

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE SILVERGATE CAPITAL
CORPORATION SECURITIES
LITIGATION

Case No. 3:22-cv-01936-JES-MSB

CLASS ACTION

**ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
AUTHORIZING
DISSEMINATION OF NOTICE
OF SETTLEMENT**

[ECF No. 139]

1 WHEREAS, a consolidated securities class action is pending in this Court
2 entitled *In re Silvergate Capital Corporation Securities Litigation*, No. 3:22-cv-
3 01936-JES-MSB (the “Action”);

4 WHEREAS, (a) Plaintiffs Indiana Public Retirement System, Boston
5 Retirement System, Public School Teachers’ Pension & Retirement Fund of
6 Chicago, International Union of Operating Engineers, Local No. 793, Members
7 Pension Benefit Trust of Ontario, UMC Benefit Board, Inc. and Wespath
8 Institutional Investments LLC, both as administrative trustees of the Wespath Funds
9 Trust (collectively, the “Institutional Investors” or “Lead Plaintiffs”); and Bucks
10 County Employees Retirement Fund (“Bucks County,” and collectively with the
11 Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the other members of the
12 Settlement Class (as defined in paragraph 1(pp) below); and (b) defendants
13 Silvergate Capital Corporation (“Silvergate Capital” and together with its subsidiary
14 Silvergate Bank, the “Debtors”), Alan J. Lane, Paul D. Colucci, Thomas C. Dircks,
15 Michael Lempres, Scott A. Reed, Karen Brassfield, Aanchal Gupta, Colleen
16 Sullivan, Tony Martino, Dennis Frank and Robert Campbell (collectively, the
17 “Individual Defendants” and together with the Debtors, the “Silvergate Defendants”)
18 and defendants Canaccord Genuity LLC, Citigroup Global Markets Inc., Compass
19 Point Research & Trading, LLC, Craig-Hallum Capital Group LLC, Goldman Sachs
20 & Co. LLC, J.P. Morgan Securities LLC, Keefe, Bruyette & Woods, Inc., UBS
21 Securities LLC, and Wedbush Securities Inc. (collectively, the “Underwriter
22 Defendants” and together with the Silvergate Defendants, the “Defendants”) have
23 determined to settle all claims asserted against Defendants in this Action with
24 prejudice on the terms and conditions set forth in the Stipulation and Agreement of
25 Settlement dated May 9, 2025 (the “Stipulation”), subject to the approval of this
26 Court (the “Settlement”);

27 WHEREAS, Plaintiffs have made a motion, pursuant to Rule 23(e) of the
28 Federal Rules of Civil Procedure, for an order preliminarily approving the

1 Settlement in accordance with the Stipulation and allowing notice to Settlement
2 Class Members as more fully described herein;

3 WHEREAS, the Court has read and considered: (a) Plaintiffs' motion for
4 preliminary approval of the Settlement and authorization to send notice of the
5 Settlement to the Settlement Class, and the papers filed and arguments made in
6 connection therewith; and (b) the Stipulation and the exhibits attached thereto; and

7 WHEREAS, unless otherwise defined in this Order, all capitalized terms
8 herein shall have the same meanings as they have in the Stipulation;

9 NOW THEREFORE, IT IS HEREBY ORDERED:

10 1. **Proposed Class Certification for Settlement Purposes** – The Parties
11 have proposed the certification of the following Settlement Class pursuant to Rules
12 23(a) and (b)(3) of the Federal Rules of Civil Procedure solely for purposes of
13 effectuating the proposed Settlement: (a) all persons and entities who purchased or
14 otherwise acquired the publicly traded common stock of Silvergate Capital from
15 November 7, 2019 through March 21, 2023, inclusive, and were damaged thereby,
16 and (b) all persons and entities who purchased Silvergate Capital securities in and/or
17 traceable to any of Silvergate Capital's securities offerings during 2021, and were
18 damaged thereby. Excluded from the Settlement Class are (a) Defendants; (b)
19 directors and officers of Defendants (at all relevant times); (c) Defendants'
20 Immediate Family Members and their legal representatives, heirs, successors or
21 assigns; and (d) any entity in which any Defendant has or had a controlling interest;
22 *provided, however*, that no Investment Vehicle shall be excluded from the
23 Settlement Class. Also excluded from the Settlement Class are any persons or
24 entities who or which timely and validly exclude themselves by submitting a request
25 for exclusion that is accepted by the Court.

