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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL, RONALD  
ANTHONY DINKINS, and LARICE  
ADDAMO on Behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

BAN OF AMERICA, N.A.,  
Defendant.

CASE NO. 3:16-cv-00492-L-WVG

**NOTICE OF MOTION AND  
PLAINTIFFS' UNOPPOSED  
APPLICATION FOR AWARD OF  
ATTORNEYS' FEES AND COSTS  
AND SERVICE AWARDS**

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018 at 11:00am

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD, PLEASE TAKE NOTICE that on **June 18, 2018 at 11:00 a.m.**, or as soon thereafter as the matter may be heard, in Courtroom 5B, before the Honorable M. James Lorenz, Plaintiffs and Class Counsel will, and hereby do, respectfully request that the Court approve an award of \$16,650,000 in attorneys' fees, which represents 25% of the monetary relief created for Settlement Class Members' benefit (and less than 5% of all value afforded, including the \$1.2 billion in savings from injunctive relief), for their efforts and

risks litigating this Action and the benefits obtained for the Class. Plaintiffs and Class Counsel also seek an award of \$53,119.92 in expenses incurred during the pendency of litigation and in pursuit of the result reached on behalf of the Settlement Class Members. Lastly, Plaintiffs and Class Counsel seek approval of Service Awards of \$5,000 for each Class Representative.

This Motion is based upon this Notice of Motion and Application for Award of Attorneys' Fees, Costs and Service Awards; the accompanying Memorandum of Points and Authorities; the Settlement Agreement; the Joint Declaration of Class Counsel; Declaration of Professor Brian Fitzpatrick; individual Declarations of Class Counsel, Jeff Ostrow, Hassan Zavareei, Brian Gowdy and Cristina Pierson; Declaration of Jason Hartley, Esq.; pleadings and papers on file in this Action; and other such evidence or argument as may be presented to the Court at the hearing on this Motion.

Defendant, Bank of America, N.A., does not oppose this Motion.

Dated: February 19, 2018

Respectfully submitted,

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17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 JOANNE FARRELL, RONALD  
20 ANTHONY DINKINS, and LARICE  
21 ADDAMO on Behalf of themselves and all  
22 others similarly situated,  
23  
24 Plaintiffs,  
25  
26 vs.  
27  
28 BAN OF AMERICA, N.A.,  
Defendant.

CASE NO. 3:16-cv-00492-L-WVG

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
UNOPPOSED APPLICATION FOR  
AWARD OF ATTORNEYS' FEES  
AND COSTS AND SERVICE  
AWARDS**

Judge: Hon. M. James Lorenz  
Place: Courtroom 5B  
Hearing Date: June 18, 2018 at 11:00am

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## I. INTRODUCTION

Plaintiffs, Joanne Farrell, Ronald Anthony Dinkins, Tia Little and Larice Addamo (“Plaintiffs” or “Class Representatives”), through Class Counsel, respectfully submit this Memorandum of Points and Authorities in Support of their Unopposed Application for Award of Attorneys’ Fees and Costs and Service Awards. Plaintiffs brought this Action against Defendant Bank of America, N.A. (“BANA”), alleging that Extended Overdrawn Balance Charges (“EOBCs”) on checking accounts violates the usury provision of the National Bank Act (“NBA”), 12 U.S.C. § 86. As detailed in Plaintiffs’ Motion for Preliminary Approval, Dkt 69, the Parties settled the Action. BANA has agreed to: (1) stop assessing the EOBC charge on consumer checking accounts for a period of five years; and (2) establish a \$37.5 million cash Settlement Fund and \$29.1 million Debt Reduction Amount. BANA will also update reports to credit reporting bureaus regarding customers with outstanding EOBCs. The Settlement benefits will automatically be distributed to Settlement Class Members without reversion to BANA. This is a common fund settlement, coupled with extraordinary non-monetary injunctive relief.

The non-monetary relief is BANA’s agreement to stop charging the EOBC for at least five years, unless the U.S. Supreme Court declares the practice of charging EOBCs lawful and not usurious. This occurred despite three other district courts disagreeing with this Court, previously holding extended overdraft fees are not interest. In one case, BANA was the defendant, and after this Court denied BANA’s motion to dismiss, BANA still persuaded the U.S. Court of Appeals for the Eleventh Circuit to affirm the Florida district court’s judgment of dismissal on the same issue. Thus, considering this precedent, Class Counsel took a great risk in even filing this action in the first instance, and the results obtained, including the notable cessation of charging EOBCs, is even more extraordinary.

Accordingly, consistent with standard class action practice and procedure, and as stated in the Notices, Class Counsel respectfully request a fee award of 25% of the value of the common fund created for the benefit of Settlement Class Members, for a total



1 amount of \$16,650,000. BANA does not oppose Plaintiffs' request.

2 The Court's overall analysis of the reasonableness of the requested fee award should  
3 consider the fact that the percentage of the fund request is much lower if the Court  
4 includes remuneration related to BANA's agreement to pay the estimated \$2 million in  
5 notice and settlement administration costs (24.3%), or the \$1.2 billion in savings that the  
6 Settlement Class and other accountholders will benefit from over the next five years  
7 related to BANA's cessation of the very practice at the heart of Plaintiffs' Complaint.  
8 Considering these tremendous benefits to the Settlement Class—and, indeed, to future  
9 BANA consumers who will not be assessed EOBCs—Class Counsel's requested fee  
10 represents far less than 5% of the total financial value of the settlement. The fee will fairly  
11 compensate Class Counsel for its work, which it undertook on a contingency basis, as well  
12 as work which remains to be done, including preparing the Final Approval motion,  
13 attending the June 18, 2018 Final Approval Hearing, continuing to work with members of  
14 the Settlement Class to answer questions they have regarding the Settlement, and ensuring  
15 that the Settlement is administered pursuant to its terms before and after Final Approval.

16 The Parties discussed attorneys' fees and costs only after reaching agreement on all  
17 other material terms of this Settlement. Joint Declaration of Class Counsel, attached as  
18 **Exhibit 1** ("Joint Decl."), ¶22. The amount of the requested attorneys' fees is well within  
19 the range of common fund recoveries regularly approved by courts in this Circuit for a  
20 settlement of this size, when considering the significant monetary and non-monetary relief.  
21 In support of the reasonableness of the requested fee award, Class Counsel retained  
22 Professor Brian Fitzpatrick, whose declaration is attached as **Exhibit 2** ("Fitzpatrick  
23 Decl."), and who offers opinions supporting the Court's application of the percentage-of-  
24 the-fund method, with consideration given for a discretionary lodestar cross-check to the  
25 extent the Court elects do so. Professor Fitzpatrick is a law professor at Vanderbilt  
26 University who focuses his research on class action litigation. He formerly clerked for  
27 Judge O'Scannlain of the Ninth Circuit and Justice Scalia of the Supreme Court.

1 Fitzpatrick Decl., ¶¶1-2. He is the author of the most comprehensive examination of  
2 federal class action settlements and attorneys' fees that has even been published, and has  
3 been extensively published on the topic of class action settlements. *Id.* ¶3. Professor  
4 Fitzpatrick's study has been relied upon by a number of courts, scholars, and testifying  
5 experts. *Id.* ¶3 n.1. He opines that the awarding a fee in the amount requested here, and as  
6 a percentage of the common fund, is justified and reasonable in this case. *Id.* ¶¶9-13.

7 To substantiate the requested hourly rates used in the discretionary lodestar cross-  
8 check, Class Counsel (Jeff Ostrow, Hassan Zavareei, Cristina Pierson and Bryan Gowdy)  
9 submit Declarations on behalf of each of their firms, attached as *Exhibits 3 to 6*  
10 respectively, and the Declaration of Jason Hartley, Esq., who opines in attached *Exhibit*  
11 *7* that the rates are commensurate with reasonable rates charged in the Southern District  
12 of California. In addition, Class Counsel seek reimbursement for costs and fees reasonably  
13 expended during the litigation, as reflected in their Declarations. Class Counsel also seek  
14 a Service Award for each Class Representative for the efforts and risk in this litigation.

15 For the reasons detailed herein, the Court should approve the requested fees and  
16 costs, and Service Awards, as appropriate, fair and reasonable.

## 17 **II. HISTORY OF CLASS COUNSEL'S WORK IN THIS LITIGATION**

18 Prior to and during this case, Class Counsel investigated the assessment of EOBCs  
19 upon BANA checking accounts. Class Counsel interviewed the Class Representatives at  
20 length regarding their bank statements and any EOBCs assessed and paid. Joint Decl. ¶¶3,  
21 16. In addition, Class Counsel analyzed the NBA's legislative history and its implementing  
22 regulations, as well as other regulations, guidance, academic articles, press releases, and  
23 consumer complaints in order to understand the purpose and impact of EOBCs and  
24 similar charges levied by other banks. *Id.* ¶3. This includes Class Counsel's participation in  
25 prosecuting extended overdraft claims in *McGee v. Bank of America, N.A.*, No. 15-60480,  
26 2015 WL 4594582 (S.D. Fla. July 30, 2015), *aff'd*, 674 Fed. App'x 958 (11th Cir. January  
27 18, 2017) (unpublished), and *Shaw v. BOKF, N.A.*, No. 15-CV-0173-CVE-FHM, 2015 WL  
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1 6142903 (N.D. Okla. Oct. 19, 2015) (case dismissed). Throughout this litigation, Class  
2 Counsel has continued to monitor, research, and review these materials. *Id.*

3 Class Counsel worked with Plaintiff Farrell to review and understand her bank  
4 statements. Joint Decl. ¶4. Based on Class Counsel’s experience with usury cases under  
5 the NBA, Class Counsel drafted the Class Action Complaint, filing it on February 25, 2016.  
6 *Id.* ¶5. Plaintiff asserted claims on behalf of herself and a proposed class of accountholders  
7 who were assessed EOBCs. Plaintiff alleged the EOBCs were usurious interest that  
8 violated the NBA.

9 BANA moved to dismiss in April 2016. *Id.* ¶6. BANA claimed that the EOBCs are  
10 not “interest” under the NBA. BANA’s brief cited district court cases from across the  
11 country in which the courts dismissed similar claims alleging that extended overdraft fees  
12 like the EOBCs are usurious interest charges under the NBA. *Id.* Class Counsel reviewed  
13 and researched BANA’s arguments on issues like the applicability of guidance from the  
14 Office of the Comptroller of the Currency (“OCC”) and the definition of an “extension  
15 of credit.” *Id.* ¶7. Class Counsel drafted a substantial, detailed opposition to the motion to  
16 dismiss. *Id.* On December 19, 2016, the Court ruled counter to every other court in similar  
17 cases, denying BANA’s motion without oral argument. Dkt. 20.

18 Class Counsel then researched and drafted a motion to appoint Class Counsel as  
19 interim class counsel under Fed. R. Civ. P. 23(g). Joint Decl. ¶9. The motion addressed  
20 Class Counsel’s qualifications, efforts litigating the case, and ability to represent the  
21 interests of a putative class. Class Counsel also began to prepare to file a motion for class  
22 certification by researching issues related to class certification under the NBA. *Id.*

23 After BANA filed its Answer, Dkt. 25, Class Counsel reviewed and researched its  
24 affirmative defenses. *Id.* ¶10. Class Counsel researched and drafted a motion to strike the  
25 affirmative defenses on the grounds that BANA’s common law defenses do not apply to  
26 a federal statutory claim, and BANA’s other defenses were either irrelevant or simply  
27 denials. *Id.* Class Counsel also investigated the claims of additional Class Representatives  
28

1 who could adequately represent the interests of the putative class. *Id.*

2         Meanwhile, BANA filed a motion for certification of an interlocutory appeal. Dkt.  
3 29. Class Counsel carefully and thoughtfully researched and drafted an opposition to the  
4 motion, because the risks of an appeal were significant. Joint Decl. ¶11. Class Counsel also  
5 prepared replies in support of the motions for Class Counsel to be appointed lead counsel  
6 and the motion to strike BANA’s affirmative defenses. *Id.* ¶¶2, 14.

7         In February 2017, Class Counsel began to explore the possibility of settlement and  
8 internally discussed what a settlement proposal might look like. *Id.* ¶13. Class Counsel  
9 expended significant effort researching numerous issues relating to an appropriate  
10 settlement proposal for this highly unique case. *Id.* Class Counsel drafted a settlement  
11 proposal and demand letter, and sent the same to BANA. *Id.*

12         On March 1, 2017, Class Counsel prepared for and participated in an Early Neutral  
13 Evaluation conference before United States Magistrate Judge William V. Gallo. *Id.* ¶15.  
14 That ENE did not lead to settlement, but opened the door to further negotiations.  
15 Separately, Class Counsel began to prepare to file the Amended Complaint. Class Counsel  
16 met with all new clients, reviewed their bank statements, and drafted new fact sections to  
17 be added to the Complaint. *Id.* ¶16. Plaintiffs’ motion for leave to file the Amended  
18 Complaint was filed on March 13, 2017. Dkt. No. 60.

19         The Court granted BANA’s motion to certify an interlocutory appeal on April 11,  
20 2017, and Class Counsel began to prepare to defend against an appeal in the Ninth Circuit,  
21 first opposing BANA’s petition filed with Ninth Circuit asking that it accept the case for  
22 appeal. Joint Decl. ¶17. Detailed briefing was required in opposition to that petition, which  
23 despite Class Counsel’s efforts, was granted, resulting in Class Counsel needing to turn its  
24 attention to prepare for merits briefing to the Ninth Circuit. Class Counsel coordinated  
25 with stakeholder entities regarding amicus support. *Id.*

26         At the same time, Class Counsel continued to investigate settlement by pursuing  
27 mediation. *Id.* ¶18. In early June 2017, the Parties agreed to mediate before the Honorable  
28

1 Judge Layn R. Phillips (Ret.), a respected mediator with extensive experience in complex  
2 class actions. *Id.* Class Counsel prepared a robust mediation statement, and a reply  
3 mediation statement at the mediator’s request with the mediator asking the Parties to  
4 address specific issues after reading the Parties’ mediation statements. *Id.* ¶19. The  
5 statements directly contributed to the excellent results achieved in the Settlement  
6 Agreement. *Id.* The mediation statements made Plaintiff’s best case for the merits of her  
7 factual and legal arguments. *Id.* Class Counsel expended significant effort researching every  
8 possible legal angle and defense, including the meaning of the “knowingly” standard under  
9 the NBA. *Id.* Class Counsel worked with an expert (Arthur Olsen) who provided support  
10 for Plaintiff’s damages analysis. Class Counsel also pressed BANA to provide certain data  
11 necessary to consult with Mr. Olsen to arrive at a settlement by drafting and serving a  
12 demand letter. *Id.* Upon receipt of BANA’s settlement materials in August 2017, Class  
13 Counsel reviewed and researched the materials and discussed a response. *Id.* ¶20.

14 On August 25, 2017, Class Counsel attended an all-day mediation with Judge  
15 Phillips in Newport Beach, California. *Id.* ¶21. The parties discussed the potential  
16 resolution of the case in good faith but were unable to reach an agreement that day. *Id.*

17 During September and October 2017, Judge Phillips continued communicating  
18 with the Parties to further settlement efforts. *Id.* ¶22. Class Counsel spent considerable  
19 effort communicating with Judge Phillips, BANA’s outside counsel, BANA’s Deputy  
20 General Counsel, Jana Litsey, and internally. *Id.* The negotiations were adversarial, and  
21 required numerous telephone calls and emails. *Id.* After about two months of negotiations,  
22 the parties were able to reach agreement on the material Settlement terms. *Id.*

23 In October 2017, Class Counsel participated in a confirmatory discovery meeting  
24 in Charlotte, North Carolina, with BANA’s Fee Management Executive, Riaz Bhamani.  
25 *Id.* ¶22. Mr. Bhamani supervised the analysis of the data used to calculate the damages  
26 numbers that were provided prior to the mediation. *Id.* During the interview, Mr. Bhamani  
27 explained the assumptions made and methods used for each of these calculations in great  
28

1 detail. *Id.* Class Counsel explored those assumptions and methods with rigorous  
2 questioning and became confident that the numbers relied on were trustworthy and  
3 accurate. *Id.* Based on that meeting and the prior negotiations, Class Counsel drafted a  
4 Settlement Agreement, preliminary approval motion, and notices. *Id.* ¶24.

5 To accomplish the work described above, Class Counsel drafted other court filings  
6 such as proposed orders, stipulations, notices of motion, and declarations in support of  
7 various memoranda. *Id.* ¶25. Throughout the litigation, Class Counsel coordinated  
8 internally to formulate case strategy and divide work to avoid duplication. *Id.* ¶2.

### 9 III. LEGAL ARGUMENT

#### 10 A. CLASS COUNSEL'S FEE REQUEST IS REASONABLE UNDER 11 NINTH CIRCUIT PRECEDENT

##### 12 1. The Percentage-of-the-Fund Method is Appropriate.

13 When a representative party confers a substantial benefit upon a class, counsel is  
14 entitled to attorneys' fees based on the benefit obtained *Boeing Co. v. Van Gemert*, 444 U.S.  
15 472, 478 (1980). As this Court has observed in considering awards of attorneys' fees to  
16 counsel in class actions, Fed. R. Civ. P. 23(h) provides: "[i]n a certified class action, the  
17 court may award reasonable attorneys' fees and nontaxable costs that are authorized by  
18 law or by the parties' agreement." Quoting *In re Bluetooth Headset Products Liab. Litig.*, 654  
19 F.3d 935, 941 (9th Cir. 2011), this Court reiterated in *Foos v. Ann, Inc.*, No. 11cv2794 L  
20 (MDD), 2013 U.S. Dist. LEXIS 136918, at \*9 (S.D. Cal. Sept. 23, 2013), that attorneys'  
21 fees awarded must be "fundamentally fair, adequate, and reasonable."

22 The common benefit doctrine is an exception to the general rule that each party  
23 must bear its own litigation costs. It removes a potential financial obstacle to a plaintiff's  
24 pursuit of a class claim and equitably distributes the fees and costs of successful litigation  
25 among all who gained from the named plaintiff's efforts. The doctrine stems from the  
26 premise that those who receive the benefit of a lawsuit without contributing to its costs  
27 are "unjustly enriched" at the expense of the successful litigant. *Boeing Co.*, 444 U.S. at  
28



1 478. As a result, the Supreme Court and the Ninth Circuit have recognized that “a litigant  
2 or a lawyer who recovers a common fund for the benefit of persons other than himself  
3 or his client is entitled to a reasonable attorney’s fee from the fund as whole.” *Staton v.*  
4 *Boeing*, 327 F.3d 938, 967 (9th Cir. 2003) (quoting *Boeing Co.*, 444 U.S. at 478).

