings in the Action against the Defendant, other than proceedings as may be necessary to carry out the terms and conditions of the Agreement;
- 10.11 Pending Final Approval, and upon expiration of the Opt-Out Deadline, preliminarily enjoin each Settlement Class Member from maintaining,

commencing, prosecuting or pursuing directly, representatively, or in any other capacity any Released Claim subsumed and covered by the Release in this Agreement in any court or arbitration forum;

10.12 Contain such other and further provisions consistent with the terms and provisions of this Agreement as the Court may deem advisable; and

10.13 Authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the terms of this Agreement.

11. NOTICE TO CLASS MEMBERS

11.1 If the Court grants the Preliminary Approval Motion, the Administrator will, within twenty-one (21) days of entry of the Preliminary Approval Order, mail to each Settlement Class Member at his or her last known address a Notice of Proposed Class Settlement (“Notice”), which form is attached as **Exhibit A**. HNB shall provide the Administrator and Class Counsel with the name, last known address, and social security number of each Settlement Class Member subject to and governed by the Protective Order. Any Notices returned as undeliverable, but with a forwarding address, shall be promptly re-mailed to the forwarding address. The Administrator shall perform a National Change of Address Registry and LexisNexis/Death Records Search for all Notices returned as undeliverable, without a forwarding address. Such Notices shall be re-mailed upon discovery of a valid mailing address for the Settlement Class Member.

11.2 The Notice shall apprise the potential Settlement Class Members of his/her right to opt out of the Settlement Class, of his/her right to object to the Class Settlement, of the fact that any objections or opt outs must be sent to the Administrator and

postmarked no later than twenty-eight (28) days prior to the Final Approval Hearing, and that any failure to object or to opt out in accordance with applicable deadlines for opt outs and objections constitutes a knowing and voluntary waiver of any right to opt out of the Settlement Class or to appeal from the Final Approval Order.

11.3 This Agreement does not impose on any Party or the Administrator an obligation to make extraordinary efforts to locate a potential Settlement Class Member.

12. ATTORNEY'S FEES AND EXPENSES

12.1 HNB will not object to Class Counsel moving the Court for an award of Attorney's fees and Expenses in the Action as set forth in Paragraph 8.6.

12.2 Class Counsel's application for Attorney's Fees and Expenses shall be filed and served no later than twenty (20) calendar days prior to the Final Approval Hearing. Class Counsel agree that the amounts of such costs and fees awarded shall compensate them for all legal work in the Action up to and including the date of the Final Approval Order, including any appeal of the Judgment, as well as for all legal work and costs that may be incurred in the Action after the date of Final Judgment. In the event the Court awards Class Counsel less than the amount agreed to in Paragraph 8.6 in Attorney's Fees and Expenses, this Settlement Agreement shall nonetheless remain in full force and effect and the other benefits or payments due or to become due shall not be increased or changed.

12.3 Neither HNB nor the Releasees shall have any responsibility for any application of Attorney's Fees and Expenses submitted by Class Counsel. The procedure for and the grant or denial or disallowance by the Court of the application for Attorney's

Fees and Expenses is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the applications for Attorney's Fees and Expenses or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Final Approval Order approving the Agreement and the Settlement, except as provided for in Section 16.

- 12.4 Class Counsel and the Putative Class Representatives shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this section. No party shall be deemed the prevailing party for any other purposes of the Action.

13. SERVICE OF NOTICE OF OPT OUT

At least fourteen (14) days prior to the Final Approval Hearing, the Administrator shall notify Class Counsel and HNB's counsel of any persons who have objected to the Class Settlement or opted out of the Settlement Class, and shall serve HNB's counsel, Plaintiffs' counsel, and the Court with copies of all objections, notices of opt out, and supporting documentation.

14. OPT OUT RIGHTS.

- 14.1 A Settlement Class Member who wishes to be excluded from the Settlement Class must do so in writing. To opt out, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.
- 14.2 In order to opt out, the Settlement Class Member must complete and send to the Settlement Administrator, at the address listed in the Class Notice and on the

Settlement Website for this Settlement, a Request to Opt Out that is postmarked no later than the Opt-Out Deadline, as specified in the Class Notice. The Request to Opt Out must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the Action.” Mass or class opt outs shall be void.