26 a. The Court finds, pursuant to Rule 23(e)(1)(B)(ii) of the Federal
27 Rules of Civil Procedure and for purposes of effectuating the proposed Stipulation
28 and the Settlement, that it will likely be able to certify the Settlement Class.

Specifically, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met or will likely be met: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

b. The Court also finds, pursuant to Rule 23(e)(1)(B)(ii) of the Federal Rules of Civil Procedure and for purposes of effectuating the proposed Stipulation and the Settlement, that it will likely be able to certify Plaintiffs as Class Representatives for the Settlement Class and preliminarily appoints Lead Counsel as Class Counsel for the Settlement Class, for purposes of the Stipulation and Settlement only, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. Lead Counsel are authorized to act on behalf of the Settlement Class with respect to all acts required by, or which may be undertaken pursuant to, the Stipulation or such other acts that are reasonably necessary to consummate the proposed Settlement set forth in the Stipulation.

2. **Preliminary Approval of the Settlement** – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, and finds, pursuant to Rule 23(e)(1)(B)(i) of the Federal Rules of Civil Procedure, that it will likely be able to approve the Settlement under Rule 23(e)(2) as being fair, reasonable, and adequate to the Settlement Class, subject to further consideration at the Settlement Hearing to be conducted as described below.

3. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement Hearing”) on November 19, 2025, at 9:00 a.m. in Courtroom 4B of the

Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego, CA 92101, for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be finally approved by the Court; (b) to determine whether, for purposes of the Settlement only, the Action should be certified as a class action on behalf of the Settlement Class, Plaintiffs should be certified as Class Representatives for the Settlement Class, and Lead Counsel should be appointed as Class Counsel for the Settlement Class; (c) to determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered dismissing the Action with prejudice against Defendants, without costs to any party; (d) to determine whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (e) to determine whether Lead Counsel's motion for attorneys' fees and Litigation Expenses should be approved; and (f) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Settlement Class Members as set forth in paragraph 5 of this Order.

4. The Court may adjourn the Settlement Hearing without further notice to the Settlement Class and may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice.

5. **Retention of Claims Administrator and Manner of Giving Notice** – Lead Counsel are hereby authorized to retain JND Legal Administration (the "Claims Administrator") to supervise and administer the notice procedure in connection with the proposed Settlement, as well as the processing of Claims as more fully set forth below. Notice of the Settlement and the Settlement Hearing shall be given by Lead Counsel as follows:

(a) within ten (10) business days of the date of entry of this Order, at no cost to the Settlement Fund, Lead Counsel, the Settlement Class, or the Claims

1 Administrator, (i) Silvergate Capital shall provide or cause to be provided to the
2 Claims Administrator, in electronic format, records reasonably available to
3 Silvergate Capital or its transfer agent concerning the identity, last known mailing
4 addresses, and, if available, last known email addresses of potential Settlement Class
5 Members, which information the Claims Administrator shall treat and maintain as
6 confidential, and (ii) the Underwriter Defendants shall provide or cause to be
7 provided to the Claims Administrator, in electronic format, records reasonably
8 available to the Underwriter Defendants concerning the identity of persons and
9 entities who purchased Silvergate Capital Stock in the 2021 Offerings, which
10 information the Claims Administrator shall treat and maintain as confidential;

11 (b) beginning not later than twenty (20) business days after the date
12 of entry of this Order (the “Notice Date”), the Claims Administrator shall cause a
13 copy of the Notice and the Claim Form, substantially in the forms attached hereto as
14 Exhibits 1 and 2, respectively (collectively, the “Notice Packet”), to be mailed by
15 first-class mail or emailed to all potential Settlement Class Members who may be
16 identified through reasonable effort, including those identified by Silvergate Capital
17 and the Underwriter Defendants and through mailing the Notice Packet to the largest
18 and most common brokers and other nominee owners, who will be instructed to
19 forward the Notice Packet or provide names and addresses of Settlement Class
20 Members, as discussed below in paragraph 7;

21 (c) by the Notice Date, the Claims Administrator shall cause copies
22 of the Notice and Claim Form to be posted on a website to be developed for the
23 Settlement, from which copies of the Notice and Claim Form can be downloaded;

24 (d) not later than ten (10) business days after the Notice Date, the
25 Claims Administrator shall cause the Summary Notice, substantially in the form
26 attached hereto as Exhibit 3, to be published in *The Wall Street Journal* and to be
27 transmitted once over the *PR Newswire*; and

28 (e) not later than seven (7) calendar days prior to the Settlement

1 Hearing, Lead Counsel shall serve on Defendants' Counsel and file with the Court
2 proof, by affidavit or declaration, of such mailing and publication.