5 Although courts in the Ninth Circuit choose to award attorneys’ fees in common  
6 fund settlements using either the percentage-of-the-fund or the lodestar approach, “the  
7 percentage-of-the-fund calculation is preferable to the lodestar calculation.” *E.g.*, *Ruiξ v.*  
8 *XPO Last Mile, Inc.*, No. 5-CV-2125 JLS (KSC), 2017 WL 6513962, at \*6 (S.D. Cal. Dec.  
9 20, 2017); *see also* Fitzpatrick Decl., ¶10. Indeed, an attorneys’ fees award as a percentage  
10 of a common fund established by a class action settlement is well-established in Ninth  
11 Circuit jurisprudence and is eminently appropriate here. *See Viξcaino v. Microsoft Corp.*,  
12 290 F.3d 1043, 1047 (9th Cir. 2002); *Six (6) Mexican Workers v. Ariξ. Citrus Growers*, 904  
13 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272  
14 (9th Cir. 1989); *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995); *In re*  
15 *Daou Sys., Secs. Litig.*, No. 98-CV-1537-L(AJB), 2008 U.S. Dist. LEXIS 56320, at \*3 (S.D.  
16 Cal. July 24, 2008). For the reasons discussed below and in Professor Fitzpatrick’s  
17 Declaration, Class Counsel respectfully requests that the Court employ the percentage  
18 method in this common fund settlement instead of the lodestar method.

19 As Professor Fitzpatrick explains, the Settlement creates a common fund in a class  
20 action for which there is no applicable fee-shifting statute. Thus, Class Counsel may only  
21 be compensated from the fund created as a result of their work. Fitzpatrick Decl., ¶¶8-  
22 9. The percentage-of-the-fund method is the superior method for awarding attorneys’  
23 fees to Class Counsel because, besides being onerous and difficult to perform, the  
24 lodestar method does not align the interests of class counsel with those of the Class. *Id.*  
25 Under the lodestar method, Class Counsel’s recovery would not depend on how much  
26 the Class recovers via the Settlement, but, rather, on how many hours Class Counsel  
27 spent. *Id.* In contrast, applying the percentage-of-the-fund method aligns Class Counsel’s  
28



1 interests with the Class's interests because the more the Class recovers, the more Class  
 2 Counsel recovers. *Id.* This is especially true here, where the value of the settlement, which  
 3 includes both the cash and non-monetary components, is reliably quantified.<sup>1</sup> *Id.* ¶10.

4 Under the percentage method, the Court first calculates the value of the  
 5 Settlement benefits to the Class and then selects a percentage of that value to award to  
 6 Class Counsel. When calculating the value of the Settlement benefits, this Court should  
 7 include any cash benefits to class members, cash the defendant must pay to third parties,  
 8 non-cash benefits that can be reliably valued, attorneys' fees and expenses, and  
 9 administrative costs paid by the defendant.<sup>2</sup> *Id.* ¶11 (citing *In re Heartland Payment Systems,*  
 10 *Inc. Customer Data Sec. Breach Litigation*, 851 F.Supp.2d 1040, 1080 (S.D. Tex. 2012)  
 11 (Rosenthal, J.) (including these items in the denominator of the percentage method);  
 12 *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMc), 2013 U.S. Dist. LEXIS 163118, \*21-22  
 13 (S.D. Cal., Nov. 14, 2013) (including notice and administration costs in the denominator  
 14 of the percentage method)). Although some benefits do not go directly to the Class as  
 15 compensation, they either facilitate compensation to the Class, savings to the Class, or  
 16 serve to deter defendants such as BANA from future misconduct by making defendants  
 17 pay more when they cause harm. When selecting the percentage, courts in the Ninth  
 18 Circuit use 25% as the "bench mark' percentage for the fee award," which "can then be  
 19 adjusted upward or downward to account for any unusual circumstances involved in the  
 20 case." *Paul, Johnson, Alston & Hunt*, 886 F.2d at 272; *Six Mexican Workers*, 904 F.2d at  
 21 1311; *Chavez v. WIS Holding Corp.*, No. 07cv1932 L(NLS), 2010 U.S. Dist. LEXIS 56138,  
 22 at \*7-8 (S.D. Cal. June 7, 2010). *See also* Fitzpatrick Decl., ¶11.

## 23 **2. Class Counsel's Requested Fee is Reasonable.**

24 Class Counsel requests a fee equal to 25% of the total \$66.6 million value of the

25  
 26 <sup>1</sup> Even if the non-monetary component was not valued, the monetary components alone  
 justifies the requested fee award under the percentage-of-the-fund method. *Id.* ¶11.

27 <sup>2</sup> Here, however, Class Counsel is not including administrative costs paid by BANA in the  
 calculation of the total value of the Settlement for purposes of calculating their requested  
 28 fee, nor the \$1.2 billion value of the injunctive relief.

1 Settlement, which includes both the \$37.5 million for paid EOBCs and \$29.1 million for  
2 EOBCs charged but not yet paid. If the entire cash value of the settlement is considered  
3 (including the \$2 million in administration costs separately paid by BANA), the fee request  
4 is 24.3% of the total—below the benchmark. And if the entire settlement value is  
5 considered, including future monetary savings to the Class from the elimination of  
6 EOBCs, the fee request is well below 5%. No matter how the fee percentage is calculated  
7 here, it is justified under the pertinent factors, and in light of the empirical data and the  
8 economics of class action litigation. Fitzpatrick Decl., ¶13.

9 The Court would be well justified in including the total settlement value in  
10 calculating a reasonable fee. When the non-cash relief portion of a settlement can be  
11 reliably valued, courts often include the value of this relief in the common fund and award  
12 class counsel a percentage of the total. *See, e.g., Staton*, 327 F.3d at 974 (“[W]here the value  
13 to individual class members of benefits deriving from injunctive relief can be accurately  
14 ascertained . . . courts [may] include such relief as part of the value of a common fund for  
15 purposes of applying the percentage method . . .”). *See also* Principles of the Law of  
16 Aggregate Litigation, § 3.13(b) (American Law Institute, 2010) (“[A] percentage of the  
17 fund approach should be the method utilized in most common-fund cases, with the  
18 percentage being based on both the monetary and nonmonetary value of the judgment or  
19 settlement.”). Class counsel is requesting consistent relief here by asking the Court to  
20 award 25% of the \$66.6 million of which Settlement Class Members will receive immediate  
21 benefits upon Final Approval. Class Counsel is not seeking compensation for the  
22 approximately \$1.2 billion that BANA’s customers will save by not being assessed future  
23 EOBCs. An award of 25% of the \$66.6 million is reasonable. *See generally* Fitzpatrick Decl.

24 In evaluating a fee award, the main inquiry is whether the end result is  
25 reasonable. *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000). Ultimately, to ensure  
26 that the fee award is reasonable, “[s]election of the benchmark or any other rate must be  
27 supported by findings that take into account all of the circumstances of the case.”

1 *Vizcaino*, 290 F.3d at 1048. The Ninth Circuit has identified at least eight factors that  
2 district courts can examine in deciding whether the benchmark 25% is appropriate:

- 3 a. The results achieved by class counsel;
- 4 b. The length the case has transpired;
- 5 c. The complexity of the case;
- 6 d. The risks the involved in the case;
- 7 e. The percentages awarded in other class action cases;
- 8 f. Any non-monetary benefits obtained by class counsel;
- 9 g. The percentages in standard contingency-fee agreements in similar individual  
10 cases; and
- 11 h. Class counsel’s lodestar.

12 *See Six (6) Mexican Workers*, 904 F.2d at 1311; *Vizcaino*, 290 F.3d at 1048-50; *Michael A.*  
13 *Cramer, MAI, SRPA, Inc. v. United States*, 47 F.3d 379, 379 (10th Cir. 1995); *SStaton*, 327  
14 F.3d at 946. Consideration of each factor supports the 25% requested by Class Counsel.

### 15 **3. The Value of the Benefits and Results Achieved By Class Counsel.**

16 When determining the reasonableness of the fee request, the results achieved by  
17 Class Counsel should be of paramount concern to the Court. *See Vizcaino*, 290 F.3d at  
18 1048 (considering the “exceptional results for the class”). The benefits achieved in this  
19 common fund Settlement are tremendous and easily valued. BANA has agreed to pay the  
20 Settlement Class Members \$66.6 million as well as to pay approximately \$2 million in  
21 notice and settlement administration costs, for a total of \$68.6 million. However, the  
22 practice change BANA agreed to in the settlement—foregoing EOBCs altogether for at  
23 least five years—is worth many times this amount. Indeed, account holders will save some  
24 \$1.2 billion over this time period. *See Joint Decl.*, ¶33. This amount was objectively  
25 quantified based on historic data provided by BANA and confirmed by Class Counsel via  
26 confirmatory discovery. *Joint Decl.*, ¶23. According to data from BANA, the vast majority  
27 of class members still have accounts with BANA and will therefore benefit from these

1 savings.<sup>3</sup> The total settlement value, then, is easily many hundreds of millions of dollars.

2 This benefit is extraordinary considering the legal hurdles Plaintiffs faced, as  
3 discussed below. As Professor Fitzpatrick observes, the Class will save 100% of the  
4 EOBCs over the next five years pursuant to the agreed practice change. Fitzpatrick Decl.,  
5 ¶19. Settlement Class Members will receive their monetary distributions without the need  
6 to submit a claim. The amount each Settlement Class Member will recover will be fairly  
7 allocated and paid by direct deposit or by paper check. In short, the Settlement provides  
8 incredible benefits to Settlement Class Members. The risks and uncertainty attendant in  
9 this litigation were substantial and extraordinary. All other prior cases (including one  
10 involving BANA) had been unsuccessful. And, after this Court denied BANA's motion to  
11 dismiss, the Eleventh Circuit affirmed a decision of a Florida federal district court finding  
12 BANA's EOBC to be non-usurious and lawful. *See McGee v. Bank of Am., N.A.*, 674 Fed.  
13 App'x. 958 (11th Cir. Jan. 18, 2017) (unpublished). Plaintiffs pursued the same claim here.  
14 Thus, recovery was far from certain, and there was a significant risk that the Class could  
15 receive no recovery at all had Plaintiffs continued to litigate this case.

16 At a minimum, even excluding the \$2 million in administrative costs and the \$1.2  
17 billion in injunctive relief, the total settlement value here is \$66.6 million in cash (\$37.5  
18 million in cash and debt forgiveness of \$29.1 million). *In re Online DVD-Rental Antitrust*  
19 *Litig.*, 779 F.3d 934 (9th Cir. 2015), an antitrust case alleging that an agreement between  
20 Netflix and Walmart was anti-competitive, is an example of the Ninth Circuit affirming a  
21 fee awarded that recognized the total settlement value. Walmart agreed in the settlement  
22 to pay "a total amount of \$27,250,000, comprising both a 'Cash Component' and a 'Gift  
23 Card Component.'" *Id.* at 940. Class counsel sought, and was granted, a fee award of "25%  
24 of the overall settlement award of \$27,250,000." *Id.* at 949. The Ninth Circuit held the  
25 district court had properly calculated attorneys' fees based on the total settlement amount,

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26  
27 <sup>3</sup> Moreover, new account holders, will automatically benefit from this practice change as  
28 well because now they, too, will not be at risk of being charged EOBCs.

1 not just the “cash component.” *Id.* at 949-50.<sup>4</sup> Class Counsel requests consistent relief  
 2 here, asking the Court to award 25% of the \$66.6 million that Settlement Class Members  
 3 will receive immediate benefits upon Final Approval. An award of 25% of the \$66.6  
 4 million total value of the Settlement is reasonable. *See generally* Fitzpatrick Decl.

5 **4. The Risks Assumed by Class Counsel and the Complexity of the**  
 6 **Case Favor the Fee Award Sought.**

7 Class Counsel assumed a very real risk in taking on this complex case. These two  
 8 factors are conveniently addressed in tandem, and hue closely with the results achieved by  
 9 Class Counsel discussed above. Class Counsel took the case on a contingency basis, and  
 10 invested substantial time, effort and money with no guarantee of any recovery. They did  
 11 so in the face of their own repeated defeats in other federal courts on the NBA usury  
 12 claim. Joint Decl., ¶¶26-32. Most notably, BANA prevailed on the identical claims and  
 13 issues in the Southern District of Florida and the Eleventh Circuit in *McGee v. Bank of Am.,*  
 14 *N.A.*, 2015 WL 4594582 (S.D. Fla. July 30, 2015), *aff'd*, 674 F. App'x 958 (11th Cir. Jan.  
 15 18, 2017). That this Action survived a Motion to Dismiss and later settled with the relief  
 16 it did, is in and of itself a tremendous victory. In addition to *McGee*, other courts rejected  
 17 the theory of liability, both before and after this Court denied BANA’s motion to dismiss,  
 18 in *In re TD Bank, N.A. Debit Card Overdraft Fee Litig.*, No. 2613, 2015 WL 8493979 (D.S.C.  
 19 Dec. 10, 2015) (case dismissed);<sup>5</sup> *Shaw v. BOKF, N.A.*, No. 15-CV-0173-CVE-FHM, 2015

20 <sup>4</sup> *See also In re: Easysaver Rewards Litig.*, No. 09-cv-02094-BAS-WVG, 2016 WL 4191048, at  
 21 \*2, \*4-5 (S.D. Cal. Aug. 9, 2016) (approving 22.7% of \$38 million, which included both “a  
 22 \$12.5 million non-reversionary cash fund plus \$20.0 merchandise credits automatically  
 23 sent” to class members); *In re Lloyd’s Am. Tr. Fund Litig.*, No. 96 Civ. 1262 RWS, 2002 WL  
 24 31663577, at \*8 (S.D.N.Y. Nov. 26, 2002) (approving approximately 28% of the total  
 25 settlement value, which included \$8,500,000 in cash and “\$11,500,000 in Credit Notes to  
 26 be used by Class Members to reduce debt they owed or were claimed to owe”); *Cullen v.*  
 27 *Whitman Med. Corp.*, 197 F.R.D. 136, 46-47 (E.D. Pa. 2000) (approving 1/3 of the net  
 28 settlement, plus 1/3 of the interest accrued on the fund, where total settlement value  
 included \$5.97 million in cash and \$1.3 million in loan forgiveness); *Jacobs v. Huntington*  
*Bancshares Inc.*, No. 11-CV-000090 (Oh. Com. Pl. June 2, 2017) (approving 40% award of  
 the total settlement value, with a \$8,975,000 cash fund and \$7,000,000 debt forgiveness).

<sup>5</sup> *Dorsey v. TD Bank, N.A.*, No. 6:17-cv-01432 (D.S.C.), is a separately filed putative class  
 case that was transferred to the same MDL asserting the NBA usury claim, and a motion  
 to dismiss pending before the MDL court.



1 WL 6142903 (N.D. Okla. Oct. 19, 2015) (case dismissed); *Johnson v. BOKF, N.A. d/b/a*  
2 *Bank of Texas*, No. 3:17-cv-663, Dkt. No. 30 (N.D. Tex. Oct. 24-2017) (dismissed with  
3 leave to amend and motion to dismiss amended complaint is pending); *Moore v. MB Fin.*  
4 *Bank, N.A.*, No. 17 C 4716, 2017 U.S. Dist. LEXIS 189585 (Nov. 16, 2017) (amended  
5 complaint dismissed and appeal pending before the Seventh Circuit).

6 The case involved complicated issues and unsettled law. Had Settlement not been  
7 reached by the parties, there is a very real possibility that the entire case could have been  
8 wiped out by an adverse Ninth Circuit ruling, consistent with the ruling from Eleventh  
9 Circuit. Thus, as Professor Fitzpatrick observes, in light of other courts' rejection of this  
10 very legal theory, "unlike most other class action settlements, we do not need to speculate  
11 that class counsel here have overcome incredible risks; we have the *empirical proof* that they  
12 have done so. In light of the legal challenges this case faced (and continues to face—as I  
13 noted, this court certified the National Bank Act question for interlocutory appeal and the  
14 Ninth Circuit agreed to decide the issue), the Class's recovery here is *outstanding*."  
15 Fitzpatrick Decl., ¶19. Class Counsel's success in the face of all these prior rulings should  
16 be a significant and primary factor when evaluating the reasonableness of the fee  
17 requested. Indeed, *Vizcaino* recognized that "[r]isk is a relevant circumstance" in  
18 considering an attorneys' fee award where plaintiffs previously received adverse rulings  
19 over the course of litigation. *Vizcaino*, 290 F.3d at 1048. The same should hold true here,  
20 as Class Counsel previously experienced adverse rulings on this very issue in other cases.

21 **5. The Case Settled Only After Class Counsel Had Attained Maximum**  
22 **Leverage and Sufficient Information to Value the Possible Relief.**

23 This case has been pending for two years, and it settled while BANA's interlocutory  
24 appeal to the Ninth Circuit of the Court's denial of its motion to dismiss is pending.  
25 Sufficient work and legal and factually analysis occurred to allow Class Counsel to  
26 determine the benefits of resolving the case at what is arguably an "early" stage to give the  
27 Class immediate relief. Most critically, Class Counsel attained a significant victory on the  
28 fundamental contested issue—whether EOBCs are interest under the NBA—an issue on

1 which every other court had ruled for the banks. In addition, Class Counsel conducted  
2 sufficient informal and confirmatory discovery to value the case and to attain a fair result,  
3 including the extraordinary injunctive relief. The Court certified the question to the Ninth  
4 Circuit, which could have agreed with the Eleventh Circuit's decision in *McGee* and erased  
5 the value created by the early victory in this Court. Moreover, even if the Plaintiffs had  
6 won the appeal, they faced BANA's non-pleadings defense that it did not act "knowingly,"  
7 as required by, 12 U.S.C. §86, because courts had ruled its EOBC is not NBA interest.