- 14.3 Any Settlement Class Member who does not opt out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class upon the expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments.
- 14.4 Any Settlement Class Member who desires to opt out must take timely affirmative written action pursuant to this section, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative or actual class member in any other class action filed against any of the Released Parties. To the extent a separate action is pending against Released Parties for Released Claims by any Settlement Class Member, Class Notice shall also be given to counsel for the Settlement Class Member and such counsel’s contact information shall be made available to the Settlement Administrator.
- 14.5 Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be

entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

14.6 The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests to Opt Out within seven (7) business days after the Opt-Out Deadline.

14.7 Notwithstanding the foregoing, a Settlement Class Member shall have the right to revoke a properly and timely submitted request for exclusion if a notice of the Settlement Class Member's election to revoke his or her exclusion is sent to the Settlement Administrator, postmarked on or before the Opt-Out Deadline.

15. **OBJECTIONS**

15.1 Overview. Any Settlement Class Member may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement and any Court order entered in this case.

15.2 Process. Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Clerk of Court, and mailed (with the requisite postmark) to Class Counsel and Defense Counsel at the following addresses, no later than the Objection Deadline:

15.2.1 Klein & Sheridan, LC
c/o Benjamin Sheridan & Jed R. Nolan
3566 Teays Valley Road
Hurricane, WV 25525

Bordas & Bordas
c/o Jason E. Causey
1358 National Road
Wheeling, WV 26003

15.2.2 McGuireWoods LLP
c/o Elizabeth Zwickert Timmermans
501 Fayetteville St., #500
Raleigh, NC 27601

- 15.3 The requirements to assert a valid written objection shall be set forth in the Class Notice, and, to be valid, the written objection must include: (a) the case name and number; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.
- 15.4 Within seven (7) business days of the Objection Deadline, the Settlement Administrator shall provide a report to the Court setting forth a list of Objections that meet the above guidelines. The Court shall have the ultimate determination of whether an Objection has been appropriately made.
- 15.5 Any Settlement Class Member who does not make his or her objection in the manner provided in this section shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Agreement, and to the award of Attorney's Fees and Expenses to Class Counsel and the payment of an Incentive Award to the Putative Class Representatives, unless otherwise ordered by the Court.
- 15.6 Appearance. Subject to approval of the Court, any Settlement Class Member who files and serves a written objection in accordance with this section and the Class Notice may appear, in person or by counsel, at the Final Approval Hearing held by

the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member:

- (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice of Intention to Appear”); and
- (b) serves the Notice of Intention to Appear on all counsel designated in the Class Notice by the Objection Deadline.

15.7 The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

15.8 Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

16. TERMINATION

16.1 In the event that the Settlement set forth in this Agreement is not approved without changes by the Court or, if one of the conditions upon which the Agreement is based is not satisfied, or if the Court determines that it lacks jurisdiction to approve the Settlement, or if there is a court order from another court that takes jurisdiction over some or all of the claims in the Action, or if there is a regulator determination that frustrates the purpose of and protection of the Settlement, or in the event that the Effective Date does not occur, no further payments shall be made by HNB to anyone in accordance with the terms of this Agreement, the Parties will bear their own costs and fees with regard to the efforts to obtain Court approval, and this

Agreement shall be deemed null and void with no effect on the Action whatsoever.

Reductions in the amount of the requested Attorney's Fees and Expenses shall not be deemed a substantial change necessitating termination of the Settlement.

- 16.2 Failure of the Court to enter the Preliminary Approval or Final Approval Order in its entirety or in a similar form without material changes thereto as determined by HNB or the Putative Class Representatives will be grounds for HNB or the Putative Class Representatives to terminate the Settlement and the terms of this Agreement. If any material portion of the Agreement or the Order of Final Approval is vacated, modified, or otherwise altered on appeal, HNB or the Putative Class Representatives may, in their sole discretion, within fourteen (14) calendar days of such appellate ruling, declare that the Agreement has failed to become effective, and in such circumstances the Agreement shall cease to be of any force and effect.
- 16.3 In the event that 3% or more Settlement Class Members exclude themselves from the Settlement Class, HNB shall have the absolute discretionary right to terminate this settlement and Agreement and in such case, each and every one of HNB's obligations under this Agreement shall cease to be of any force and effect, and this Agreement and any orders entered into in connection therewith shall be vacated, rescinded, cancelled, and annulled. If HNB exercises this option, the Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement. In addition, in such event, the Agreement and all negotiations, Court orders, and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other

proceeding. HNB must exercise this option pursuant to this paragraph within ten (10) days after receiving the Opt Out List and at least three (3) days prior to the Final Approval Hearing, by giving written notice of such exercise to Class Counsel.