3 6. **Approval of Form and Content of Notice** – The Court (a) approves,
4 as to form and content, the Notice, the Claim Form, and the Summary Notice,
5 attached hereto as Exhibits 1, 2, and 3, respectively, and (b) finds that the mailing
6 and distribution of the Notice and Claim Form and the publication of the Summary
7 Notice in the manner and form set forth in paragraph 5 of this Order (i) is the best
8 notice practicable under the circumstances; (ii) constitutes notice that is reasonably
9 calculated, under the circumstances, to apprise Settlement Class Members of the
10 pendency of the Action, of the effect of the proposed Settlement (including the
11 Releases to be provided thereunder), of Lead Counsel's motion for attorneys' fees
12 and Litigation Expenses, of Settlement Class Members' right to object to the
13 Settlement, the Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees
14 and Litigation Expenses, of their right to exclude themselves from the Settlement
15 Class, and of their right to appear at the Settlement Hearing; (iii) constitutes due,
16 adequate, and sufficient notice to all persons and entities entitled to receive notice
17 of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the
18 Federal Rules of Civil Procedure, the United States Constitution (including the Due
19 Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C.
20 §§ 77z-1, 78u-4, as amended, and all other applicable law and rules. The date and
21 time of the Settlement Hearing shall be included in the Notice and Summary Notice
22 before they are mailed and published, respectively.

23 7. **Nominee Procedures** – Brokers and other nominees who purchased or
24 otherwise acquired Silvergate Capital common stock during the Class Period or
25 purchased Silvergate Capital Stock in or traceable to the 2021 Offerings for the
26 benefit of another person or entity shall: (a) within seven (7) calendar days of receipt
27 of the Notice, request from the Claims Administrator sufficient copies of the Notice
28 Packet to forward to all such beneficial owners and, within seven (7) calendar days

1 of receipt of those Notice Packets, forward them to all such beneficial owners; or (b)
2 within seven (7) calendar days of receipt of the Notice, send a list of the names,
3 mailing addresses, and, if available, email addresses, of all such beneficial owners
4 to the Claims Administrator in which event the Claims Administrator shall promptly
5 mail or email the Notice Packet to such beneficial owners. Upon full compliance
6 with this Order, such nominees may seek reimbursement of their reasonable
7 expenses actually incurred in complying with this Order by providing the Claims
8 Administrator with proper documentation supporting the expenses for which
9 reimbursement is sought. Such expenses incurred by the nominees shall not exceed
10 \$0.05 plus postage at the current pre-sort rate used by the Claims Administrator per
11 Notice Packet mailed; or \$0.05 per name, address, and email address (to the extent
12 available) provided to the Claims Administrator. Such properly documented
13 expenses incurred by nominees in compliance with the terms of this Order shall be
14 paid solely from the Settlement Fund, with any disputes as to the reasonableness or
15 documentation of expenses incurred subject to review by the Court.

16 8. **CAFA Notice** – As provided in the Stipulation, Defendants shall be
17 responsible for serving notice under the Class Action Fairness Act (“CAFA”) if they
18 determine it is required, and for coordinating with the Claims Administrator to the
19 extent necessary. Silvergate Capital shall be solely responsible for the costs of the
20 CAFA notices. At least seven (7) calendar days before the Settlement Hearing, or
21 as otherwise ordered by the Court, Defendants shall cause to be served on Lead
22 Counsel and filed with the Court proof, by affidavit or declaration, regarding
23 compliance with CAFA § 1715(b).

24 9. **Participation in the Settlement** – Settlement Class Members who
25 wish to participate in the Settlement and to be potentially eligible to receive a
26 distribution from the Net Settlement Fund must complete and submit a Claim Form
27 in accordance with the instructions contained therein. Unless the Court orders
28 otherwise, all Claim Forms must be postmarked no later than one hundred twenty

1 (120) calendar days after the Notice Date. Notwithstanding the foregoing, Lead
2 Counsel may, at their discretion, accept for processing late Claims provided such
3 acceptance does not delay the distribution of the Net Settlement Fund to the
4 Settlement Class. By submitting a Claim, a person or entity shall be deemed to have
5 submitted to the jurisdiction of the Court with respect to his, her, or its Claim and
6 the subject matter of the Settlement.