8 The length of this litigation is not a basis to reduce the fee award. Fitzpatrick Decl.,  
9 ¶20 ("[T]he length-the-case-has-transpired factor is more a proxy for class counsel's  
10 performance than a measure of class counsel's performance itself; it would not make much  
11 sense otherwise: why would we want to encourage class counsel to delay resolving cases  
12 for no reason?"). As he further explains, the key issue is whether class counsel advanced  
13 the case to the point where it can properly evaluate the risks and value of the case:

14 [T]his factor makes sense only when it is a proxy for whether class counsel  
15 have dug far enough into the case to know what the case is worth and to  
16 provide the court with information about what the case is worth so it can  
17 evaluate whether the recovery is warranted by the risks and complexities  
18 of the case. *See Vizcaino*, 290 F.3d at 1050 n.5 ("We do not mean to imply  
19 that class counsel should necessarily receive a lesser fee for settling a case  
20 quickly; in many instances, it is relevant that counsel achieved a timely  
21 result for class members in need of immediate relief." (emphasis added));  
22 *Williamson v. Microsemi Corp.*, No. 5:14-cv-01827-LHK, 2015 U.S. Dist.  
23 LEXIS 191692 (N.D. Ca. Feb. 19, 2015) ("This Court will not reward  
24 attorneys for unnecessary litigation, nor punish them for resolving matters  
25 quickly, when such quick resolution is, as here, highly beneficial to the  
26 class."). No further litigation was needed here to uncover that  
27 information: as I explained above, we can examine what happened in the  
28 other EOBC litigation and figure out very quickly that the recovery here  
is incredible compared to most class actions in light of the risks the class  
faced. Indeed, with all the cases that class counsel here have collectively  
litigated against EOBCs, they are likely the most well versed lawyers in the  
entire country in this area of the law. Given that we know the track record  
of other cases litigated under the same theory, we know this case was very  
difficult to win without years and years of additional litigation to tell us  
that. But if there were any doubt about all this, it should be noted that  
class counsel had plenty of opportunity to intimately familiarize  
themselves with this case through the pre-mediation and post-mediation  
settlement processes—activities that included confirmatory discovery. As  
such, I do not believe this factor is good reason to reduce class counsel's  
fee award. Indeed, early settlement can be to the benefit of a class: it



1 cannot be forgotten that the Ninth Circuit had agreed to hear the  
 2 interlocutory appeal at the time this case settled; had the case continued  
 3 and had the Ninth Circuit joined the courts listed above and ruled against  
 4 the class here, the class would have ended up with nothing. As one might  
 5 expect, the class members charged EOBCs are typically those who can  
 6 least afford to be charged overdraft fees; accelerating relief to such class  
 7 members is a virtue, not a vice.

8 Fitzpatrick Decl., ¶20 (emphasis added).

9 Armed with extensive experience litigating overdraft fee and other class action  
 10 cases, *see generally Exhibits 3-6*, Class Counsel's collective wisdom was to make every  
 11 reasonable effort to achieve a settlement during the Ninth Circuit interlocutory appeal.  
 12 Notwithstanding the adverse appellate result in *McGee*, Class Counsel obtained an  
 13 outstanding result. Prior to and during the litigation, Class Counsel engaged in an extensive  
 14 factual investigation of the class claims, actively and diligently analyzing the strengths and  
 15 weaknesses of the case. With the clear risk of Ninth Circuit reversal, Class Counsel took  
 16 the opportunity to settle the case. Following *Vizcaino* and *Williamson*, no reduction should  
 17 be made from the 25% benchmark.<sup>6</sup> To do otherwise would only chill other lawyers from  
 18 pursuing risky consumer class cases worthy of pursuit on a contingent fee basis.

#### 16 **6. The Non-Monetary Benefits Obtained by Class Counsel.**

17 The benchmark award sought here is supported by the Ninth Circuit's long-  
 18 standing recognition that non-monetary benefits for a class obtained by Class Counsel is  
 19 a laudable consideration in determining the percentage of the fund. *See Pacific Enters.*  
 20 *Securities Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1049; *Staton*, 327 F.3d at 946. Professor  
 21 Fitzpatrick notes that his empirical study revealed that while 89% of class action settlement  
 22 included cash relief, only 23% conferred injunctive or declaratory relief. Fitzpatrick Decl.,  
 23 ¶21. He opines that "if courts do not depart upward when class counsel secures such [non-

24  
 25 <sup>6</sup> *See also Trombley v. Nat'l City Bank*, 826 F. Supp. 2d 179, 199 (D.D.C. 2011) (settlement  
 26 here "does not come too early to be suspicious nor too late to be a waste of resources, but  
 27 instead at a desirable point in the litigation for the parties to reach an agreement and to  
 28 resolve the issues without further delay, expense, and litigation.") (internal quotations  
 omitted); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 588 (N.D. Ill. 2011) ("That a case  
 is settled early does not establish that the class was ill-represented or that the settlement  
 was the product of collusion.").

1 monetary] relief, then class action lawyers will have no incentive to fight to obtain these  
 2 benefits—even though, as here, these benefits can be even more valuable to the class than  
 3 cash.” *Id.* Yet, Class Counsel is not directly asking to be compensated for that incredibly  
 4 valuable non-monetary benefit.<sup>7</sup> They only ask that the Court’s consideration of the non-  
 5 monetary relief result in the Court determining that a 25% benchmark award (measured  
 6 from direct monetary relief) is especially justified and reasonable. *Cf. Vizcaino*, 290 F.3d at  
 7 1049 (discussing non-monetary benefits as partial justification for a 28% award).

### 8 **7. The Percentages in Standard Contingency-Fee Agreements in** 9 **Similar Individual Cases.**

10 Class Counsel confirm that the retention agreements with the Plaintiffs are  
 11 contingent fee agreements. *Exhibit 3*, ¶16. No payment of attorneys’ fees would occur in  
 12 this case but for a fee award in an individual or class settlement. *Id.* Consistent with  
 13 standard-contingent fee agreements in individual cases, were the case to settle on an  
 14 individual basis, Class Counsel agreed to set its fees at 33.33% of any recovery. *Id.* Class  
 15 Counsel took on this case with no guarantee they would receive any compensation for  
 16 their work, which occupied significant resources at Class Counsel firms even before this  
 17 case was filed two years ago. Public interest is served by rewarding attorneys who assume  
 18 representation on a contingent basis with an enhanced fee to compensate them for the  
 19 risk that might be paid nothing at all for their work. This practice encourages attorneys to  
 20 assume this risk and allows plaintiffs who would otherwise not be able to hire an attorney  
 21 to obtain competent counsel. *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,  
 22 1299 (9th Cir. 1994). Class Counsel’s representation of Plaintiffs and the Settlement Class  
 23 supports the 25% benchmark award requested, a rate considerably below the standard  
 24 33% rate at which contingent fee attorneys regularly contract. Fitzpatrick Decl., ¶22.

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26  
 27 <sup>7</sup> BANA will also update the reports it sent to any credit bureau to show that Settlement  
 28 Class Members now owe BANA no monies or lesser monies than had been previously  
 reported to account for forgiveness of EOBCs.

1                   **8. The Requested Fee is Justified by Awards in Similar Cases.**

2                   The most common fee percentages awarded in common fund class actions are 25%,  
 3 30%, and 33%, with the mean and median at 25%. *Id.* ¶¶16-18 (detailing consistency with  
 4 the 111 settlements in the Ninth Circuit). Examples of this Court granting 25% benchmark  
 5 awards include *In re Daou Sys. Secs. Litig.*, 2008 U.S. Dist. LEXIS 56320, at \*6-7; *Dennis*,  
 6 2008 U.S. Dist. LEXIS 163118 at \*21-22 (awarding 25% of cash portion of settlement);  
 7 *Chavez*, 2010 U.S. Dist. LEXIS 56138 at \*7 (awarding “\$2,000 less than 25%”). Class  
 8 Counsel is seeking far less than 5% of the total monetary and non-monetary value of the  
 9 Settlement, 24.3% of the cash benefit if the notice and administration costs are included,  
 10 and 25% of the \$66.6 million cash benefits to be directly distributed to the Class. Under  
 11 any of these metrics, the fee percentage requested here is either *far below, below, or at* virtually  
 12 all the average and median data both nationwide and in the Ninth Circuit. *Vizcaino* instructs  
 13 that it is appropriate “to examine lawyers’ reasonable expectations, which are based on the  
 14 circumstances of the case and the range of fee awards out of common funds of comparable  
 15 size.” 290 F.3d at 1050. Here, the requested fee, 25% of the Settlement Payment, is well  
 16 within the range of acceptable attorneys’ fees in Ninth Circuit cases.

17                   Since 2010, numerous courts have awarded percentage of the fund fees in other  
 18 bank overdraft fee class actions (based on different—and arguably less difficult—theories  
 19 of liability). The following table depicts overdraft fee settlements nationwide, all of which  
 20 resulted in fee awards at or significantly above the Ninth Circuit’s 25% benchmark:

21

<u>Overdraft Fee Case Name</u>	<u>Percentage-of-the-Fund Awarded</u>
<i>Lopez v. JPMorgan Chase Bank, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	44% of value of settlement, which includes 30% of \$110 million cash fund and 30% of value of practice changes
<i>Jacobs v. Huntington Bancshares Inc.</i> No. 11-cv-000090 (Lake County Ohio)	40% of value of settlement, which includes 40% of \$8.975 million and 40% of \$7 Million in debt forgiveness
<i>Nelson v. Rabobank, N.A.</i> , No. RIC 1101391 (Cal. Supr.)	35.2% (\$750k fee includes % of practice changes)
<i>Molina v. Intrust Bank, N.A.</i> , No. 10-CV-3686 (Dist. Ct. Ks.)	33% of \$2.7 million

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1	<i>Hawkins et al v. First Tenn. Bank, N.A.</i> (Cir. Ct. Tenn.)	35% of \$16.75 million
2	<i>Swift v BancorpSouth</i> , No. 1:10-cv-00090-GRJ (N.D. Fla.)	35% of \$24 million
3	<i>Casto v. City National Bank, N.A.</i> , No. 10-C-1089 (Cir. Ct. W.Va.)	33% of \$3 million
4	<i>Schulte v. Fifth Third Bank</i> , No. 09-cv-6655 (N.D. Ill.)	33% of \$9.5 million
5	<i>Johnson v. Community Bank, N.A.</i> , No. 12-cv-01405-RDM (M.D. Pa.)	33% of \$2.5 million
6	<i>Bodnar v. Bank of America</i> , No. 5:14-cv- 03224-EGS (E.D. Pa.)	33% of \$27 million
7	<i>Harris v. Associated Bank, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$13 million
8	<i>Duval v. Citizens Bank Fin. Group, Inc.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$137.5 million
9	<i>Mosser v. TD Bank, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$62 million
10	<i>Anderson v. Compass Bank</i> No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$11.5 million
11	<i>Casayuran v. PNC Bank, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$90 million
12	<i>Orallo v. Bank of the West</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$18 million
13	<i>Wolfgeher v. Commerce Bank, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of value of settlement, which includes 30% of \$18.3 million cash and 30% of value of practice changes
14	<i>McKinley v. Great Western Bank</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$2.2 million
15	<i>Eno v. M &amp; I Marshall &amp; Ilsley Bank</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$4 million
16	<i>Larsen v. Union Bank</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$35 million
17	<i>Tornes v. Bank of America, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$410 million
18	<i>Case v. Bank of Oklahoma, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.)	30% of \$19 million
19	<i>Allen v. UMB Bank</i> , No. 1016-CV34791 (Cir. Ct. Mo.)	30% of \$7.8 million
20	<i>Jones v. United Bank</i> , (Jackson, WV)	30% of \$3.3 million
21	<i>Higgins v. Pinnacle Bank</i> , (Tenn. St. Ct.)	30% of \$1.25 million
22	<i>Beason v. Liberty Bank</i> , (Ark. St. Ct.)	30% of \$325k
23	<i>Trombley v. National City Bank</i> , No. 10-00232 (JDB) (D.D.C.)	25% of \$12 million
24	<i>LaCour v. Whitney Bank</i> , No. 11-cv-1896-T-33-MAP (M.D. Fla.)	25% of \$6.8 million
25	<i>Mathena v. Webster Bank, N.A.</i> , No. 3:10-cv-1448-SRU (D. Conn.)	25% of \$2.8 million
26	<i>Taulava v. Bank of Hawaii</i> , No. 11-1-0037-02 KTN (1st Cir. Haw.)	25% \$9 million

The results in those cases were tremendous for consumers. However, in contrast

1 to Plaintiffs' legal theory that has gained acceptance only by this Court, those cases  
 2 involved a legal theory that ultimately gained wide acceptance. This comparison supports  
 3 Class Counsel's request for a \$16.65 million dollar, which is the benchmark 25%.

4 **9. A Lodestar Cross-Check Supports a 25% Benchmark Award.**

5 The Court is not obligated to perform a lodestar cross-check in evaluating the  
 6 percentage of the fund to be awarded. *In re Google Referrer Header Privacy Litig.*, 869 F.3d 737  
 7 (9th Cir. 2017) (district court did but was not required to do a lodestar cross-check);  
 8 *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 547 (9th Cir. 2016) ("a cross-check is  
 9 entirely discretionary"); *compare Chavez*, 2010 U.S. Dist. LEXIS 56138 at \*7-\*8 (awarding  
 10 fee with no lodestar crosscheck) *with In re Daou*, 2008 U.S. Dist. LEXIS 56320, at \*5-\*6  
 11 (awarding fee with lodestar crosscheck). The foregoing should assuage the Court that using  
 12 the percentage-of-the-fund method is appropriate without a cross-check. Fitzpatrick  
 13 Decl., ¶¶23-25. Nevertheless, recognizing that this Court at times conducts a lodestar  
 14 cross-check, Class Counsel has provided the Court with the information needed to do so.  
 15 The first step is to determine the lodestar amount, multiplying the Class Counsel's total  
 16 number of hours expended by their reasonable hourly rates. *E.g.*, *Bluetooth*, 654 F.3d at  
 17 941-42. The second step requires the Court to consider a multiplier to add or subtract  
 18 from the lodestar. *See Id.*; *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

19 Class Counsel's declarations evidence that they reasonably expended a total of 2,158  
 20 hours, inclusive of an estimate of the hours that they will spend to work to complete the  
 21 Final Approval process and accounting for time that will be spent post-Final Approval,  
 22 along with the requested hourly rates.<sup>8</sup> *See Exhibits 3-6*. Consistent with formatting this  
 23 Court has previously requested, the declarations summarize the categories of major stages  
 24 of the case, explaining the hours spent by the different billers at each of the Class Counsel's  
 25 law firms and their respective hourly rates that are requested to be approved as reasonable.

26 \_\_\_\_\_  
 27 <sup>8</sup> Some hours are for Class Counsel's time litigating *McGee* and *Shaw*, which work benefited  
 28 the Class. Fitzpatrick Decl., ¶26 n.6 (noting it is not uncommon to treat time intertwined  
 across cases as one when performing a lodestar crosscheck (cases citations omitted)).



1            “[T]he district court must determine a reasonable hourly rate considering the  
2 experience, skill, and reputation of the attorney requesting fees.” *Chalmers v. Los Angeles*,  
3 796 F.2d 1205, 1210 (9th Cir. 1986). A “reasonable hourly rate is ordinarily the prevailing  
4 market rate in the relevant community.” *KKelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir.  
5 2016); *see also HaHartless v. Clorox Co.*, 273 F.R.D. 630, 644 (S.D. Cal. 2011) (stating that  
6 rates are “reasonable where they [are] similar to those charged in the community and  
7 approved by other courts.”). The requested hourly rates are supported by an expert  
8 opinion from a class action litigator in the Southern District of California. *See Exhibit 7*.  
9 “Affidavits of the plaintiff[s] attorney and other attorneys regarding prevailing fees in the  
10 community, and rate determinations in other cases, particularly those setting a rate for the  
11 plaintiff[s] attorney, are satisfactory evidence of the prevailing market rate.” *United*  
12 *Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

13            In addition to affidavits and evidence, the court may also “rely on its own familiarity  
14 with the legal market.” *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011). The Court  
15 should also consider the recent decisions in which this Court approved rates similar to, or  
16 higher than, Class Counsel’s requested rates. *See, e.g., Beaver v. Tarsadia Hotels*, No. 11-cv-  
17 01842-GPC-KSC, 2017 U.S. Dist. LEXIS 160214, at \*43 (S.D. Cal. Sept. 28, 2017)) (hourly  
18 rates of \$740, \$725, \$720, \$650, \$575, \$400, and \$395 for attorneys, \$225 for law clerks,  
19 \$150 for summer interns, and \$200 for law students were “the prevailing rates in the  
20 community for attorneys of comparable skill, experience and reputation”); *In re: Easysaver*  
21 *Rewards Litig.*, 2016 WL 4191048, at \*4 (“the rates billed by the attorneys (ranging from  
22 \$625 to \$750 for partners; \$240 to \$450 for associates, \$125 to \$260 for paralegals, \$575  
23 for of-counsel, and \$105 for legal assistants) are reasonable and reflect the prevailing rate  
24 seen by this court in other similar cases”); *Hazlin v. Botanical Labs., Inc.*, No. 13CV0618-  
25 KSC, 2015 WL 11237634, at \*7 (S.D. Cal. May 20, 2015) (hourly rates of \$750, \$575, and  
26 \$375 were reasonable in a consumer class action); *Makaeff v. Trump Univ., L.L.C.*, No.  
27 10CV0940 GPC(WVG), 2015 WL 1579000, at \*4-5 (S.D. Cal. Apr. 9, 2015) (approving  
28

1 rates “ranging from \$250 to \$440 for associates, and \$600 to \$825 for partners” as  
 2 “consistent with . . . those previously approved by this Court and this District in class  
 3 action settlements, and with this Court’s familiarity of the rates charged in the San Diego  
 4 community”); *Grant v. Cap. Mgmt. Servs., L.P.*, No. 10-CV-2471-WQH (BGS), 2014 WL  
 5 888665, at \*6 (S.D. Cal. Mar. 5, 2014)(approving as “reasonable” rates of \$875, \$695, \$525,  
 6 \$395, and \$245 for attorneys and \$150 for paralegals in a consumer class action).

7 Ninth Circuit precedent permits Class Counsel to base their lodestar calculations  
 8 on current market rates in recognition that Class Counsel has taken this litigation as a  
 9 contingent fee matter delaying any recovery until the outcome of the case. *Fischel v. Eq.*  
 10 *Life Assur. Soc’y of the U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002); *Vizcaino*, 290 F.3d at 1050-  
 11 51. Class Counsel submits that its hourly rates ranging from \$250 to \$800 for attorneys,  
 12 and \$180 to \$200 for paralegals, are reasonable and in line with, or below, prevailing rates  
 13 in the Southern District for similar services rendered by comparably skilled and  
 14 experienced attorneys. Applying the requested rates to the total hours expended results in  
 15 a \$1,428,047.50 lodestar. An award of \$16.65 million would result in a multiplier of 11.66.