16.4 If one of the Parties exercises a right herein to terminate or rescind this Agreement or this Agreement is not approved by the Court pursuant to the proposed Order of Final Approval, this Agreement, the conditional Class certification provided herein, the Settlement proposed herein (including any modifications made with the consent of the Parties), and any action taken or to be taken in connection therewith shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated, the Parties shall be restored to their respective positions existing prior to the execution of this Agreement, and the Parties' rights and obligations with respect to the use of this Agreement and the settlement contemplated hereby will be subject to section 25 hereof. In addition, neither this Agreement, the preliminary certification of the Class, the Preliminary Approval Order, nor any other document in any way relating to any of the foregoing, shall be relied on, referred to, or used by anyone in any way for any purpose in connection with any further proceedings in this Action and/or any action, lawsuit, arbitration, or proceeding involving a Released Claim.

17. FINAL APPROVAL MOTION

17.1 Prior to the Final Approval Hearing, Plaintiffs will file a Motion for Final Approval of Class Settlement ("Final Approval Motion"). The Final Approval Motion will request that the Court approve the Settlement and enter a Final Order and Judgment that will, among other things:

- 17.2 Find that (i) the Court has personal jurisdiction over the Settlement Class Members,
(ii) the Court has personal jurisdiction over the claims asserted in the Action, and
(iii) venue is proper;
- 17.3 Finally certify the Settlement Class for settlement purposes only;
- 17.4 Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution, and find that the Parties and procedures used complied with federal law so as to give full effect to the Settlement;
- 17.5 Adjudge and approve in all respects the settlement of the Action on the terms described in this Agreement, including but not limited to, making the Releases in section 25 of this Agreement effective as of the date of the Final Approval Order;
- 17.6 Permanently bar and enjoin Putative Class Representatives and all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims;
- 17.7 Permanently bar and enjoin the Putative Class Representatives and all Settlement Class Members from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action involving Released Claims (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification

in a pending action in any jurisdiction based on or relating to any of the Released Claims);

17.8 Find that, by operation of the entry of the Judgment, the Putative Class Representatives and all of the Settlement Class Members shall be deemed to have forever released, relinquished, and discharged the Released Parties from any and all Released Claims;

17.9 Authorize the Parties to implement the terms of the Agreement;

17.10 Dismiss on the merits and with prejudice all class and individual claims in the Action, including without limitation the Released Claims, and enter final judgment;

17.11 Include a description of all relief to be provided as part of this Settlement, including the class release and the payment due to each class member; and

17.12 Retain jurisdiction of all matters relating to the interpretation and enforcement of the Settlement and this Agreement.

18. EFFECT OF DISAPPROVAL/DENIAL OF SETTLEMENT

If the Court disapproves this Agreement or any part thereof for any reason or declines to enter a Final Approval Order as described in this Agreement certifying the proposed Settlement Class, including the entirety of all three subclasses defined in Section 5.1 herein, then this Agreement, including all releases contained within the Agreement, shall become null and void and the Action shall proceed as though no settlement had been negotiated or achieved, unless Plaintiffs and Defendant agree otherwise or appeal the order disapproving this Settlement.

19. REVERSAL, VACATION, OR MODIFICATION OF AGREEMENT BY APPELLATE COURT

In the event that a court of appeals or other reviewing court sets aside, reverses, vacates or modifies the Final Approval Order as described in this Agreement in any material way, then this

Agreement, including all releases contained within the Agreement, shall become null and void and the Action shall proceed as though no settlement had been negotiated or achieved unless the Parties otherwise agree.