7 10. Each Claim Form submitted must satisfy the following conditions: (a)
8 it must be properly completed, signed, and submitted in a timely manner in
9 accordance with the provisions of the preceding paragraph; (b) it must be
10 accompanied by adequate supporting documentation for the transactions and
11 holdings reported therein, in the form of broker confirmation slips, broker account
12 statements, an authorized statement from the broker containing the transactional and
13 holding information found in a broker confirmation slip or account statement, or
14 such other documentation as is deemed adequate by Lead Counsel or the Claims
15 Administrator; (c) if the person executing the Claim Form is acting in a
16 representative capacity, a certification of his, her, or its current authority to act on
17 behalf of the Settlement Class Member must be included in the Claim Form to the
18 satisfaction of Lead Counsel or the Claims Administrator; and (d) the Claim Form
19 must be complete and contain no material deletions or modifications of any of the
20 printed matter contained therein and must be signed under penalty of perjury.

21 11. Any Settlement Class Member that does not timely and validly submit
22 a Claim Form or whose Claim is not otherwise approved by the Court: (a) shall be
23 deemed to have waived his, her, or its right to share in the Net Settlement Fund; (b)
24 shall be forever barred from participating in any distributions therefrom; (c) shall be
25 bound by the provisions of the Stipulation and the Settlement and all proceedings,
26 determinations, orders, and judgments in the Action relating thereto, including,
27 without limitation, the Judgment and the Releases provided for therein, whether
28 favorable or unfavorable; and (d) will be forever barred and enjoined from

1 commencing, instituting, intervening in, participating in, continuing, maintaining,
2 asserting or prosecuting, either directly or indirectly, whether in the United States or
3 elsewhere, on their own behalf or on behalf of any class or any other person, any
4 action, suit, cause of action, claim, or demand with respect to any or all of the
5 Released Plaintiffs' Claims against any of the Defendant Releasees in any court of
6 law or equity, arbitration, tribunal, administrative forum, or other forum of any kind
7 or character, whether brought directly, in a representative capacity, derivatively, or
8 in any other capacity, as more fully described in the Stipulation and Notice.
9 Notwithstanding the foregoing, late Claim Forms may be accepted for processing as
10 set forth in paragraph 9 above.

11 12. **Exclusion from the Settlement Class** – Any member of the Settlement
12 Class who wishes to exclude himself, herself, or itself from the Settlement Class
13 must request exclusion in writing within the time and in the manner set forth in the
14 Notice, which shall provide that: (a) any such request for exclusion from the
15 Settlement Class must be mailed or delivered such that it is received no later than
16 twenty-one (21) calendar days prior to the Settlement Hearing, to: *Silvergate*
17 *Securities Litigation*, EXCLUSIONS, c/o JND Legal Administration, P.O. Box
18 91072, Seattle, WA 98111, and (b) each request for exclusion must (i) state the
19 name, address, and telephone number of the person or entity requesting exclusion,
20 and in the case of entities, the name and telephone number of the appropriate contact
21 person; (ii) state that such person or entity “requests exclusion from the Settlement
22 Class in *In re Silvergate Capital Corporation Securities Litigation*, No. 3:22-cv-
23 01936-JES-MSB (S.D. Cal.)”; (iii) state the number of shares of Silvergate Capital
24 common stock that the person or entity requesting exclusion (A) owned as of the
25 opening of trading on November 7, 2019 and (B) purchased/acquired and/or sold
26 from November 7, 2019 through March 21, 2023, inclusive, as well as the dates and
27 prices of each such purchase/acquisition and/or sale and, for each, the numbers of
28 shares purchased/acquired and/or sold; (iv) state the number of shares of Silvergate

1 Capital common stock and Silvergate Capital Preferred Stock that the person or
2 entity requesting exclusion purchased in or traceable to Silvergate Capital's 2021
3 Offerings, as well as the dates and prices of each such purchase and the dates and
4 prices of any related sale, if applicable, and, for each, the numbers of securities
5 purchased and/or sold; and (v) be signed by the person or entity requesting exclusion
6 or an authorized representative. A request for exclusion shall not be effective unless
7 it provides all the required information and is received within the time stated above,
8 or is otherwise accepted by the Court.