16 Class Counsel’s contingent representation, combined with the excellent results  
 17 obtained in this risky litigation, and the quality of Class Counsel’s previous work and future  
 18 work to be done, support application of the requested multiplier under the *Kerr* factors.  
 19 526 F.2d at 69-70. Although this is a higher multiplier, the cross-check should not be  
 20 given undue weight given that Class Counsel maximized the value for the class by settling  
 21 the case at the point of maximum leverage. The lodestar crosscheck should not be used to  
 22 undermine the rationale of the preferred percentage-of-the-fund method in a case like this.

23 [C]ourts that entertain the lodestar crosscheck do not create the best  
 24 incentives for class action lawyers. *In particular, the lodestar crosscheck*  
 25 *reintroduces the very same undesirable consequences of the lodestar method that the*  
 26 *percentage method was designed to correct in the first place.* For example, as the  
 27 Ninth Circuit has observed, if class counsel believe that courts will cap the  
 28 percentage awarded at some multiple of their lodestar, then *they will have*  
*precisely the same incentives they would if courts used the lodestar method alone: to be*  
*inefficient, perform unnecessary projects, delay results, and overbill and overstaff work*  
*in order to run up their lodestar.* See *Vizcaino*, 290 F.3d at 1050 n. 5 (“[I]t is



1 widely recognized that the lodestar [cross-check] creates incentives for  
 2 counsel to expend more hours than may be necessary on litigating a case  
 3 so as to recover a reasonable fee . . . .”). *The lodestar crosscheck also caps the*  
 4 *amount of compensation class counsel can receive from a settlement, thereby misaligning*  
 5 *their incentives from those of class members, and blunting their incentive to achieve the*  
 6 *largest possible award for the class. See Fitzpatrick, Class Action Lawyers, supra,*  
 7 *at 2065-66.*

8 Fitzpatrick Decl., ¶24 (emphasis added).

9 Professor Fitzpatrick also offers empirical evidence of multipliers that have been  
 10 approved by Courts in the range that Class Counsel requests here, exhibiting that when  
 11 other factors justify the requested fee (like those detailed herein), courts should not be  
 12 afraid to employ an above-average lodestar multiplier. *Id.* ¶26. As he concludes:

13 Not only is this the only EOBC-usury case—among many—that has  
 14 survived dismissal, but the relief class counsel have won here will save  
 15 class members and others *over a billion dollars* over the next five years in  
 16 addition to reimbursing them *tens of millions of dollars* of past EOBC charges.  
 17 In other words, the results in this case far exceed what a reasonable  
 18 observer might have forecast when this case was filed. It is not  
 19 unreasonable to award class counsel a fee percentage that results in a high  
 20 lodestar multiplier when class counsel have achieved results that are even  
 21 higher.

22 *Id.* Giving due consideration for all of the foregoing, the Court should conclude that a  
 23 lodestar cross-check against the \$16.65 million fee award requested by Class Counsel  
 24 supports that award, in recognition of Class Counsel’s achievements for the Class.

25 **B. CLASS COUNSEL SHOULD BE REIMBURSED FOR COSTS AND**  
 26 **EXPENSES REASONABLY SPENT DURING THE LITIGATION**

27 An attorney is entitled to “recover as part of the award of attorneys’ fees those out-  
 28 of-pocket expenses that would normally be charged to a fee paying client.” *Harris v.*  
*Marboefer*, 24 F.3d 16, 19 (9th Cir. 1994) (citation omitted). Class Counsel’s declarations  
 detail each of the claimed and recoverable costs and expenses, separating each by category.  
 The expenses were incurred to initiate the action; to allow experienced overdraft class  
 action litigators to appear pro hac vice; to retain the services of a preeminent mediator that  
 assisted the parties in successfully settling the case; to retain a well-qualified banking data  
 expert to prepare for mediation; for travel expenses (requested at 50% of amounts  
 expended); and legal research costs. *Exhibits 3-6*. Because the costs and expenses are

1 small relative to the common fund amount, and are facially reasonable and necessary, the  
 2 Court should award the requested **\$53,119.92**. Class Counsel has incurred fees for engaging  
 3 Professor Fitzpatrick's services in this action, but are not seeking reimbursement for his  
 4 charges. Moreover, Class Counsel anticipates incurring future expenses in connection with  
 5 seeking Final Approval of the Settlement, but likewise will not seek reimbursement.

6 **C. THE CLASS REPRESENTATIVES SHOULD RECEIVE THE**  
 7 **REQUESTED SERVICE AWARDS FOR THEIR EFFORTS**

8 Class Counsel seek Service Awards of \$5,000.00 for each Class Representative's  
 9 services. Totaling \$20,000.00, the Service Awards will represent 0.0003% of \$66.6 million,  
 10 making such awards eminently reasonable. As this Court observed in *Dennis*, 2013 U.S.  
 11 Dist. LEXIS 163118, at \*25: "Incentive awards are fairly typical in class action cases"  
 12 (citing *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)).

13 "Such awards are discretionary . . . and are intended to compensate class  
 14 representatives for work done on behalf of the class, to make up for  
 15 financial or reputational risk undertaken in bringing the action." *Id.* "The  
 16 criteria courts may consider in determining whether to make an incentive  
 17 award include: 1) the risk to the class representative in commencing suit,  
 18 both financial and otherwise; 2) the notoriety and personal difficulties  
 19 encountered by the class representative; 3) the amount of time and effort  
 20 spent by the class representative; 4) the duration of the litigation and; 5)  
 21 the personal benefit (or lack thereof) enjoyed by the class representative  
 22 as a result of the litigation." *Van Vranken v. Atlantic Richfield Co.*, 901 F.  
 23 Supp. 294, 299 (N.D. Cal. 1995) (citations omitted).

24 *Dennis*, 2013 U.S. Dist. LEXIS 163118, at \*25. *Staton*, 327 F.3d at 977, addresses the  
 25 relevant factors, similarly referring to the actions the plaintiff has taken to protect the  
 26 interests of the class; the degree to which the class has benefitted from those actions; the  
 27 amount of time and effort the plaintiff expended in pursuing the litigation.

28 The Class Representatives all took risks by offering their services when the legal  
 landscape for NBA usury claims was particularly averse to their interests. Their claims,  
 which publicly disclose their personal financial difficulties, create notoriety regardless of  
 their success on the claims. Had they failed, they created risk to their reputations. They  
 should be commended for taking action to protect the interests of millions of

1 accountholders who were affected by BANA's EOBC policy, on top of their own  
2 individual usury claims. It cannot be disputed that the Plaintiffs' efforts have created  
3 extraordinary financial benefits for the Class, compensating them for past harm and  
4 protecting them from future harm. Their efforts will also inure to the benefit of new  
5 accountholders whose accounts will not be subject to EOBCs for at least the next five  
6 years. Plaintiffs expended hours in advancing this litigation against a large and powerful  
7 adversary. Each conferred with Class Counsel on a number of occasions. Joint Decl., ¶3.  
8 They gathered documents pertaining to their EOBC charges and explained them to Class  
9 Counsel to confirm that they had claims which could be pursued. *Id.*

10 The \$5,000 requested for each Class Representatives in recognition of their service  
11 on behalf of the Settlement Class is reasonable and appropriate. This amount was  
12 approved by this Court in *Dennis*, 2013 U.S. Dist. LEXIS 163118, at \*25 (citing cases within  
13 this District and without, including *Cicero v. DirecTV, Inc.*, No. EDCV 07-1182, 2010 U.S.  
14 Dist. LEXIS 86920, at \*19-20 (C.D. Cal. July 27, 2010), which also approved a \$7,500 and  
15 \$5,000 service awards). *See also Chavez*, 2010 U.S. Dist. LEXIS 56138, at \*8 (approving  
16 \$7,500 awards); *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 457 (9th  
17 Cir. 2000) (affirming \$5,000 award out of a fund of \$1.725 million); *Fontes v. Heritage*  
18 *Operating, Ltd. P'ship*, No. 14cv1413-MMA (NLS), 2016 U.S. Dist. LEXIS 50502, at \*22  
19 (S.D. Cal. Apr. 14, 2016) (approving \$5,000 award out of \$550,000.00 common fund);  
20 *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731, at \*19-20 (S.D. Cal. July 7,  
21 2010) (approving \$5,000 award in an antitrust case settling for \$440,000).

#### 22 IV. CONCLUSION

23 Based on the foregoing, Plaintiffs and Class Counsel respectfully request that the  
24 Court award attorneys' fees of **\$16,650,000.00** and costs of **\$53,119.92**. In addition,  
25 Plaintiffs and Class Counsel request that the Court approve Service Awards of **\$5,000.00**  
26 per Class Representative for a total of **\$20,000.00**.

1 Dated: February 19, 2018

2 Respectfully submitted,

3 *s/ Jeff Ostrow*

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

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# EXHIBIT 1

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL, on behalf of  
herself and all others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 3:16-cv-00492-L-WVG

**JOINT DECLARATION OF  
CLASS COUNSEL JEFF OSTROW,  
HASSAN ZAVAREEI, CRISTINA  
M. PIERSON AND BRYAN S.  
GOWDY IN SUPPORT OF  
APPLICATION FOR  
ATTORNEYS' FEES AND  
REIMBURSEMENT OF COSTS  
AND SERVICE AWARDS**

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018 at 11:00am

We, Jeff Ostrow, Hassan Zavareei, Cristina M. Pierson and Bryan S. Gowdy (“Class Counsel”), pursuant to 18 U.S.C. § 1746, hereby declare as follows:

1. We are Class Counsel under the Settlement with Bank of America, N.A. (“BANA”) being presented to the court for Final Approval. We submit this declaration in support of Plaintiffs’ Application for Attorneys’ Fees and Costs and for Service Awards (“Fee and Expense Application”). We have personal knowledge of the facts set forth in this declaration, and could testify competently as to them if called upon to do so. This declaration summarizes the work performed by Class Counsel in this litigation that led to an outstanding result for the class.

**A. History of the Litigation**

2. Prior to and during this litigation, Class Counsel conducted an investigation relating to the assessment of Extended Overdrawn Balance Charges (“EOBCs”) upon checking accounts held by BANA customers. Throughout the litigation, Class Counsel

1 worked closely together to formulate case strategy. Work was divided between all four  
2 firms to avoid unnecessary duplication.

3 3. Class Counsel interviewed the Plaintiffs in this action at length regarding  
4 their bank statements and any EOBCs assessed and paid. In addition, Class Counsel  
5 analyzed the legislative history of the National Bank Act (“NBA”) and its implementing  
6 regulations, as well as other regulations, guidance, academic articles, press releases, and  
7 consumer complaints to understand the purpose and impact of EOBCs and other similar  
8 charges assessed by other banks. This includes our participation in prosecuting claims in  
9 *McGee v. Bank of America, N.A.*, 2015 WL 4594582 (S.D. Fla. July 30, 2015), *aff’d*, 674 Fed.  
10 Appx. 958 (11th Cir. January 18, 2017) (unpublished), and *Shaw v. BOKF, N.A.*, No. 15-  
11 CV-0173-CVE-FHM, 2015 WL 6142903 (N.D. Okla. Oct. 19, 2015) (case dismissed).  
12 Throughout this litigation, Class Counsel has continued to monitor, research, and review  
13 these materials.

14 4. In February 2016, Class Counsel worked with Plaintiff Joanne Farrell to  
15 review and understand her bank statements.

16 5. Based on Class Counsel’s experience with the *McGee* and *Shaw* usury cases  
17 under the NBA, Class Counsel drafted a Class Action Complaint setting forth Plaintiff  
18 Farrell’s allegations in a clear and detailed manner.

19 6. In April 2016, BANA filed a Motion to Dismiss on the ground, among  
20 others, that the EOBCs do not constitute “interest” under the NBA. BANA’s brief cited  
21 district court cases from across the country in which the courts dismissed similar claims  
22 alleging that extended overdraft fees like the EOBCs are usurious interest charges under  
23 the NBA.

24 7. Class Counsel reviewed and researched BANA’s arguments on issues like the  
25 applicability of guidance from the Office of the Comptroller of the Currency (“OCC”) and  
26 the definition of an “extension of credit,” and Class Counsel drafted a substantial  
27 opposition to BANA’s motion to dismiss.





1 settlement proposal for this highly unique case. Class Counsel drafted a settlement  
2 proposal and demand letter, and sent the same to BANA.

3 14. Class Counsel also researched and drafted a Reply in Support of Plaintiff  
4 Farrell's motion to strike BANA's Affirmative Defenses in its Amended Answer.

5 15. On March 1, 2017, Class Counsel prepared for and participated in an Early  
6 Neutral Evaluation conference before United States Magistrate Judge William V. Gallo.

7 16. Also in March, Class Counsel began to prepare to file the Amended  
8 Complaint. Class Counsel held meetings with all new clients, reviewed their bank  
9 statements, and drafted new fact sections to be added to the Complaint. Plaintiff Farrell's  
10 Motion for Leave to File an Amended Complaint was filed on March 13, 2017. Before  
11 filing the Amended Complaint, Class Counsel researched whether additional claims could  
12 be brought on legal theories, other than the usury theory, including, for example, a  
13 potential claim under the Equal Credit Opportunity Act. Ultimately, Class Counsel  
14 determined the best course of action was to amend the Complaint so as to add the new  
15 clients as plaintiffs but not to add any new legal theories.

16 17. After the Court granted BANA's Motion to Certify an Interlocutory Appeal  
17 on April 11, 2017, Class Counsel began to prepare to defend against an appeal in the Ninth  
18 Circuit, first by preparing detailed briefing to persuade the Ninth Circuit not to entertain  
19 the question certified by this Court. Once the Ninth Circuit agreed to decide the certified  
20 question, Class Counsel incurred significant time contacting, and coordinating with,  
21 organizations who might have an interest in filing amicus briefs in support of the Plaintiffs.

22 18. Meanwhile, Class Counsel began to pursue the possibility of mediation. In  
23 early June 2017, the parties agreed to mediate before the Honorable Layn R. Phillips (Ret.),  
24 a highly respected mediator with extensive experience in the mediation of complex class  
25 actions.

26 19. Class Counsel expended significant effort preparing a robust, detailed  
27 mediation statement, which directly contributed to the excellent result obtained for the  
28

1 Settlement Class in the Settlement Agreement. The mediation statement made Plaintiffs’  
2 best case for the merits of their arguments and incorporated detailed factual and legal  
3 analyses. Class Counsel expended significant effort researching every possibly legal angle,  
4 including the meaning of the “knowingly” standard under the NBA and other statutes and  
5 researching and reviewing OCC regulations. Class Counsel pressed BANA to provide  
6 certain data necessary to evaluate damages by drafting and serving a demand letter. Class  
7 Counsel identified, retained, and met with an expert (Arthur Olsen) who provided  
8 substantial support for Plaintiffs’ damages analysis.

9         20. Upon receipt of BANA’s mediation statement materials in August 2017,  
10 Class Counsel reviewed and researched the materials and discussed a response. Class  
11 Counsel drafted a Mediation Reply Statement to respond to the mediator’s targeted  
12 questions presented to both sides, and also reviewed and researched the arguments  
13 presented in BANA’s mediation statement.

14         21. On August 25, 2017, Class Counsel attended an all-day mediation with Judge  
15 Phillips in Newport Beach, California, diligently and in good faith negotiating the potential  
16 resolution of the Action, but were unable to reach an agreement that day.

17         22. During September and October 2017, Judge Phillips continued to  
18 communicate with the parties to further settlement efforts. Class Counsel communicated  
19 with Judge Phillips, BANA’s outside counsel, and its Deputy General Counsel, Jana Litsey,  
20 as part of the negotiations. The negotiations were adversarial, and required numerous  
21 telephone calls, emails, and discussions over the details of the ultimate Settlement. After  
22 approximately two months of negotiations, the parties agreed to the material terms of this  
23 Settlement. The parties first discussed attorneys’ fees and costs after agreeing to the  
24 material terms of the Settlement.

25         23. In October 2017, Class Counsel prepared for and participated in a  
26 confirmatory discovery meeting in Charlotte, North Carolina with BANA’s Fee  
27 Management Executive, Riaz Bhamani. Mr. Bhamani supervised gathering and analysis of  
28

1 the data used to calculate the damage figures that were provided before the mediation.  
2 During the interview, Mr. Bhamani explained the assumptions made and methods used  
3 for each of these calculations in great detail. We explored those assumptions and methods  
4 with rigorous questioning and became confident that the numbers we relied on were  
5 indeed trustworthy and accurate.

6 24. Based on that meeting and the prior negotiations, Class Counsel drafted a  
7 Settlement Agreement, Preliminary Approval Motion, Class Notices, and a Preliminary  
8 Approval Order for the Court's consideration. The Court preliminarily approved the  
9 Settlement, subject to the parties making changes to the Class Notices. Thereafter, Class  
10 Counsel began working with and continues to work with the Notice and Settlement  
11 Administrator to effectuate notice and all other aspects of the notice plan.

12 25. To accomplish the work described above, Class Counsel regularly drafted  
13 other court filings such as proposed orders, stipulations, notices of motion, and  
14 declarations in support of Plaintiffs' various memoranda.

15 **B. The Risks Borne by Class Counsel**

16 26. From the outset, Class Counsel anticipated spending hundreds or even  
17 thousands of hours and advancing hundreds of thousands of dollars to advance this claim  
18 with no guarantee of success, especially given the dismissal of the *McGee* and *Shaw* actions.  
19 Class Counsel knew that prosecuting the claim would require that other work be foregone.

20 27. This case posed significant risks regarding the applicable legal and factual  
21 issues. As noted above, similar claims against other national banks were unsuccessful in  
22 every other district court that analyzed them. Thus, the risks in this case were especially  
23 significant. As far as we know, this is the only case alleging that extended overdraft fees  
24 are usurious interest under the National Bank Act in which the plaintiff survived a motion  
25 to dismiss. Thus, numerous examples exist where plaintiffs' counsel in contingent cases such  
26 as this, after the expenditure of thousands of hours and advancing hundreds of thousands  
27 of dollars, have received no compensation. We are aware of many hard-fought lawsuits  
28

1 where, because of the discovery of facts unknown when the case was commenced, changes  
2 in the law during the pendency of the case, or a decision of a judge or jury following a trial on  
3 the merits, excellent professional efforts of members of the plaintiffs’ bar resulted in zero fees.