20. PAYMENT OF SETTLEMENT AMOUNT

- 20.1 As soon as practicable and not more than twenty-one days (21) after the Effective Date, the Administrator shall distribute the Settlement Amount to Settlement Class Members as provided in Section 7 of this Agreement, less that portion of the Settlement Amount the Court awards as Attorney's Fees and Expenses, Administrative Costs, and the incentive awards to Putative Class Representatives. Distributions to Settlement Class Members will be made to their last known address by first class mail, postage prepaid.
- 20.2 Checks made payable to each Settlement Class Member shall become stale and all right to payment on any such check shall end upon expiration of three (3) months from the date of the check (which will be within one calendar week of the date such check is mailed) and shall include a statement to inform the bearer of this validity period.
- 20.3 Any check that becomes stale may be re-issued one time. Right to payment on any re-issued check shall similarly become stale upon the expiration of two (2) months from the date of the re-issued check (which will be within one calendar week of the date such check is mailed) and shall include a statement again informing the bearer of this validity period. The funds represented by any re-issued checks that become stale shall be applied to Administrative Costs first and, if any sums remain after payment of Administrative Costs, donated as set forth in Paragraph 6.4 of this

Agreement. Any such donation will have no effect on the validity of this Agreement, including without limitation the effectiveness of the Final Order and Judgment with regard to the Released Claims, against those Settlement Class Members who do not receive a Settlement Payment following reasonable efforts to deliver a payment to them.

21. COVENANTS NOT TO SUE.

The Putative Class Representatives, on behalf of themselves and the Settlement Class Members, covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims, or the facts and circumstances relating thereto, against any of the Released Parties; (ii) not to organize or solicit the participating of Settlement Class Members, or persons who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Releasees.

22. FINAL REPORT OF DISTRIBUTION OF SETTLEMENT AMOUNT

Twelve (12) months after the Final Approval Order is entered, or thirty (30) days after distribution of the Settlement Amount is completed, whichever is later, Class Counsel shall file a report with the Court, and serve a copy on HNB's counsel, detailing the distribution of the Settlement Amount.

23. FINAL AND BINDING AGREEMENT

The Parties acknowledge that this Agreement is a full and final accord and satisfaction and shall be binding upon and inure to the benefit of Defendant, the Putative Class Representatives, the Settlement Class Members, their counsel, and each of their respective trustees, heirs, executors, administrators, beneficiaries, representatives, agents, successors, and assigns.

24. RELEASE

24.1 Class Release and Released Claims. Class Members who do not opt out of the class will release Defendant and other Releasees from the Released Claims.

24.2 In connection with the Released Claims, each Settlement Class Member is releasing past or currently existing claims that existed up until the Effective Date and is aware that he or she may hereafter discover claims that existed in the past or present that may be unknown or unsuspected but discoverable based on reasonable investigation, or facts in addition to or different from those which he or she now knows or believes to be true with respect to property inspection fees, attorney's fees or representations of amounts due following acceleration or otherwise pertaining to the collection or attempted collection of the Released Fees, which are the allegations and subject matter in the Action. Nevertheless, it is the intention of each Settlement Class Member to fully, finally and forever settle and release all Released Claims against the Releasees, which exist or might have existed (whether or not previously or currently asserted in the Action).

24.3 The Putative Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Claims against

any of the Released Parties, and further covenant that they will not assign or otherwise transfer any interest in any of the Released Claims.

24.4 Each Party to this Agreement understands, acknowledges, and agrees that if any fact now believed to be true is found hereafter to be other than, or different from, that which is now believed, each expressly assumes the risk of such difference in fact and agrees that this Agreement shall be, and will remain, in effect notwithstanding any such difference in fact.

25. NO ADMISSION OF LIABILITY OR CERTIFICATION OF CLASS

25.1 Neither this Agreement nor the fact of settlement nor the payment of the Settlement Amount is, may be construed as, or may be used as, an admission on the part of HNB of any fault, wrongdoing, or liability whatsoever, or that any class asserted by Plaintiffs merits certification. HNB expressly denies any wrongdoing under any federal, state, or local statute, public policy, tort law, contract law, in equity, or common law and expressly denies the truth or validity of any claim made against it or the propriety of certification of any class on the merits.

25.2 Further, neither this Agreement nor any drafts hereof nor any documents leading to or relating to the Settlement set forth herein, including, but not limited to, any proposed order, Preliminary Approval Motion, Final Approval Motion, or memoranda in support thereof, constitutes an admission of liability or of any fact by the Plaintiffs or HNB.