9 13. Any person or entity who or which timely and validly requests
10 exclusion in compliance with the terms stated in this Order and is excluded from the
11 Settlement Class shall not be a Settlement Class Member, shall not be bound by the
12 terms of the Settlement or any orders or judgments in the Action, and shall not
13 receive any payment out of the Net Settlement Fund.

14 14. Any Settlement Class Member who or which does not timely and
15 validly request exclusion from the Settlement Class in the manner stated in this
16 Order: (a) shall be deemed to have waived his, her, or its right to be excluded from
17 the Settlement Class; (b) shall be forever barred from requesting exclusion from the
18 Settlement Class in this or any other proceeding; (c) shall be bound by the provisions
19 of the Stipulation and Settlement and all proceedings, determinations, orders, and
20 judgments in the Action, including, but not limited to, the Judgment and the Releases
21 provided for therein, whether favorable or unfavorable; and (d) will be forever
22 barred and enjoined from commencing, instituting, intervening in, participating in,
23 continuing, maintaining, asserting or prosecuting, either directly or indirectly,
24 whether in the United States or elsewhere, on their own behalf or on behalf of any
25 class or any other person, any action, suit, cause of action, claim, or demand with
26 respect to any or all of the Released Plaintiffs' Claims against any of the Defendant
27 Releasees in any court of law or equity, arbitration, tribunal, administrative forum,
28 or other forum of any kind or character, whether brought directly, in a representative

1 capacity, derivatively, or in any other capacity, as more fully described in the
2 Stipulation and Notice.

3 15. **Appearance and Objections at Settlement Hearing** – Any Settlement
4 Class Member who or which does not request exclusion from the Settlement Class
5 may enter an appearance in the Action, at his, her, or its own expense, individually
6 or through counsel of his, her, or its own choice, by filing with the Clerk of Court
7 and delivering a notice of appearance to both Lead Counsel and Representative
8 Defendants’ Counsel, at the addresses set forth in paragraph 16 below, such that it
9 is received no later than twenty-one (21) calendar days prior to the Settlement
10 Hearing, or as the Court may otherwise direct. Any Settlement Class Member who
11 does not enter an appearance will be represented by Lead Counsel.

12 16. Any Settlement Class Member who or which does not request exclusion
13 from the Settlement Class may file a written objection to the proposed Settlement,
14 the proposed Plan of Allocation, and/or Lead Counsel’s motion for attorneys’ fees
15 and Litigation Expenses and appear and show cause, if he, she, or it has any cause,
16 why the proposed Settlement, the proposed Plan of Allocation, and/or Lead
17 Counsel’s motion for attorneys’ fees and Litigation Expenses should not be
18 approved; *provided, however*, that no Settlement Class Member shall be heard or
19 entitled to contest the approval of the terms and conditions of the proposed
20 Settlement, the proposed Plan of Allocation, and/or the motion for attorneys’ fees
21 and Litigation Expenses unless that person or entity has filed a written objection with
22 the Court and served copies of such objection on Lead Counsel and Representative
23 Defendants’ Counsel at the addresses set forth below such that they are received no
24 later than twenty-one (21) calendar days prior to the Settlement Hearing.

25 **Lead Plaintiffs’ Counsel:**
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1 Carol V. Gilden
2 Cohen Milstein Sellers & Toll PLLC
3 200 S. Wacker Drive, Suite 2375
4 Chicago, IL 60606

5 Jonathan D. Uslander
6 Bernstein Litowitz Berger & Grossmann LLP
7 2121 Avenue of the Stars, Suite 2575
8 Los Angeles, CA 90067

Representative Defendants' Counsel:

9 John P. Stigi III
10 Sheppard, Mullin, Richter & Hampton LLP
11 12275 El Camino Real, Suite 100
12 San Diego, CA 92130-4092