4 28. In accepting this case, Class Counsel bore considerable risk. We took this  
5 case on a fully contingent basis, meaning that we were not paid for any of our time, and  
6 that we agreed to pay all costs and out-of-pocket expenses without any reimbursement.  
7 From the outset, Class Counsel recognized that it would be contributing a substantial  
8 amount of time and advancing significant costs in prosecuting this class action with no  
9 guarantee of compensation or recovery, in the hopes of prevailing against a well-funded  
10 defense.

11 29. Because of the nature of a contingent practice where cases are typically  
12 complex and last several years, not only do contingent fee law firms such as Class  
13 Counsels’ firms have to pay regular overhead, but they also have to advance the expenses  
14 of the litigation. Given it often takes years for these cases to conclude, the financial burden  
15 on contingent fee counsel is far greater than on a firm that is paid on an ongoing or hourly  
16 basis.

17 30. BANA was represented by a highly-skilled and well-resourced litigation firm,  
18 so there was an increased risk that BANA would prevail at the class certification stage or  
19 later on summary judgment or after a prolonged trial.

20 31. Had the parties not agreed to the Settlement, they would have remained  
21 embroiled in contested issues of both law and fact for years to come.

22 32. In reaching the Settlement, Plaintiffs have avoided the very real risk that this  
23 Court or the Ninth Circuit might find that an EOBC is not “interest” under the NBA.

24 **C. The Outstanding Results for the Class**

25 33. The Settlement Agreement provides outstanding relief for the Settlement  
26 Class, which includes “all holders of [BANA’s] consumer checking accounts who [from  
27 February 25, 2014 to December 30, 2017] were assessed at least one EOBC that was not  
28

1 refunded.” BANA has agreed to a wholesale change in its practice of charging EOBCs,  
2 and to no longer assess these fees when an account remains overdrawn. This change will  
3 be for a minimum of five years and will save BANA’s customers approximately \$1.2  
4 billion. In addition, BANA agreed to pay the class \$66.6 million in cash and debt relief,  
5 update the reports it sent to credit bureaus on any Settlement Class Members that had  
6 previously been reported for failing to pay an EOBC, and pay the costs of notifying the  
7 class and administering the Settlement.

8 34. The Settlement Agreement provides extraordinary and definite benefits to  
9 the Settlement Class. Millions of Settlement Class Members will benefit and receive  
10 compensation for their losses and avoid the very real risk of no recovery.

11 **D. The Diligent Prosecution of This Case**

12 35. Class Counsel devoted significant resources to the Action by mastering the  
13 relevant facts, drafting Complaints and comprehensive memoranda of law in connection  
14 with BANA’s Motion to Dismiss and efforts to obtain interlocutory review of the Order  
15 denying that motion, formulating strategy, preparing the other motions detailed above,  
16 preparing for and attending mediation, and otherwise preparing to try the case if necessary.

17 36. The Settlement is a product of hard-fought litigation and takes into  
18 consideration the risks specific to the case. It is the result of extensive arms-length  
19 negotiations, and was negotiated by highly experienced and capable counsel with a full  
20 understanding of the strengths and weaknesses of their respective positions.

21 **E. Complexity of the Action**

22 37. As demonstrated by the discussion above of the contested issues in this  
23 Action, had the Settlement not been reached by the parties, the complex factual and legal  
24 questions at issue would undoubtedly continue to be the subject of substantial analysis and  
25 dispute. Numerous complex issues would necessarily be involved in Class Counsel’s efforts  
26 to prove liability, including whether the EOBC is “interest,” whether BANA acted  
27 “knowingly,” and the issues related to certifying a class.



1 We declare under penalty of perjury that the foregoing is true and correct. Executed  
2 this 19<sup>th</sup> day of February, 2018.

3 /s/ Jeff Ostrow  
4 Jeff Ostrow

5  
6 /s/ Hassan Zavareei  
7 Hassan Zavareei

8  
9 /s/ Cristina Pierson  
10 Cristina Pierson

11 /s/ Bryan Gowdy  
12 Bryan Gowdy

# **EXHIBIT 2**

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15 *hzavareei@tzlegal.com*

16 *Counsel for Plaintiff and the Settlement Class*

17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 JOANNE FARRELL, on behalf of herself and  
20 all others similarly situated,

21 Plaintiff,

22 vs.

23 BANK OF AMERICA, N.A.,

24 Defendant.

25 CASE NO. 3:16-cv-00492-L-WVG

26 **DECLARATION OF BRIAN T.  
27 FITZPATRICK IN SUPPORT OF  
28 APPLICATION FOR ATTORNEYS'  
FEES AND REIMBURSEMENT OF  
EXPENSES AND SERVICE AWARDS**

Judge: Hon. M. James Lorenz  
Place: Courtroom 5B  
Hearing Date: June 18, 2018

29 I, Brian T. Fitzpatrick, pursuant to 28 U.S.C. § 1746, declare as follows:

30 **Background and qualifications**

31 1. I am a Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the  
32 Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University  
33 School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard  
34 Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid

1 O’Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable  
2 Antonin Scalia on the United States Supreme Court. I also practiced law for several years in  
3 Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit 1.

4 2. My teaching and research at Vanderbilt and New York University have focused on  
5 class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses  
6 at Vanderbilt. In addition, I have published a number of articles on class action litigation in such  
7 journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the  
8 Vanderbilt Law Review, the University of Arizona Law Review, and the NYU Journal of Law &  
9 Business. My work has been cited by numerous courts, scholars, and popular media outlets, such as  
10 the New York Times, USA Today, and the Wall Street Journal. I am also frequently invited to speak  
11 at symposia and other events about class action litigation, such as the ABA National Institutes on  
12 Class Actions in 2011, 2015, 2016, and 2017, and the ABA Annual Meeting in 2012. Since 2010, I  
13 have also served on the Executive Committee of the Litigation Practice Group of the Federalist  
14 Society for Law & Public Policy Studies. In 2015, I was elected to the membership of the American  
15 Law Institute.

16 3. In December 2010, I published an article in the Journal of Empirical Legal Studies  
17 entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud.  
18 811 (2010) (hereinafter “Empirical Study”). This article is what I believe to be the most  
19 comprehensive examination of federal class action settlements and attorneys’ fees that has ever been  
20 published. Unlike other studies of class actions, which have been confined to securities cases or have  
21 been based on samples of cases that were not intended to be representative of the whole (such as  
22 settlements approved in published opinions), my study attempted to examine *every* class action  
23 settlement approved by a federal court over a two-year period, 2006-2007. *See id.* at 812-13. As  
24 such, not only is my study an unbiased sample of settlements, but the number of settlements included  
25 in my study is several times the number of settlements per year that has been identified in any other  
26 empirical study of class action settlements: over this two-year period, I found 688 settlements,  
27 including 169 from the Ninth Circuit alone. *See id.* at 817. I presented the findings of my study at  
28

1 the Conference on Empirical Legal Studies at the University of Southern California School of Law in  
 2 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre  
 3 Dame in 2009, and before the faculties of many law schools in 2009 and 2010. This study has been  
 4 relied upon by a number of courts, scholars, and testifying experts.<sup>1</sup> In addition to my empirical  
 5 works, I have also published many papers on how the economic incentives of attorneys and others  
 6 affect class action litigation. *See, e.g.*, Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand.  
 7 L. Rev. 1623 (2009); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L.  
 8 Rev. 2043 (2010) (hereinafter “Class Action Lawyers”).

9 4. From time to time, I serve as an expert witness on attorneys’ fees in class action  
 10 litigation. Most relevant here, since 2010, I have served as an expert in nearly two dozen class action  
 11 cases challenging overdraft fees. *See In Re: Checking Account Overdraft Litigation* (MDL No. 2036)  
 12 (S.D. Fla.) (twenty-one different settlements); *Hawkins v. First Tennessee Bank, N.A.*, No. CT-

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15 <sup>1</sup> *See, e.g.*, *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to  
 16 assess fees); *Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at \*4 (E.D. Mich. Aug. 11, 2017); *Good v. W.*  
 17 *Virginia-Am. Water Co.*, 2017 WL 2884535, at \*23, \*27 (S.D.W. Va. July 6, 2017); *McGreevy v. Life Alert*  
 18 *Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017); *Brown v. Rita’s Water Ice Franchise*  
 19 *Co. LLC*, 2017 WL 1021025, at \*9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*,  
 20 2016 WL 1629349, at \*17 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D.  
 21 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016); *In*  
 22 *re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 721680, at \*42 (N.D. Cal. Jan. 28, 2016) (same); *In re*  
 23 *Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at \*19-20 (E.D. La. July 27, 2015) (same);  
 24 *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at \*2-4 (N.D. Ill. May 6, 2015) (same);  
 25 *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at \*3-5 (N.D. Ill. Mar. 23, 2015) (same);  
 26 *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at \*12 (N.D. Ill. Feb. 12, 2015) (same);  
 27 *In re Neurontin Marketing and Sales Practices Litigation*, 2014 WL 5810625, at \*3 (D. Mass. Nov. 10, 2014)  
 28 (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at \*4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-*  
*Palmolive Co. ERISA Litig.*, 36 F.Supp.3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card*  
*Interchange Fee and Merchant Discount Antitrust Litigation*, 991 F.Supp.2d 437, 444-46 & n.8 (E.D.N.Y.  
 2014) (same); *In re Federal National Mortgage Association Securities, Derivative, and “ERISA” Litigation*, 4  
 F.Supp.3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Products Liability Litigation*, 2013 WL 5295707, at  
 \*3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litigation*, 953 F.Supp.2d 82, 98-  
 99 (D.D.C. 2013) (same); *In re Southeastern Milk Antitrust Litigation*, 2013 WL 2155387, at \*2 (E.D. Tenn.,  
 May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d  
 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at \*4 (N.D. Ill. Nov. 1, 2011) (same);  
*In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility*  
*Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife*  
*Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

1 004085-11 (Tenn. Cir. Ct.). In addition to my academic work, I will draw on this experience in this  
2 declaration.

3 5. I have been asked by class counsel to opine on whether the attorneys' fees they have  
4 requested here are reasonable in light of the empirical studies and the economics research on class  
5 action litigation. In order to formulate my opinion, I reviewed a number of documents provided to  
6 me by class counsel; I have attached a list of these documents in Exhibit 2 (and describe there how I  
7 refer to them herein). As I explain, based on my study of settlements across the country and in the  
8 Ninth Circuit in particular, I believe the request here is well within the range of reason.

9 **Case background**

10 6. This lawsuit alleges that the defendant violated the National Bank Act by charging  
11 usurious interest in the plaintiff's checking account when it was in overdraft; in particular, when the  
12 defendant charged the plaintiff \$35 for failing to cure a negative balance—no matter how small—  
13 within 5 days. These failure-to-cure charges are known in this litigation as “Extended Overdrawn  
14 Balance Charges” or “EOBCs.” The lawsuit was filed on February 25, 2016, and the defendant moved  
15 to dismiss it on the ground, among others, that the EOBCs do not constitute “interest” under the  
16 National Bank Act. The court denied the motion, but certified this question for interlocutory appeal,  
17 and the Ninth Circuit accepted the invitation to review the matter. With the appeal pending, the parties  
18 reached a settlement. The parties have asked the court to certify a settlement class and approve the  
19 settlement. This court preliminarily did so on December 11, 2017. The parties are now seeking final  
20 approval of the settlement.

21 7. The settlement class includes “[a]ll holders of [the defendant's] consumer checking  
22 accounts who [from February 25, 2014, to December 30, 2017] were assessed at least one EOBC that  
23 was not refunded.” Settlement Agreement §§ 1.11, 2.1(a). Under the settlement, the defendant agreed  
24 to a wholesale change in its practice (indeed, the defendant agreed to institute it even before final  
25 approval of the settlement): to stop charging any EOBCs whatsoever “when [an] account . . . remains  
26  
27  
28



1 overdrawn.” *Id.* at §§ 1.18, 2.2(a)(1).<sup>2</sup> As discussed more fully below, this practice change is  
 2 estimated to save account holders \$1.2 billion in EOBCs. *See* Joint Declaration ¶24. In addition, the  
 3 defendant agreed to pay the class \$66.6 million in monetary benefits for the assessments it already  
 4 made, with \$37.5 million earmarked for class members who paid the EOBCs and \$29.1 million  
 5 earmarked for those who have yet to pay the EOBCs. *See* Settlement Agreement § 2.2(b)(1). Class  
 6 members in the former group will share the money pro rata based on the number of assessments they  
 7 paid; class members in the latter group will have their negative balances entirely forgiven up to \$35.<sup>3</sup>  
 8 *See id.* at §§ 2.2(b)(3)-(4). In addition, the defendant agreed to update the reports it sent to any credit  
 9 bureau on any class members in the latter group to show that the class members now owe the  
 10 defendant no monies or lesser monies than had been previously reported to account for the reduction  
 11 in debt attributed to the forgiveness of the EOBC. *See id.* at § 2.2(b)(4). All of this money will be  
 12 distributed without any claim forms: the money will be distributed automatically in class members’  
 13 active accounts, or, if they no longer have an account with the defendant, via a check mailed to their  
 14 current address as determined by the defendant’s records and change-of-address databases. *See id.* at  
 15 § 2.6. None of these monies will revert back to the defendant under any circumstances; if any checks  
 16 are not cashed, the leftover money will either be distributed again to class members or distributed in  
 17 cy pres to a charity. *See id.* at § 3.5. The defendant has also agreed to pay separately the costs of  
 18 notifying the class and administering the settlement, which the parties believe will come to  
 19 approximately \$2 million. *See id.* at 2.24(a); Motion for Preliminary Approval p. 7. In exchange for  
 20 all the benefits, the class will release the defendant from, among other things, “any and all claims”  
 21 with respect to “the assessment of EOBCs,” including “any claim” that “EOBCs and initial overdraft  
 22 fees . . . constitute[] usurious interest.” *See id.* at ¶ 2.3(a).

23 8. Class counsel have now asked the court to award them attorneys’ fees of \$16.65  
 24 million. This number equals 25% of the \$66.6 million in monetary benefits the class will receive  
 25

26 <sup>2</sup> The bar includes assessments when “the account remains overdrawn for five (5) or more consecutive business days”  
 27 as well as “any equiavalent fee.” Settlement Agreement §§ 1.18, 2.2(a)(1). The only exception is if the U.S. Supreme  
 28 Court declares that EOBCs are not “interest” under the National Banking Act. *See id.* at §2.2(a)(2).

<sup>3</sup> Some class members fall in both groups and will get both monetary benefits.

1 directly, 24.3% of the \$68.6 million of total monetary benefits in the settlement (i.e., including notice  
2 and administration costs), and well below 5% of the total value of the settlement (i.e., including the  
3 value to the class of the defendant's agreement to eliminate EOBCs). No matter which percentage  
4 figure is used, my opinion is the same: this fee request is within the range of reason.

5 **Assessment of the reasonableness of the request for attorneys' fees**

6 9. This is a so-called "common fund" settlement where the efforts by attorneys for the  
7 plaintiff have created a common fund for the benefit of class members, but, because this is a class  
8 action and there is no fee-shifting statute applicable, the attorneys can be compensated only from the  
9 fund they have created. At one time, courts that awarded fees in common fund class action cases did  
10 so using the familiar "lodestar" approach. *See Fitzpatrick, Class Action Lawyers, supra*, at 2051.  
11 Under this approach, courts awarded class counsel a fee equal to the number of hours they worked on  
12 the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate as well as  
13 by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. *See*  
14 *id.* Over time, however, the lodestar approach fell out of favor in common fund class actions. It did  
15 so largely for two reasons. First, courts came to dislike the lodestar method because it was difficult  
16 to calculate the lodestar; courts had to review voluminous time records and the like. Second—and  
17 more importantly—courts came to dislike the lodestar method because it did not align the interests of  
18 class counsel with the interests of the class; to wit, class counsel's recovery did not depend on how  
19 much the class recovered, but, rather, on how many hours could be spent on the case. *See id.* at 2051-  
20 52. According to my empirical study, the lodestar method is now used to award fees in only a small  
21 percentage of class action cases, usually those involving fee-shifting statutes or those where the relief  
22 is injunctive in nature and the value of the injunction cannot be reliably calculated. *See Fitzpatrick,*  
23 *Empirical Study, supra*, at 832 (finding the lodestar method used in only 12% of settlements). The  
24 other large-scale academic studies of class action fees agree. *See, e.g., Theodore Eisenberg et al.,*  
25 *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937, 945 (2017) (hereinafter  
26 "Eisenberg-Miller 2017") (finding the lodestar method used only 6.29% of the time from 2009-2013,  
27 down from 13.6% from 1993-2002 and 9.6% from 2003-2008).

1           10.     The more widely utilized method of calculating attorneys' fees today is known as the  
2 "percentage" method or the "common fund" method. Under this approach, courts select a percentage  
3 that they believe is fair to class counsel, multiply the settlement amount by that percentage, and then  
4 award class counsel the resulting product. The percentage approach became popular precisely  
5 because it corrected the deficiencies of the lodestar method: it is less cumbersome to calculate, and,  
6 more importantly, it aligns the interests of class counsel with the interests of the class because the  
7 more the class recovers, the more class counsel recovers. *See Fitzpatrick, Class Action Lawyers,*  
8 *supra*, at 2052.

9           11.     In the Ninth Circuit, district courts have the discretion to use either the lodestar method  
10 or the percentage method in common fund cases. *See In re Washington Public Power Supply Sys.*  
11 *Securities Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994) ("[D]istrict court has discretion to use either  
12 method in common fund cases."). In light of the well-recognized disadvantages of the lodestar  
13 method and the well-recognized advantages of the percentage method, it is my opinion that courts  
14 should generally use the percentage method in common fund cases whenever the value of the  
15 settlement can be reliably calculated. It is my opinion that courts should use the lodestar method *only*  
16 where the value of the settlement cannot be reliably calculated (and the percentage method is therefore  
17 not feasible) or a fee-shifting statute is applicable. This is not just my opinion. It is the consensus  
18 opinion of class action scholars. *See American Law Institute, Principles of the Law of Aggregate*  
19 *Litigation* § 3.13(b) (2010) ("[A] percentage-of-the-fund approach should be the method utilized in  
20 most common-fund cases."). In this case, both the cash and non-monetary portions of the settlement  
21 are readily quantifiable; therefore, in my opinion, the percentage method should be used. But even if  
22 the non-monetary portion were not valued, the cash portion alone is sufficient to justify the fee award  
23 under the percentage method. As such, I will assess the reasonableness of the fee requests here using  
24 the percentage method.