25.3 The Parties agree that the foregoing documents will not be offered as or received against HNB as evidence of, or construed as or deemed to be evidence of any admission or concession of any liability, negligence, fault or wrongdoing, or in any

way referred to for any other reason as against any of the Parties to this Agreement in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, HNB may rely upon or use this Agreement as necessary to effectuate the liability protection granted HNB hereunder. Notwithstanding the foregoing, Defendant may use, offer, admit, or refer to the Agreement and to the settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding

26. NON-ADMISSIBILITY OF SETTLEMENT NEGOTIATIONS

The settlement negotiations resulting in this Agreement have been undertaken by Plaintiffs and Defendant and their respective counsel in good faith and for settlement purposes only pursuant to Federal Rule of Evidence 408, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose.

27. NO ORAL MODIFICATION

This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. No amendment, modification, waiver, termination, or discharge of any provision of this Agreement shall be effective unless it is in a written agreement duly executed by all of the Parties hereto.

28. COMPLETE AGREEMENT

This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms of the Agreement are contractual and not merely recitals. This Agreement supersedes all prior negotiations. No other agreement,

written or oral, expressed or implied, exists between the Parties with respect to the subject matter of this Agreement, and the Parties declare and represent that no promise, inducement, or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

29. COMPETENCY; INDEPENDENT COUNSEL

Each Party to this Agreement represents and warrants that it is competent to enter into the Agreement and in doing so is acting upon its independent judgment and upon the advice of its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the terms set forth in or contemplated by this Agreement.

30. CONSTRUCTION OF AGREEMENT

The language and terms of this Agreement shall be construed as a whole, according to fair and ordinary meaning, as if both Parties jointly prepared it, and shall not be strictly construed for or against any party to this Agreement.

31. STAY OF DISCOVERY AND OTHER PROCEEDINGS.

31.1 To the extent the Action has not already been stayed by the Court, upon execution of this Agreement, the Parties shall discontinue all discovery activity or related proceedings in the Action.

31.2 Upon the Effective Date, and notwithstanding any of the other provisions in this Agreement, Defendant shall have no obligation to preserve documents and evidence with respect to Released Claims, and the Putative Class Representatives and Class Counsel shall not pursue any spoliation claims or other actions or sanctions against Defendant with respect to documents or evidence related to the Released Claims.

32. RETURN/DESTRUCTION OF DISCOVERY MATERIALS.

32.1 The Parties agree that the terms of the Protective Order govern the dealings of the Parties with respect to materials produced in discovery in this Action and shall continue in force after the Effective Date of the Settlement. Accordingly, within thirty (30) business days of the Effective Date, the Parties and their counsel of record, and any consultants or experts retained by the Parties or their counsel of record, shall use their best efforts to locate all Confidential Information (as the term is defined in the Protective Order) produced in the Action and return such Confidential Information to counsel of record for the producing party or destroy all originals or reproductions (whether in electronic, hard copy, or other form) of the Confidential Information.

32.2 Within sixty (60) days of the Effective Date, counsel of record shall make written certification of compliance as specified by the Protective Order.

32.3 Notwithstanding this section, the Parties shall be excused from any duty to return or destroy Confidential Information to the extent necessary to comply with outstanding court orders or with judicial and non-judicial subpoenas, civil investigative demands or other compulsory process.

32.4 The Court shall retain jurisdiction to ensure compliance with the Protective Order and pursuant to Section 33.

33. CONTINUING JURISDICTION

The United States District Court for the Southern District of West Virginia will have continuing jurisdiction over the Action for the purpose of implementing the Settlement until the Action and all related appeals are fully resolved, and for enforcement of the Settlement, the

Agreement, and the Final Order thereafter. Any dispute regarding the Parties' obligations pursuant to this Agreement or interpretation of the terms of this Agreement or the Final Order will be resolved by the Court.

34. CHOICE OF LAW

This Agreement will be governed by federal law with respect to the Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure and the internal laws of the State of West Virginia with respect to contract interpretation, without regard to its choice of law principles.

35. CHOICE OF FORUM

The Parties consent to jurisdiction and venue in the United States District Court for the Southern District of West Virginia for any dispute arising in any way out of this Agreement.