13 Jason C. Hegt
14 Latham & Watkins LLP
15 1271 Avenue of the Americas
16 New York, NY 10020

17 17. Any objections, filings, and other submissions by the objecting
18 Settlement Class Member must: (a) identify the case name and docket number in *In*
19 *re Silvergate Capital Corporation Securities Litigation*, No. 3:22-cv-01936-JES-
20 MSB (S.D. Cal.); (b) state the name, address, and telephone number of the person or
21 entity objecting and be signed by the objector; (c) state with specificity the grounds
22 for the Settlement Class Member's objection, including any legal and evidentiary
23 support the Settlement Class Member wishes to bring to the Court's attention and
24 whether the objection applies only to the objector, to a specific subset of the
25 Settlement Class, or to the entire Settlement Class; and (d) include documents
26 sufficient to prove membership in the Settlement Class, including documents
27 showing (i) the number of shares of Silvergate Capital common stock that the person
28 or entity (A) owned as of the opening of trading on November 7, 2019 and (B)
purchased/acquired and/or sold from November 7, 2019 through March 21, 2023,

1 inclusive, as well as the dates and prices of each such purchase/acquisition and/or
2 sale and, for each, the numbers of shares purchased/acquired and/or sold, and/or (ii)
3 the number of shares of Silvergate Capital common stock and Silvergate Capital
4 Preferred Stock that the person or entity purchased in or traceable to Silvergate
5 Capital's 2021 Offerings, as well as the dates and prices of each such purchase and
6 the dates and prices of any related sale, if applicable, and, for each, the numbers of
7 securities purchased and/or sold. Documentation establishing membership in the
8 Settlement Class must consist of copies of brokerage confirmation slips or monthly
9 brokerage account statements, or an authorized statement from the objector's broker
10 containing the transactional and holding information found in a broker confirmation
11 slip or account statement. Objectors who enter an appearance and desire to present
12 evidence at the Settlement Hearing in support of their objection must include in their
13 written objection or notice of appearance the identity of any witnesses they may call
14 to testify and any exhibits they intend to introduce into evidence at the hearing.

15 18. Any Settlement Class Member who or which does not make his, her, or
16 its objection in the manner provided herein shall be deemed to have waived his, her,
17 or its right to object to any aspect of the proposed Settlement, the proposed Plan of
18 Allocation, and Lead Counsel's motion for attorneys' fees and Litigation Expenses
19 and shall be forever barred and foreclosed from objecting to the fairness,
20 reasonableness, or adequacy of the Settlement, the Plan of Allocation, or the
21 requested attorneys' fees and Litigation Expenses, or from otherwise being heard
22 concerning the Settlement, the Plan of Allocation, or the requested attorneys' fees
23 and Litigation Expenses in this or any other proceeding.

24 19. **Stay and Temporary Injunction** – Until otherwise ordered by the
25 Court, the Court stays all proceedings in the Action other than proceedings necessary
26 to carry out or enforce the terms and conditions of the Stipulation. Pending final
27 determination of whether the Settlement should be approved, the Court bars and
28 enjoins Plaintiffs, Plaintiffs' Counsel, and all other members of the Settlement Class

1 from commencing, instituting, intervening in, participating in, continuing,
2 maintaining, asserting or prosecuting, either directly or indirectly, whether in the
3 United States or elsewhere, on their own behalf or on behalf of any class or any other
4 person, any action, suit, cause of action, claim, or demand with respect to any or all
5 of the Released Plaintiffs' Claims against any of the Defendant Releasees in any
6 court of law or equity, arbitration, tribunal, administrative forum, or other forum of
7 any kind or character, whether brought directly, in a representative capacity,
8 derivatively, or in any other capacity, as more fully described in the Stipulation and
9 Notice.

10 20. **Settlement Administration Fees and Expenses** – All reasonable costs
11 incurred in identifying Settlement Class Members and notifying them of the
12 Settlement as well as in administering the Settlement shall be paid as set forth in the
13 Stipulation without further order of the Court.

14 21. **Settlement Fund** – The contents of the Settlement Fund held by
15 Huntington Bank (which the Court approves as the Escrow Agent) shall be deemed
16 and considered to be *in custodia legis* of the Court, and shall remain subject to the
17 jurisdiction of the Court, until such time as they shall be distributed pursuant to the
18 Stipulation and/or further order(s) of the Court.

19 22. **Taxes** – Lead Counsel are authorized and directed to prepare any tax
20 returns and any other tax reporting form for or in respect to the Settlement Fund, to
21 pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund,
22 to apply for any tax refund owed to the Settlement Fund, and to otherwise perform
23 all obligations with respect to Taxes and any reporting or filings in respect thereof
24 without further order of the Court in a manner consistent with the provisions of the
25 Stipulation.