25           12.     Under the percentage method, courts must 1) calculate the value of the benefits to the  
26 class in the settlement and then 2) select a percentage of that value to award to class counsel. When  
27 calculating the value of the benefits, in my opinion, courts should include any cash benefits to class  
28

1 members, cash the defendant must pay to third parties, non-cash benefits that can be reliably valued,  
2 attorneys' fees and expenses, and administrative costs paid by the defendant. *See, e.g., In re*  
3 *Heartland Payment Systems, Inc. Customer Data Sec. Breach Litigation*, 851 F.Supp.2d 1040, 1080  
4 (S.D. Tex. 2012) (Rosenthal, J.) (including these items in the denominator of the percentage method);  
5 *Dennis v. Kellogg Co.*, 2013 U.S. Dist. LEXIS 163118, \*21-\*22 (S.D. Cal., Nov. 14, 2013) (Lorenz,  
6 J.) (including notice and administration costs in the denominator of the percentage method). Although  
7 some of these things do not go directly to the class as compensation, they facilitate compensation to  
8 the class, savings to the class, or serve to deter defendants from future misconduct by making  
9 defendants pay more when they cause harm. When selecting the percentage, courts in the Ninth  
10 Circuit use 25% as the “‘bench mark’ percentage for the fee award,” which “can then be adjusted  
11 upward or downward to account for any unusual circumstances involved in the case.” *Paul, Johnson,*  
12 *Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989); *Chavez v. WIS Holding Corp.*, 2010  
13 U.S. Dist. LEXIS 56138, \*7-\*8 (S.D. Cal., June 7, 2010) (Lorenz, J.). In various cases, the Ninth  
14 Circuit has identified at least eight different factors that district courts can examine in deciding  
15 whether to increase or decrease an award from the benchmark:

- 16 a. the results achieved by class counsel, *see Six Mexican Workers v. Arizona*  
17 *Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Vizcaino v. Microsoft*  
18 *Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002);
- 19 b. the length the case has transpired, *see Six Mexican Workers*, 904 F.2d at 1311;  
20 *Vizcaino*, 290 F.3d at 1050;
- 21 c. the complexity of the case, *see Six Mexican Workers*, 904 F.2d at 1311; *In re*  
22 *Pacific Enters. Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995);
- 23 d. the risks the case involved, *see In re Pacific Enters. Securities Litig.*, 47 F.3d  
24 at 379; *Vizcaino*, 290 F.3d at 1048-49;
- 25 e. the percentages awarded in other class action cases, *see Vizcaino*, 290 F.3d at  
26 1050;

- 1 f. any non-monetary benefits obtained by class counsel, *see In re Pacific Enters.*
- 2 *Securities Litig.*, 47 F.3d at 379; *Vizcaino*, 290 F.3d at 1049; *Staton v. Boeing*,
- 3 327 F.3d 938, 946 (9th Cir. 2003);
- 4 g. the percentages in standard contingency-fee agreements in similar individual
- 5 cases, *see Vizcaino*, 290 F.3d at 1049; and
- 6 h. class counsel's lodestar, *see id.* at 1050-51.

7  
8 13. As I explain below, the fee request here matches the Ninth Circuit's 25% benchmark  
9 if only the cash portions of the settlement that go directly to the class are considered; is below the  
10 benchmark if, as is customary, the entire cash value of the settlement is considered (i.e., including the  
11 \$2 million notice and settlement administration costs separately paid by the defendant); and is  
12 *exceedingly* below the benchmark if, as is also customary, the entire value of the settlement is  
13 considered (i.e., the future monetary savings to the class from the elimination of EOBCs). In my  
14 opinion, no matter how you calculate the fee percentage here, it is justified under the above factors in  
15 light of the empirical data and the economics of class action litigation.

16 14. Let me begin with the valuation of the benefits to the class in the settlement. The cash  
17 portions of the settlement are easily valued. The defendant has agreed to pay the class members \$66.6  
18 million in cash as well as to pay approximately \$2 million in notice and settlement administration  
19 costs, for a total of \$68.6 million. But the changed practices the defendant agreed to in the  
20 settlement—forgoing EOBCs altogether for at least five years—are worth many times this amount.  
21 Indeed, the parties estimate that account holders will save some \$1.2 billion over this time period.  
22 *See* Joint Declaration ¶24. Although not every class member will share in these savings because some  
23 do not have accounts with the defendant any longer, according to data from the defendant, the vast  
24 majority of class members do still have accounts and will therefore benefit from these savings.<sup>4</sup> The  
25 total value of the settlement to the class, then, is easily many hundreds of millions of dollars.

26  
27 <sup>4</sup> Moreover, persons not even in the class like new account holders will automatically benefit from this practice change  
28 as well because now they, too, will not be at risk of being charged EOBCs.

1           15.     The \$16.65 million fee request here therefore seeks only a tiny percentage (well less  
2 than 5%) of the total value of the settlement, only 24.3% of the total cash value of the settlement, and  
3 only 25% of the cash value that will go directly to class members. As I explain below, no matter  
4 which figure is used, my opinion is the same: the percentage is reasonable under the Ninth Circuit's  
5 factors in light of the empirical data and economics of class action litigation.

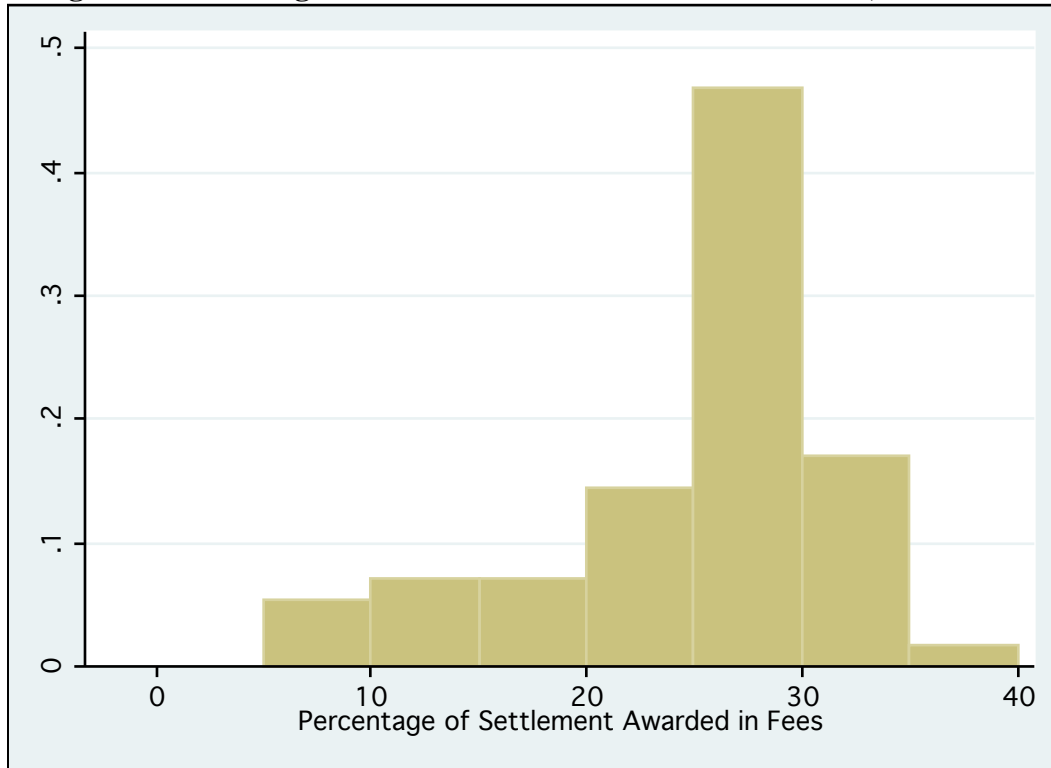
6           16.     Consider first the factor that looks at how this request measures up against other fees  
7 awards: (5) the percentages awarded in other class action cases. According to my empirical study,  
8 the most common fee percentages awarded in common fund class actions were 25%, 30%, and 33%,  
9 with the mean and median at 25%. *See Fitzpatrick, Empirical Study, supra*, at 833, 838 (Figure 6).  
10 The numbers for the 111 settlements in the Ninth Circuit where the percentage method was used were  
11 quite similar: the most common percentages were also 25%, 30%, and 33%, with the vast majority of  
12 awards also between 25% and 35%, and a mean of 23.9% and median of 25%. *See also In re Daou*  
13 *Sys. Securities Litig.*, 2008 U.S. Dist. LEXIS 56320, \*6-\*7 (S.D. Cal., Jul. 24, 2008) (Lorenz, J.)  
14 (awarding 25%); *Dennis*, 2008 U.S. Dist. LEXIS at \*21-\*22 (awarding 25% of cash portion of  
15 settlement); *Chavez*, 2010 U.S. Dist. LEXIS at \*7 (awarding "\$2,000 less than 25%"). My numbers  
16 agree with the other large-scale academic studies of class action fee awards. *See Theodore Eisenberg*  
17 *& Geoffrey P. Miller, Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J.  
18 *Empirical L. Stud.* 248, 260 (2010) (hereinafter "Eisenberg-Miller 2010") (finding mean and median  
19 of 24% and 25% nationwide, and 25% in Ninth Circuit); Eisenberg-Miller 2017, *supra*, at 951 (finding  
20 mean and median of 27% and 29% nationwide, and 26% and 25% in the Ninth Circuit). Thus, the  
21 fee percentage requested here is either *far below, below, or at* virtually all of the average and median  
22 data both nationwide and in the Ninth Circuit.

23           17.     Indeed, in order to see more clearly where the fee request here falls among other  
24 awards, I graphed the distribution of the Ninth Circuit's percentage awards from my study in Figure  
25 1. The figure shows what fraction of settlements (y-axis) had fee awards within each five-point range  
26 of fee percentages (x-axis). Thus, for example, nearly half of all settlements (i.e., nearly .5 of all  
27 settlements) had fee awards that fell between 25% (inclusive) and 30%. As the Figure shows, a fee  
28



1 request of 24.3% or 25% would be in the meaty part of the Ninth Circuit’s curve, and a fee percentage  
 2 based on the total value of the settlement (well under 5%) would literally be off the chart it would be  
 3 so low.

4 **Figure 1: Percentage-method fee awards in the Ninth Circuit, 2006-2007**



17 18. Although, as I note below, this is the first case to successfully challenge EOBCs, it is  
 18 not the first case to successfully challenge other overdraft fees. I happen to be personally familiar  
 19 with much of the overdraft litigation across the country because I have served as an expert in many  
 20 of these cases. In all of the cases I have worked on—nearly two dozen now—the fee percentages  
 21 awarded by the courts were more—sometimes much more—than 25% of the cash portion of the  
 22 settlements. *See In Re: Checking Account Overdraft Litigation* (MDL No. 2036) (S.D. Fla.)  
 23 (awarding 30% or more in twenty-one different settlements); *Hawkins v. First Tennessee Bank, N.A.*,  
 24 No. CT-004085-11 (Tenn. Cir. Ct.) (35%). Thus, no matter which set of data is considered—national  
 25 class action data, Ninth Circuit class action data, or overdraft class action data—the fee request here  
 26 is modest compared to other cases.

1           19. Consider next the factors that assess how the relief in this settlement stacks up against  
2 the obstacles class counsel faced: (1) the results achieved by class counsel, (3) the complexity of the  
3 case, and (4) the risks the case involved. First, consider the results. According to class counsel, the  
4 \$66.6 million in monetary benefits for past EOBCs will return approximately 9% of the damages the  
5 class might have recovered at trial if it overcame all of the risks that I outline below. See Joint  
6 Declaration ¶24. But the class will save 100% of those EOBCs over the next five years pursuant to  
7 the agreed practice change. These recoveries are much better than what plaintiffs often recover in  
8 class action litigation; the unique practice change *alone* is a tremendous victory for the class.<sup>5</sup> To my  
9 knowledge, no other national bank has ceased this lucrative practice as a result of the usury theory  
10 pursued in this case. Indeed, these recoveries look even more impressive when measured against the  
11 risks the class faced. To begin with, the defendant disputed whether any usury violations of the  
12 National Bank Act it may have committed were done, as the Act requires, “knowingly.” But, as this  
13 court is aware from its own order on the motion to dismiss, that was the least of the class’s worries:  
14 whether extended overdraft fees like EOBCs even constitute “interest” for purposes of the National  
15 Bank Act’s usury provision in the first place is a hotly debated question. Indeed, to my knowledge,  
16 this question has been litigated in six other cases, and, thus far, this case is the *only one* where the  
17 plaintiffs have survived a motion to dismiss; in the other cases, the class actions were either dismissed  
18 by virtue of the National Bank Act or the question is still pending. See *McGee v. Bank of Am., N.A.*,  
19 No. 15-60480, 2015 WL 4594582 (S.D. Fla. July 30, 2015) (case dismissed); *In re TD Bank, N.A.*  
20 *Debit Card Overdraft Fee Litig.*, No. 2613, 2015 WL 8493979 (D.S.C. Dec. 10, 2015) (case  
21 dismissed); *Dorsey v. TD Bank, N.A.*, No. 6:17-cv-01432 (D.S.C.) (motion to dismiss pending); *Shaw*  
22 *v. BOKF, N.A.*, No. 15-CV-0173-CVE-FHM, 2015 WL 6142903 (N.D. Okla. Oct. 19, 2015) (case  
23 dismissed); *Johnson v. BOKF, N.A. d/b/a Bank of Texas*, No. 3:17-cv-663 (N.D. Tex.) (dismissed)

24 \_\_\_\_\_  
25 <sup>5</sup> The best studies of class member recoveries come from securities fraud cases. See, e.g., *Recent Trends in*  
26 *Securities Class Action Litigation: 2017 Full-Year Review*, available at  
27 [http://www.nera.com/content/dam/nera/publications/2018/PUB\\_Year\\_End\\_Trends\\_Report\\_0118\\_final.pdf](http://www.nera.com/content/dam/nera/publications/2018/PUB_Year_End_Trends_Report_0118_final.pdf),  
28 at 38 (finding that the median securities fraud class action between 2008 and 2017 settled for between 1.3%  
and 2.7% of a measure of investor losses, depending on the year). Moreover, securities fraud recoveries are  
almost never accompanied by injunctive relief. See Fitzpatrick, *Empirical Study, supra*, at 824.

1 with leave to amend and motion to dismiss amended complaint is pending); *Moore v. MB Financial*  
2 *Bank, N.A.*, No. 17 C 4716, 2017 U.S. Dist. LEXIS 189585 (Nov. 16, 2017) (amended complaint  
3 dismissed and appeal pending before the Seventh Circuit). In other words, unlike most other class  
4 action settlements, we do not need to speculate that class counsel here have overcome incredible risks;  
5 we have the *empirical proof* that they have done so. In light of the legal challenges this case faced  
6 (and continues to face—as I noted, this court certified the National Bank Act question for  
7 interlocutory appeal and the Ninth Circuit agreed to decide the issue), the class’s recovery here is  
8 *outstanding*. As such, these factors, too, support the fee request here.

9         20. Consider next factor (2): the length this case has transpired. Although this case was  
10 filed two years ago, it has not yet lasted quite as long as most class action cases that reach settlement.  
11 According to my empirical study, the average and median times in which settlements received final  
12 approval in class actions were around three years. *See Fitzpatrick, Empirical Study, supra*, at 820.  
13 This is, admittedly, a reason why the court might consider departing downward from the benchmark.  
14 Nonetheless, in my opinion, the length-the-case-has-transpired factor is more a proxy for class  
15 counsel’s performance than a measure of class counsel’s performance itself; it would not make much  
16 sense otherwise: why would we want to encourage class counsel to delay resolving cases for no  
17 reason? In particular, in my opinion, this factor makes sense only when it is a proxy for whether class  
18 counsel have dug far enough into the case to know what the case is worth and to provide the court  
19 with information about what the case is worth so it can evaluate whether the recovery is warranted by  
20 the risks and complexities of the case. *See Vizcaino*, 290 F.3d at 1050 n.5 (“We do not mean to imply  
21 that class counsel should necessarily receive a lesser fee for settling a case quickly; *in many instances*,  
22 *it is relevant that counsel achieved a timely result for class members in need of immediate relief.*”  
23 (emphasis added)); *Williamson v. Microsemi Corp.*, No. 5:14-cv-01827-LHK, 2015 U.S. Dist. LEXIS  
24 191692 (N.D. Ca. Feb. 19, 2015) (“This Court will not reward attorneys for unnecessary litigation,  
25 nor punish them for resolving matters quickly, when such quick resolution is, as here, highly  
26 beneficial to the class.”). No further litigation was needed here to uncover that information: as I  
27 explained above, we can examine what happened in the other EOBC litigation and figure out very  
28

1 quickly that the recovery here is incredible compared to most class actions in light of the risks the  
2 class faced. Indeed, with all the cases that class counsel here have collectively litigated against  
3 EOBCs, they are likely the most well versed lawyers in the entire country in this area of the law.  
4 Given that we know the track record of other cases litigated under the same theory, we know this case  
5 was very difficult to win without years and years of additional litigation to tell us that. But if there  
6 were any doubt about all this, it should be noted that class counsel had plenty of opportunity to  
7 intimately familiarize themselves with this case through the pre-mediation and post-mediation  
8 settlement processes—activities that included confirmatory discovery. As such, I do not believe this  
9 factor is good reason to reduce class counsel’s fee award. Indeed, early settlement can be to the  
10 benefit of a class: it cannot be forgotten that the Ninth Circuit had agreed to hear the interlocutory  
11 appeal at the time this case settled; had the case continued and had the Ninth Circuit joined the courts  
12 listed above and ruled against the class here, the class would have ended up with nothing. As one  
13 might expect, the class members charged EOBCs are typically those who can least afford to be  
14 charged overdraft fees; accelerating relief to such class members is a virtue, not a vice.