36. ADDITIONAL ACTS TO EFFECTUATE THE AGREEMENT

The Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Agreement and to obtain the benefits of the Agreement.

37. WAIVER

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

38. PRESERVATION OF PRIVILEGE

Nothing contained in this Agreement or any Order of this Court, and no act required to be performed pursuant to this Agreement or any Order of this Court, is intended to constitute, cause or effect any waiver, in whole or in part, of any attorney client privilege, work product protection,

or common interest or joint defense privilege, and each Class Member agrees not to make or cause to be made in any form any assertion to the contrary.

39. MEDIA AND CONFIDENTIALITY

39.1 The Parties, including their Counsel, agree that the terms of this Settlement shall remain confidential and not be disclosed by any party until the Settlement Agreement is filed in connection with the Motion for Preliminary Approval.

39.2 The Parties, including their counsel, agree that they shall not at any time publish or issue a press release including but not limited to the media or on the Internet concerning the Settlement. The Parties further agree that they shall not make any statement, with or without attribution, in response to any media inquiries concerning the Action, Defendant or the Settlement. In response to any such inquiries, the Parties shall refer the inquiring media to the papers filed in the court docket. The Parties agree that they may issue a statement that describes the case and settlement using factual information in the public record and using non-disparaging language.

40. AUTHORITY OF CLASS COUNSEL

Class Counsel unconditionally warrant and represent that they are authorized by Plaintiffs, for whom they are attorneys of record, and the attorneys of record for HNB warrant and represent that they are authorized by HNB to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to effectuate the implementation of the Settlement.

41. TAX CONSEQUENCES

- 41.1 This Agreement is enforceable regardless of its tax consequences. The Parties understand and agree that the payments set forth in this Agreement reflect the settlement of disputed legal claims and that Defendant makes no representations regarding the Agreement's tax consequences.
- 41.2 No opinion concerning the tax consequences of the Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel, nor is any representation or warranty in this regard made by virtue of this Agreement. Settlement Class Members must consult their own tax advisors regarding the tax consequences of the Settlement, including any payments provided hereunder and any tax reporting obligations they may have with respect thereto.
- 41.3 Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.
- 41.4 Each Settlement Class Member specifically agrees that he or she is solely responsible for any and all taxes, interest, and penalties due and owing, if any, should the payments or any portion thereof, be taxable.

42. RELEASE, LIMITATIONS

This Agreement does not release claims arising out of the failure of either Party to perform in conformity with the terms of this Agreement.

43. KNOWING AND VOLUNTARY ASSENT

The Parties acknowledge that this Agreement is executed voluntarily by each of them, without any duress or undue influence on the part of, or on behalf of any of them. The Parties

further acknowledge that they have had the opportunity for representation in the negotiations for, and in the performance of, this Agreement by counsel of their choice and that they have read this Agreement and/or have had it fully explained to them by their counsel and that they are fully aware of the contents of this Agreement and its legal effect.

44. COUNTERPARTS AND FACSIMILE SIGNATURES

This Agreement may be executed in any number of counterparts and with facsimile signatures, and all such counterparts shall be construed together and constitute a single form of this Agreement.

45. HEADINGS AND CAPTIONS

The headings and captions inserted into this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

IN WITNESS HEREOF, counsel for the parties and the named plaintiffs have executed this Class Settlement and Release Agreement as of February 3, 2025.

PLAINTIFF TERESA KEELING

PLAINTIFF KEVIN KEELING

DEFENDANT THE HUNTINGTON NATIONAL
BANK

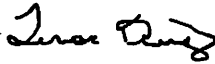
By:  _____


Its: Chief Credit Officer _____

Counsel for Plaintiffs and Settlement Class

Counsel for Defendant The Huntington National Bank

IN WITNESS HEREOF, counsel for the parties and the named plaintiffs have executed
this Class Settlement and Release Agreement as of January 31, 2024.



PLAINTIFF TERESA KEELING


PLAINTIFF KEVIN KEELING

DEFENDANT THE HUNTINGTON NATIONAL
BANK

By: _____

Its: _____

Counsel for Plaintiffs and Settlement Class

Counsel for Defendant The Huntington National Bank