26 23. **Termination of Settlement** – If the Settlement is terminated as
27 provided in the Stipulation, the Settlement is not approved (however, any decision
28 with respect to an application for attorneys' fees or Litigation Expenses, or with any

1 respect to any Plan of Allocation, shall not be considered grounds for termination),
2 or the Effective Date of the Settlement otherwise fails to occur, this Order shall be
3 vacated, rendered null and void, and be of no further force and effect, except as
4 otherwise provided by the Stipulation, and this Order shall be without prejudice to
5 the rights of Plaintiffs, the other Settlement Class Members, and Defendants, and the
6 Parties shall revert to their respective litigation positions in the Action as of March
7 25, 2025, as provided in the Stipulation.

8 24. **Use of This Order** – Neither this Order, the Term Sheet, the Stipulation
9 (whether or not consummated), including the exhibits thereto and the Plan of
10 Allocation contained therein (or any other plan of allocation that may be approved
11 by the Court), the Judgment, the Supplemental Agreement, the negotiations leading
12 to the execution of the Term Sheet and the Stipulation, nor any proceedings taken
13 pursuant to or in connection with the Stipulation and/or approval of the Settlement
14 (including any arguments proffered in connection therewith):

15 (a) shall be offered or received against any of the Defendant
16 Releasees as evidence of, or construed as, or deemed to be evidence of any
17 presumption, concession, or admission by any of the Defendant Releasees
18 with respect to the truth of any fact alleged by Plaintiffs or the validity of any
19 claim or alleged damages that were or could have been asserted or the
20 deficiency of any defense that has been or could have been asserted in this
21 Action or in any other litigation, or of any liability, negligence, fault, or other
22 wrongdoing of any kind of any of the Defendant Releasees or in any way used
23 or referred to for any other reason as against any of the Defendant Releasees,
24 in any arbitration proceeding or other civil, criminal, or administrative action
25 or proceeding, other than such proceedings as may be necessary to effectuate
26 the provisions of the Stipulation;

27 (b) shall be offered or received against any of the Plaintiff Releasees,
28 as evidence of, or construed as, or deemed to be evidence of any presumption,

1 concession, or admission by any of the Plaintiff Releasees that any of their
2 claims are without merit, that any of the Defendant Releasees had meritorious
3 defenses, or that damages recoverable under the Complaint would not have
4 exceeded the Settlement Amount or with respect to any liability, negligence,
5 fault, or wrongdoing of any kind, or in any way used or referred to for any
6 other reason as against any of the Plaintiff Releasees, in any arbitration
7 proceeding or other civil, criminal, or administrative action or proceeding,
8 other than such proceedings as may be necessary to effectuate the provisions
9 of the Stipulation;

10 (c) shall be construed against any of the Releasees as an admission,
11 concession, or presumption that the consideration to be given under the
12 Settlement represents the amount which could be or would have been
13 recovered after trial; or

14 (d) shall be construed as or received in evidence as an admission,
15 concession or presumption that class certification is or was appropriate in this
16 Action, except for purposes of this Settlement.

17 *provided, however*, that if the Stipulation is approved by the Court, the Parties and
18 the Releasees and their respective counsel may refer to it to effectuate the protections
19 from liability granted thereunder or otherwise to enforce the terms of the Settlement,
20 and Defendants and/or the Defendant Releasees may file the Stipulation and/or the
21 Judgment in any action that might be brought against them to support a defense,
22 claim, or counterclaim based on principles of res judicata, collateral estoppel, release
23 and discharge, good faith settlement, judgment bar or other bar or reduction, or any
24 other theory of claim preclusion or issue preclusion or similar defense, claim,
25 argument, or counterclaim.

26 25. **Supporting Papers** – Lead Counsel shall file and serve the opening
27 papers in support of the proposed Settlement, the proposed Plan of Allocation, and
28 Lead Counsel’s motion for attorneys’ fees and Litigation Expenses no later than

1 thirty-five (35) calendar days prior to the Settlement Hearing; and reply papers, if
2 any, shall be filed and served no later than seven (7) calendar days prior to the
3 Settlement Hearing.

4 26. The Court retains jurisdiction to consider all further applications arising
5 out of or connected with the proposed Settlement.

6 **IT IS SO ORDERED**

7
8 Dated: May 22, 2025



9
10 Honorable James E. Simmons Jr.
United States District Judge