15 21. Consider next factor “(6) any non-monetary benefits.” Unlike most class action  
16 settlements, *see Fitzpatrick, Empirical Study, supra*, at 824 (finding that 89% of class action  
17 settlements included cash relief but only 23% conferred injunctive or declaratory relief), this  
18 settlement includes non-monetary benefits in the form of future savings caused by the practice change.  
19 Indeed, not just any non-monetary benefits, but *incredible* non-monetary benefits—worth, as I noted,  
20 an estimated \$1.2 billion. As such, these non-monetary benefits are obviously more important than  
21 the cash relief. Indeed, of all the many overdraft cases I have worked on as an expert—almost two  
22 dozen now—the non-monetary relief in this settlement, as measured against the legal challenges the  
23 class faced, is the most impressive yet. If the court does not include some of this amount in the  
24 denominator of the fee percentage—which, as I noted, would make the fee percentage here a small  
25 fraction (well less than 5%) that would easily be justified—then it is entirely appropriate for the court  
26 to increase above the benchmark class counsel’s percentage of the amount the court does include in  
27 the denominator. *See Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003) (“[W]here the value to  
28

1 individual class members of benefits deriving from injunctive relief can be accurately ascertained[, ]  
2 courts [may] include such relief as part of the value of a common fund for purposes of applying the  
3 percentage method of determining fees. When this is not the case, courts should consider the value  
4 of the injunctive relief obtained as a ‘relevant circumstance’ in determining what percentage of the  
5 common fund class counsel should receive as attorneys’ fees . . . .”). Indeed, if courts do not depart  
6 upward when class counsel secures such relief, then class action lawyers will have no incentive to  
7 fight to obtain these benefits—even though, as here, these benefits can be even more valuable to the  
8 class than cash. But class counsel is not asking for even a small upward departure here: even if the  
9 non-monetary benefits are excluded from the denominator of the fee percentage, class counsel is still  
10 seeking only a benchmark fee percentage (or a *below* benchmark fee percentage if the notice and  
11 administration costs are included). As such, this factor not only supports class counsel’s fee request,  
12 but, frankly, suggests that their fee request may actually be lower than what would be optimal for the  
13 incentives of class action lawyers.

14 22. Consider next factor (7): the percentages in standard contingency-fee agreements in  
15 similar individual cases. It is well known that standard contingency-fee percentages in individual  
16 litigation are *at least* 33%, much greater than the percentage requested here. *See, e.g.,* Lester  
17 Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 *Fordham L. Rev.*  
18 247, 248 (1996) (noting that “standard contingency fees” are “usually thirty-three percent to forty  
19 percent of gross recoveries” (emphasis omitted)); Herbert M. Kritzer, *The Wages of Risk: The Returns*  
20 *of Contingency Fee Legal Practice*, 47 *DePaul L. Rev.* 267, 286 (1998) (reporting the results of a  
21 survey of Wisconsin lawyers, which found that “[o]f the cases with a [fee calculated as a] fixed  
22 percentage [of the recovery], a contingency fee of 33% was by far the most common, accounting for  
23 92% of those cases”). This was a case brought on contingency: the agreement class counsel and  
24 plaintiffs entered into provides that class counsel are not entitled to recover any attorneys’ fees absent  
25 a recovery. *See* Ostrow Declaration ¶14. As such, this factor, also supports the fee request.

26 23. Consider finally factor (8): class counsel’s lodestar. This factor—known as the  
27 “lodestar crosscheck”—is not a required one in the Ninth Circuit. *See, e.g., In re Google Referrer*  
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1 *Header Privacy Litig.*, 869 F.3d 737 (9th Cir. 2017) (noting that district court did but was not required  
2 to do a lodestar method cross-check); *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 547 (9th  
3 Cir. 2016) (“[A] cross-check is entirely discretionary . . . .”); *compare Chavez*, 2010 U.S. Dist. LEXIS  
4 at \*7-\*8 (awarding fee percentage with no lodestar crosscheck) *with In re Daou*, 2008 U.S. Dist.  
5 LEXIS, at \*5-\*6 (awarding fee percentage with lodestar crosscheck). Moreover, only a minority of  
6 courts nationwide perform it with the percentage method. *See Fitzpatrick, supra*, at 833 (finding that  
7 only 49% of courts consider lodestar when awarding fees with the percentage method); *Eisenberg-*  
8 *Miller 2017, supra*, at 945 (finding percent method with lodestar crosscheck used 38% of the time  
9 versus 54% for percent method without lodestar crosscheck). Nonetheless, because class counsel  
10 have volunteered their lodestar information to the court, I, too, will assess it in light of the empirical  
11 studies and economic research on class action litigation.

12         24. First, with regard to the economics: in my opinion, courts that entertain the lodestar  
13 crosscheck do not create the best incentives for class action lawyers. In particular, the lodestar  
14 crosscheck reintroduces the very same undesirable consequences of the lodestar method that the  
15 percentage method was designed to correct in the first place. For example, as the Ninth Circuit has  
16 observed, if class counsel believe that courts will cap the percentage awarded at some multiple of  
17 their lodestar, then they will have precisely the same incentives they would if courts used the lodestar  
18 method alone: to be inefficient, perform unnecessary projects, delay results, and overbill and overstaff  
19 work in order to run up their lodestar. *See Vizcaino*, 290 F.3d at 1050 n. 5 (“[I]t is widely recognized  
20 that the lodestar [cross-check] creates incentives for counsel to expend more hours than may be  
21 necessary on litigating a case so as to recover a reasonable fee . . . .”). The lodestar crosscheck also  
22 caps the amount of compensation class counsel can receive from a settlement, thereby misaligning  
23 their incentives from those of class members, and blunting their incentive to achieve the largest  
24 possible award for the class. *See Fitzpatrick, Class Action Lawyers, supra*, at 2065-66.

25         25. Consider the following example. Suppose a class action lawyer had incurred a lodestar  
26 of \$1 million in a class action case. If that counsel believed that a court would not award him a 25%  
27 fee if it exceeded twice his lodestar, then he would be *rationaly indifferent* between settling the case  
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1 for \$8 million and \$80 million (or any number higher than \$8 million). Either way he will get the  
2 same \$2 million fee. Or suppose counsel believed that the most he could wring from the defendant  
3 in this example was \$16 million. In order to reap the maximum 25% fee with the lodestar crosscheck,  
4 he would have to generate an additional \$1 million in lodestar before agreeing to the settlement; this  
5 would give him incentive to *drag the case out* before sealing the deal. Neither indifference as to  
6 settlement amount nor incentive to delay settlement is in the interests of class members or of a society  
7 interested in optimal compensation of injuries and optimal deterrence of wrongdoing. As such, it is  
8 my opinion that the court should not consider class counsel's lodestar at all with the percentage  
9 method.

10 26. Nonetheless, if the court chooses to do so, the lodestar here does not change my  
11 opinion that the fee request is reasonable. Class counsel have reported a lodestar of \$1,415,691.25,<sup>6</sup>  
12 which would result in a lodestar multiplier of 11.76 if the court grants their fee request. *See* Ostrow  
13 Declaration ¶ 13. It is true that this multiplier would be on the high end of the lodestars examined in  
14 empirical studies. *See* Fitzpatrick, *Empirical Study, supra*, at 834 (finding mean and median lodestar  
15 multipliers in cases using the percentage method with the lodestar crosscheck were 1.65 and 1.34,  
16 respectively); *Eisenberg-Miller 2010, supra*, at 273 (finding mean multiplier of 1.81 for cases  
17 between 1993 and 2008); *Eisenberg-Miller 2017, supra*, at 965 (finding mean multiplier of 1.48 for  
18 cases between 2009 and 2013). But the multiplier here would hardly be unprecedented. *See, e.g.,*  
19 *Vizcaino*, 290 F.3d at 1051 n.6 (noting multipliers of up to 19.6); *Steiner v. American Broadcasting*  
20 *Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming fee award where the lodestar multiplier was

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23 <sup>6</sup> Class counsel's lodestar includes time spent litigating the *McGee* and *Shaw* cases cited above. Class counsel filed  
24 *McGee* against the same defendant at issue in this case, and, although *Shaw* was filed by some of class counsel against a  
25 different defendant, it was based on the same legal theory as this case. Obviously, much of the work class counsel did in  
26 these cases was of benefit to the class in this case; had class counsel not filed those cases, they would have had to spend  
27 time in this case "inventing the wheel," so to speak. It is not uncommon for courts to treat time intertwined like this across  
28 cases as one for purposes of the lodestar crosscheck. *See, e.g., In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in*  
*the Gulf of Mexico, on Apr. 20, 2010*, 2016 WL 6215974, at \*19-20 (E.D. La., Oct. 25, 2016); *Id. at 47* (E.D. La. Feb. 15,  
2017) ("Viewing the BP Settlements together with the HESI and Transocean Settlements is . . . more relevant when the  
Court is conducting its lodestar cross-check."). When courts do this, however, it is important to add the fees together  
across cases, too; in this case, however, there are no fees to add together because, as I noted above, the *McGee* and *Shaw*  
cases, like other EOBC-usury cases, were dismissed (and the dismissal in *McGee* was upheld on appeal by the Eleventh  
Circuit.).

1 6.85); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926, at \*18 (E.D.  
2 Pa. May 19, 2005) (awarding fee with 15.6 multiplier); *In re Doral Financial Corp. Securities*  
3 *Litigation*, No. 05-cv-04014-RO (S.D.N.Y. Jul. 17, 2007) (same with 10.26 multiplier); *Beckman v.*  
4 *KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (“Courts regularly award lodestar multipliers  
5 of up to eight times the lodestar, and in some cases, even higher multipliers.”); *New England*  
6 *Carpenters Health Benefits Fund v. First Databank, Inc.*, No. 05-11148-PBS, 2009 U.S. Dist. LEXIS  
7 68419, at \*10 (D. Mass. Aug. 3, 2009) (awarding fee with 8.3 multiplier); *Hainey v. Parrott*, 2007  
8 WL 3308027, at \*1 (S.D. Ohio Nov. 6, 2007) (same with 7.47 multiplier); *In re Rite Aid Corp. Secs.*  
9 *Litig.*, 362 F. Supp 2d 587, 589 (E.D. Pa. 2005) (same with 6.96 multiplier); *In re Cardinal Health*  
10 *Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007) (same with 6 multiplier); *In re RJR*  
11 *Nabisco, Inc. Secs. Litig.*, 88 Civ. 7905 (MBM), 1992 U.S. Dist. LEXIS 12702 (S.D.N.Y. Aug. 24,  
12 1992) (same with 6 multiplier). As these cases show, when the other factors justify a fee, courts are  
13 not afraid to award it despite an above-average lodestar multiplier. As I explained above, in my  
14 opinion, the facts and circumstances of this settlement justify the multiplier in this case. Not only is  
15 this the only EOBC-usury case—among many—that has survived dismissal, but the relief class  
16 counsel have won here will save class members and others *over a billion dollars* over the next five  
17 years in addition to reimbursing them *tens of millions of dollars* of past EOBC charges. In other  
18 words, the results in this case far exceed what a reasonable observer might have forecast when this  
19 case was filed. It is not unreasonable to award class counsel a fee percentage that results in a high  
20 lodestar multiplier when class counsel have achieved results that are even higher.

21 27. For all these reasons, I believe the fee award requested here is within the range of  
22 reasonable awards.

23 28. My compensation in this matter has been \$795 per hour plus expenses.

24 29. I declare under penalty of perjury that the foregoing is true and correct.

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Executed this 16<sup>th</sup> day of February, 2018, in Nashville, Tennessee.



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**Brian T. Fitzpatrick**

# **EXHIBIT 1**

**BRIAN T. FITZPATRICK**

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**ACADEMIC APPOINTMENTS**

**VANDERBILT UNIVERSITY LAW SCHOOL**, *Professor*, 2012 to present

- *FedEx Research Professor*, 2014-2015; *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Federal Courts, Complex Litigation, Comparative Class Actions
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

**EDUCATION**

**HARVARD LAW SCHOOL**, J.D., *magna cum laude*, 2000

- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

**UNIVERSITY OF NOTRE DAME**, B.S., Chemical Engineering, *summa cum laude*, 1997

- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

**CLERKSHIPS**

**HON. ANTONIN SCALIA**, Supreme Court of the United States, 2001-2002

**HON. DIARMUID O'SCANNLAIN**, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

**EXPERIENCE**

**NEW YORK UNIVERSITY SCHOOL OF LAW**, Feb. 2006 to June 2007

*John M. Olin Fellow*

**HON. JOHN CORNYN**, United States Senate, July 2005 to Jan. 2006

*Special Counsel for Supreme Court Nominations*

**SIDLEY AUSTIN LLP**, Washington, DC, 2002 to 2005

*Litigation Associate*

## BOOKS

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press, forthcoming 2018)

## ACADEMIC ARTICLES

*A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology*, 69 VAND. L. REV. 991 (2016)

*The Hidden Question in Fisher*, 10 NYU J. L. & LIBERTY 168 (2016)

*An Empirical Look at Compensation in Consumer Class Actions*, 11 NYU J. L. & BUS. 767 (2015) (with Robert Gilbert)

*The End of Class Actions?*, 57 ARIZ. L. REV. 161 (2015)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, 98 VA. L. REV. 839 (2012)

*Twombly and Iqbal Reconsidered*, 87 NOTRE DAME L. REV. 1621 (2012)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

*Do Class Action Lawyers Make Too Little?*, 158 U. PA. L. REV. 2043 (2010)

*Originalism and Summary Judgment*, 71 OHIO ST. L.J. 919 (2010)

*The End of Objector Blackmail?*, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

*The Politics of Merit Selection*, 74 MISSOURI L. REV. 675 (2009)

*Errors, Omissions, and the Tennessee Plan*, 39 U. MEMPHIS L. REV. 85 (2008)

*Election by Appointment: The Tennessee Plan Reconsidered*, 75 TENN. L. REV. 473 (2008)

*Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?*, 13 MICH. J. RACE & LAW 277 (2007)

## BOOK CHAPTERS

*Civil Procedure in the Roberts Court* in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

*Is the Future of Affirmative Action Race Neutral?* in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)



## ACADEMIC PRESENTATIONS

*The Ironic History of Rule 23*, University of Washington Law School, Seattle, WA (July 14, 2016)

*What Will and Should Happen to Affirmative Action After Fisher v. Texas*, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

*Litigation Funding: The Basics and Beyond*, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

*Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?*, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

*Arbitration and the End of Class Actions?*, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

*The Next Steps for Discovery Reform: Requester Pays*, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

*Private Attorney General: Good or Bad?*, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

*Liberty, Judicial Independence, and Judicial Power*, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

*The Economics of Objecting for All the Right Reasons*, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

*Compensation in Consumer Class Actions: Data and Reform*, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

*The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?*, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

*The End of Class Actions?*, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, George Mason Law School, Arlington, VA (Mar. 6, 2014)

*Should Third-Party Litigation Financing Come to Class Actions?*, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

*Is the Future of Affirmative Action Race Neutral?*, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

*The Mass Tort Bankruptcy: A Pre-History*, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

*Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions*, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

*The End of Class Actions?*, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

*Toward a More Lawyer-Centric Class Action?*, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

*The Problem: AT & T as It Is Unfolding*, Conference on AT & T Mobility v. Concepcion, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

*Standing under the Statements and Accounts Clause*, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

*The End of Class Actions?*, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

*Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change*, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

*Is Summary Judgment Unconstitutional? Some Thoughts About Originalism*, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

*The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote*, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

*The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure*, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

*Twombly and Iqbal Reconsidered*, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

*Do Class Action Lawyers Make Too Little?*, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

*Originalism and Summary Judgment*, Georgetown Law School, Washington, DC (Apr. 5, 2010)

*Theorizing Fee Awards in Class Action Litigation*, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

*Originalism and Summary Judgment*, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

*The End of Objector Blackmail?*, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

*An Empirical Study of Class Action Settlements and their Fee Awards*, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

*The Politics of Merit Selection*, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

*The End of Objector Blackmail?*, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

*Alternatives To Affirmative Action After The Michigan Civil Rights Initiative*, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

## **OTHER PUBLICATIONS**

*Former clerk on Justice Antonin Scalia and his impact on the Supreme Court*, THE CONVERSATION (Feb. 24, 2016)

*Lessons from Tennessee Supreme Court Retention Election*, THE TENNESSEAN (Aug. 20, 2014)

*Public Needs Voice in Judicial Process*, THE TENNESSEAN (June 28, 2013)

*Did the Supreme Court Just Kill the Class Action?*, THE QUARTERLY JOURNAL (April 2012)

*Let General Assembly Confirm Judicial Selections*, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

*“Tennessee Plan” Needs Revisions*, THE TENNESSEAN (Feb. 3, 2012)

*How Does Your State Select Its Judges?*, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

*On the Merits of Merit Selection*, THE ADVOCATE 67 (Winter 2010)

*Supreme Court Case Could End Class Action Suits*, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

*Kagan is an Intellect Capable of Serving Court*, THE TENNESSEAN (Jun. 13, 2010)

*Confirmation “Kabuki” Does No Justice*, POLITICO (July 20, 2009)

*Selection by Governor may be Best Judicial Option*, THE TENNESSEAN (Apr. 27, 2009)

*Verdict on Tennessee Plan May Require a Jury*, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

*Tennessee’s Plan to Appoint Judges Takes Power Away from the Public*, THE TENNESSEAN (Mar. 14, 2008)

*Process of Picking Judges Broken*, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

*Disorder in the Court*, LOS ANGELES TIMES (Jul. 11, 2007)

*Scalia’s Mistake*, NATIONAL LAW JOURNAL (Apr. 24, 2006)

*GM Backs Its Bottom Line*, DETROIT FREE PRESS (Mar. 19, 2003)

*Good for GM, Bad for Racial Fairness*, LOS ANGELES TIMES (Mar. 18, 2003)

*10 Percent Fraud*, WASHINGTON TIMES (Nov. 15, 2002)

## **OTHER PRESENTATIONS**

*A Respected Judiciary—Balancing Independence and Accountability*, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

*Future Amendments in the Pipeline: Rule 23*, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

*The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding*, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

*Hedge Funds + Lawsuits = A Good Idea?*, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

*Judicial Selection in Historical and National Perspective*, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

*The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions*, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

*Life as a Supreme Court Law Clerk and Views on the Health Care Debate*, Exchange Club, Nashville, TN (Apr. 3, 2012)

*The Tennessee Judicial Selection Process—Shaping Our Future*, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

*Reexamining the Class Action Practice*, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

*Judicial Selection in Kansas*, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

*Judicial Selection and the Tennessee Constitution*, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

*What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?*, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

*Judicial Selection in Tennessee*, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

*Ethical Implications of Tennessee's Judicial Selection Process*, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

## **PROFESSIONAL ASSOCIATIONS**

Member, American Law Institute  
Referee, *Journal of Empirical Legal Studies*  
Reviewer, Oxford University Press  
Reviewer, *Supreme Court Economic Review*  
Member, American Bar Association  
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights  
Board of Directors, Tennessee Stonewall Bar Association  
American Swiss Foundation Young Leaders' Conference, 2012  
Bar Admission, District of Columbia

## **COMMUNITY ACTIVITIES**

Board of Directors, Nashville Ballet; Nashville Talking Library for the Blind, 2008-2009

## **EXHIBIT 2**



Documents Reviewed:

- Order Denying Defendant's Motion to Dismiss (document 20, filed 12/19/16)
- Memorandum of Points and Authorities in Support of Plaintiff Joanne Farrell's Motion to Strike Defendant's Amended Affirmative Defenses (document 45-1, filed 1/27/17)
- Defendant Bank of America, N.A.'s Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Strike Defendant's Amended Affirmative Defenses (document 53, filed 2/13/17)
- Reply Memorandum of Points and Authorities in Support of Plaintiff Joanne Farrell's Motion to Strike Defendant's Amended Affirmative Defenses (document 57, filed 2/27/17)
- Memorandum in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class (document 69-1, filed 10/31/17) and the exhibits thereto, including the Settlement and Release Agreement (document 69-2) ("Settlement Agreement") and Joint Declaration of Class Counsel (document 69-3) ("Joint Declaration")
- Order Conditionally Granting Preliminary Approval of Class Action Settlement (document 72, filed 12/11/17)
- Declaration of Class Counsel, Jeff Ostrow, being filed in support of Plaintiffs' and Class Class Counsel's Application for Award of Attorneys' Fees and Costs and Service Awards ("Ostrow Declaration")

# **EXHIBIT 3**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL, on behalf of  
herself and all others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 3:16-cv-00492-L-WVG

**DECLARATION OF JEFF  
OSTROW IN SUPPORT OF  
APPLICATION FOR  
ATTORNEYS' FEES AND  
REIMBURSEMENT OF COSTS  
AND SERVICE AWARDS**

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018 at 11:00am

I, Jeff Ostrow, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Managing Partner of Kopelowitz Ostrow Ferguson Weiselberg Gilbert (“KO”), a 45-attorney firm based in Fort Lauderdale, Florida.

2. I have been a member good standing of The Florida Bar since 1997, and licensed in federal courts around the country since 1998. I am admitted to practice *pro hac vice* in this court for this action. Over the past 21 years, I have practiced full time primarily in the areas of consumer class actions and commercial litigation. I have been appointed as Lead Class Counsel or Class Counsel in numerous class actions, including nearly 30 actions against banks related to the improper assessment of overdraft fees. I have recovered hundreds of millions of dollars for those I have had the pleasure to represent. I actively participated in this action, including negotiation of the Settlement Agreement, and am fully familiar with the proceedings being resolved. I am competent to testify to the facts set forth below, and if called as a witness and placed under oath, I would testify to those facts.

3. I submit this declaration in support of the Application for Attorneys’ Fees

1 and Reimbursement of Expenses and Service Awards (“Fee and Expense Application”).  
2 This declaration supports the professional time incurred and necessary and reasonable  
3 expenses incurred by attorneys at my firm in this matter. Given my role in this litigation,  
4 I have personal knowledge of the legal services rendered by the attorneys requesting fees  
5 and expenses. This declaration summarizes the work performed by my firm in this  
6 litigation that led to an outstanding result for the class.

7 4. KO has extensive experience litigating nationwide and state consumer class  
8 actions. Although the firm handles a variety of consumer class actions, we focus a  
9 significant amount of our resources pursuing financial institutions that assess their  
10 customers unlawful fees. The firm has been appointed class counsel in dozens of cases  
11 throughout the country and have tried several to verdict. The firm is well positioned to  
12 understand the risks of this action and why settlement at this stage of the litigation was the  
13 best option for the putative class. Based upon our experience as one of the leading  
14 overdraft fee litigation firms for nearly a decade, we are confident that in light of the  
15 rejection of the extended overdraft usury theory in the other cases we have litigated around  
16 the country, the settlement obtained here is an excellent result.

17 5. KO has devoted the time and resources of its attorneys and staff to ensure  
18 the vigorous prosecution of the claims brought on behalf of the putative class in this  
19 litigation, as detailed in the Fee and Expense Application. Our firm resume, and  
20 biographical information for Jeff Ostrow and Jonathan Streisfeld, is attached as *Exhibit A*.

21 6. Jonathan Streisfeld is a partner in the firm and has was admitted to practice  
22 in Florida in 1997. He is licensed in several federal courts around the country and has  
23 been appointed class counsel in numerous class actions.

24 7. Jason Alperstein is a former partner of the firm, is admitted to practice in  
25 Florida since 2009, and is licensed in federal courts around the country. He has been  
26 appointed class counsel in numerous class actions.

27 8. The current hourly rates for the attorneys at KO who worked on this case  
28

1 are as follows:

- 2 a. Jeff Ostrow - \$775.00  
 3 b. Jonathan Streisfeld - \$750.00  
 4 c. Jason Alperstein - \$450.00

5 9. These rates are customarily charged by class action attorneys practicing in  
 6 the Southern District of California with similar experience working on complex matters  
 7 and are regularly approved therein.

8 10. I have organized the time spent by Jonathan Streisfeld, Jason Alperstein and  
 9 me into categories which describe the services which we rendered in this case and in two  
 10 other usury theory matters that helped us in the prosecution of this case.

	<b><u>Task</u></b>	<b><u>Jeff Ostrow</u></b>	<b><u>Jonathan Streisfeld</u></b>	<b><u>Jason Alperstein</u></b>
11				
12	1 Presuit investigation, Factual	8.00	0.00	0.00
13	Development, Client Meetings and			
14	2 Correspondence			
15	3 Litigation of pre-Farrell NBA usury	16.25	3.50	47.50
16	4 claims, including <i>McGee v. Bank of</i>			
17	5 <i>America</i>			
18	6 Legal Research	17.75	5.00	0.00
19	7 Strategy / Case Analysis / Class Counsel	9.00	32.25	0.00
20	8 Conferences			
21	9 Complaint and Amended Complaint	12.25	41.25	0.00
22	10 Drafting, Interim Lead Counsel Motion,			
23	11 Motion to Strike Affirmative Defenses,			
24	12 and other Miscellaneous Court Filings			
25	13 Motion to Dismiss	4.50	3.25	0.00
26	14 Case Management and Other Court	0.50	0.00	0.00
27	15 Mandated Tasks			
28	16 Discovery / Confirmatory Discovery	15.75	1.25	0.00
	17 Motion to Certify Order on Motion to	1.50	1.50	0.00
	18 Dismiss Appeal to 9th Circuit			
	19 Settlement Discussions, Mediation	55.75	53.00	0.00
	20 Statements, Mediation, and Post-			
	21 Mediation Settlement Negotiations,			
	22 Settlement Agreement Drafting			
	23 Research and Writing Preliminary	49.25	24.75	0.00
	24 Approval Brief			
	25 Work with Settlement and Notice	4.00	2.50	0.00
	26 Administrator			
	27 Class Member Inquiries	1.25	0.50	0.00
	28 Attorneys' Fee and Cost Application	20.00	7.50	0.00
	29 Motion for Final Approval (25.5 past)	40.50	0.50	0.00

	and (15.0 future, estimated)			
16	Post-Final Approval Work (estimated)	25.00	0.00	0.00
17	Work with Experts	30.25	6.50	0.00
	<b>Totals</b>	311.50	183.25	47.50

11. The total hours billed by the attorneys at KO for this case are **542.25**. Applying the above hourly rates, the total lodestar is **\$399,837.50**.

12. This lodestar includes estimated time that will be spent from the date of this declaration forward, which I expect will include tasks related to preparing the motion for final approval and all supporting declarations, responding to objections if any, attending to class member inquiries, preparing for and attending the final approval hearing, working with the settlement administrator, ensuring proper distribution of funds to class members, and any post-final approval motions.

13. Class Counsel will submit detailed time records for each attorney should the Court so require.

14. Additionally, I have organized the necessary expenses that our firm has incurred for the prosecution of this case. The firm is not seeking reimbursement for internal overhead expenses that ordinarily reimbursed to Class Counsel in class actions. Class Counsel requesting reimbursement for the expert fees related to declaration prepared and submitted by Professor Brian Fitzpatrick. Cost receipts will be submitted to the Court should it likewise so require.

Category	Expenses
Mediator's Services	\$6501.15
Expert Fees (Art Olsen) <sup>1</sup>	\$5648.87
Travel (billed at 50%)	\$2616.68
Lexis Nexis	\$634.35
<b>Total</b>	<b>\$15,426.05</b>

15. Co-Counsel has submitted individual declarations in support of the Fee and

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<sup>1</sup> Art Olsen is a data and damage expert who assisted Class Counsel in preparation for mediation. His hourly rate is \$300.00 an hour for work and \$150.00 per hour for travel. He billed \$3900.00 for his services, \$750.00 for travel time, and \$998.87 for his expenses.



1 Expense Application. For the convenience of the Court, the following is an aggregate  
 2 lodestar calculation, as well as an aggregate of all necessary expenses incurred to date for  
 3 which Class Counsel seeks reimbursement.

4 <b>Class Counsel</b>	<b>Hours Billed</b>	<b>Lodestar</b>	<b>Expenses</b>
5 Kopelowitz Ostrow 6 Ferguson Weiselberg Gilbert	542.25	\$399,837.50	\$15,426.05
7 Tycko & Zavareei LLP	832.25	\$495,385.00	\$17,825.11
8 Kelley Uustal, PLC	419.75	\$282,100.00	\$17,265.03
Creed & Gowdy, P.A.	363.75	\$250,725.00	\$2,603.73
<b>Totals</b>	<b>2158.00</b>	<b>\$1,428,047.50</b>	<b>\$53,119.92</b>

9 16. Finally, Class Counsel was retained by each of the Plaintiffs on a contingent  
 10 fee basis. In the event of no recovery, Class Counsel is not entitled to any payment from  
 11 the Plaintiffs. In the event of a class recovery, payments to Class Counsel is to be set as  
 12 ordered by the Court. If the case only involved individual recovery, Class Counsel is to  
 13 be paid the greater of (a) 33.33% of any settlement or recovery obtained for the Plaintiffs;  
 14 (b) recovery from the defendant, or (c) court awarded attorney's fees.

15 I declare under penalty of perjury that the foregoing is true and correct. Executed  
 16 this 19<sup>th</sup> day of February, 2018, in Fort Lauderdale, Florida.

17  
 18 /s/ Jeff Ostrow  
 19 **Jeff Ostrow**



ONE WEST LAS OLAS BOULEVARD, SUITE 500  
FORT LAUDERDALE, FLORIDA 33301

TELEPHONE: 954.525.4100  
FACSIMILE: 954.525.4300

## OUR FIRM

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For nearly two decades, Kopelowitz Ostrow Ferguson Weiselberg Gilbert (KO) has provided comprehensive, results-oriented legal representation to individual, business, and government clients throughout Florida and the rest of the country. KO has the experience and capacity to represent its clients effectively and has the legal resources to address almost any legal need. The firm's 45 attorneys and over 20 support staff have practiced at several of the nation's largest and most prestigious firms and are skilled in almost all phases of law, including consumer class actions, multidistrict litigation involving mass tort actions, complex commercial litigation, and corporate transactions. In the class action arena, the firm has experience not only representing individual aggrieved consumers, but also defending large institutional clients, including multiple Fortune 100 companies.

### Who We Are

The firm has a roster of accomplished attorneys. Clients have an opportunity to work with some of the finest lawyers in Florida, each one committed to upholding KO's principles of professionalism, integrity, and personal service. Among our roster, you'll find attorneys whose accomplishments include: being listed among the "Legal Elite Attorneys" and as "Florida Super Lawyers"; achieving an AV® Preeminent™ rating by the Martindale-Hubbell peer review process; being Board Certified in their specialty; serving as in-house counsel for major corporations, as a city attorney handling government affairs, as a public defender, and as a prosecutor; achieving multi-millions of dollars through verdicts and settlements in trials, arbitrations, and alternative dispute resolution procedures; successfully winning appeals at every level in Florida state and federal courts; and serving government in various elected and appointed positions, including Mayor of Broward County, Florida.

Our efficient staff is trained in the use of cutting edge case management technology, communication devices and computer programs, and is assisted by our in-

house programming staff who gives our firm an advantage in coordinating our class action suits. The firm has these significant resources at its disposal, and all of those resources will be committed as needed to the representation of the putative class in this litigation.

KO has the experience and resources necessary to represent large putative classes. The firm's attorneys are not simply litigators, but rather, experienced trial attorneys with the support staff and resources needed to coordinate complex cases.

### **Class Actions – Plaintiff**

Since its founding, KO has initiated and serves as co-lead counsel and liaison counsel in many high profile class actions. Currently, the firm serves as liaison counsel in a multidistrict class action antitrust case against four of the largest contact lens manufacturers pending before Judge Schlesinger in the Middle District of Florida. See *In Re: Disposable Contact Lens Antitrust Litigation*, MDL 2626. Further, the firm serves as lead or co-lead counsel in over a dozen certified and/or proposed class actions against national and regional banks involving the unlawful re-sequencing of debit and ATM transactions resulting in manufactured overdraft fees. The complaints are pending in various federal and state jurisdictions throughout the country, including some in multidistrict litigation pending in the Southern District of Florida and others in state courts dispersed throughout the country. In connection with these cases, the firm's attorneys are admitted in many federal and state courts to properly litigate these cases. KO's substantial knowledge and experience litigating overdraft class actions and analyzing overdraft damage data has enabled the firm to obtain about 15 multi-million dollar settlements (in excess of \$300 million) for the classes KO represents. In fact, KO recently secured a \$27.5 million dollar settlement against Bank of America in connection with their debit hold practice resulting in deceptive overdraft charges for consumers.

Additionally, the firm is currently or has in the past litigated certified and proposed class actions against Blue Cross Blue Shield and United Healthcare related to their improper reimbursements of health insurance benefits. Other class action cases include cases against Microsoft Corporation related to its Xbox 360 gaming platform, ten of the largest oil companies in the world in connection with the destructive propensities of ethanol and its impact on boats, Nationwide Insurance for improper mortgage fee assessments, payday lenders for deceptive and predatory loans and several of the nation's largest retailers for deceptive advertising and marketing at their retail outlets and

factory stores.

### **Class Action - Defense**

The firm also brings experience in successfully defended many class actions on behalf of banking institutions, mortgage providers and servicers, an aircraft maker and U.S. Dept. of Defense contractor, a manufacturer of breast implants, and a national fitness chain.

### **Mass Tort Litigation**

The firm also has extensive experience in mass tort litigation, including the handling of cases against Bausch & Lomb in connection with its Renu with MoistureLoc product, Wyeth Pharmaceuticals related to Prempro, Bayer Corporation related to its birth control pill YAZ, and Howmedica Osteonics Corporation related to the Stryker Rejuvenate and AGB II hip implants. In connection with the foregoing, some of which has been litigated within the multidistrict arena, the firm has obtained millions in recoveries for its clients.

### **Other Areas of Practice**

In addition to class action and mass tort litigation, the firm has extensive experience in the following practice areas: commercial and general civil litigation, corporate transactions, health law, insurance law, labor and employment law, marital and family law, real estate litigation and transaction, government affairs, receivership, construction law, appellate practice, estate planning, wealth preservation, healthcare provider reimbursement and contractual disputes, white collar and criminal defense, employment contracts, environmental, and alternative dispute resolution.

### **More about KO**

To learn more about KO, or any of the other firm's attorneys, please visit [www.kolawyers.com](http://www.kolawyers.com).

### CLASS COUNSEL APPOINTMENTS

*Orallo v. Bank of the West*, 1:09-MD-202036 (S.D. Fla. 2012) - \$18.0 million – Class Counsel

*LaCour v. Whitney Bank*, 8:11-CV-1896 (M.D. Fla. 2012) - \$6.8 million – Class Counsel

*Mello v. Susquehanna Bank*, 1:09-MD-02046 (S.D. Fla. 2014) – 3.68 million – Class Counsel

*Wolfgeher Commerce Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$18.3 million – Class Counsel

*Harris v. Associated Bank*, 1:09-MD-02036 (S.D. Fla. 2012) - \$13.0 million – Class Counsel

*Blahut v. Harris Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$9.4 million – Class Counsel

*McKinley v. Great Western Bank*, 1:09-MD-02036 (S.D. Fla. 2013) - \$2.2 million – Class Counsel

*Nelson v. Rabobank*, RIC 1101391 (Riverside County, CA 2012) - \$2.4 million – Class Counsel

*Trevino v. Westamerica*, CIV 1003690 (Marin County, CA 2010) - \$2.0 million – Class Counsel

*Johnson v. Community Bank*, 3:11-CV-01405 (M.D.PA. 2013) - \$1.5 million – Class Counsel

*Simpson v. Citizens Bank*, 2:12-CV-10267 (E.D.MI. 2012) - \$2.0 million – Class Counsel

*Hawthorne v. Umpqua Bank*, 3:11-CV-06700 (N.D.Ca. 2012) – \$2.9 million Settlement – Class Counsel

*Case v. Bank of Oklahoma*, 09-MD-02036 (S.D. Fla. 2012) - \$19.0 million Settlement – Class Counsel

*Taulava v. Bank of Hawaii*, 11-1-0337-02 (1st Cir. Hawaii 2011) - \$9.0 million – Class Counsel

*Swift v. Bancorpsouth*, 1:10-CV-00090 (N.D. Fla. 2016) - \$24.0 million – Class Counsel, Litigation Class Certified

*Payne v. Old National Bank*, 82Co1-1406 (Cir. Ct. Vanderburgh) – Class Counsel, Litigation Class Certified

*Bodnar v. Bank of America, N.A.*, 5:14-cv-03224-EGS (E.D. Pennsylvania 2015) – \$27.5 million, Class Counsel



JEFFREY OSTROW  
**Managing Partner**

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Direct: 954-332-4200  
Fax: 954-525-4300  
Email: [ostrow@kolawyers.com](mailto:ostrow@kolawyers.com)

Jeffrey M. Ostrow is the Managing Partner of Kopelowitz Ostrow P.A. He established his own law practice immediately upon graduation from law school in 1997, co-founded the current firm in 2001, and has since grown it to over 40 attorneys in 3 offices throughout South Florida. In addition to overseeing the firm's day-to-day operations and strategic direction, Mr. Ostrow practices full time in the areas of consumer class actions, commercial litigation, business counseling, and sports agency law. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, which is the highest possible rating by the most widely recognized attorney rating organization in the world.

Mr. Ostrow often serves as outside General Counsel to companies, advising them in connection with their legal and regulatory needs. He currently represents multiple Fortune 500® Companies in connection with their Florida litigation. He has handled cases covered by media outlets throughout the country and has been quoted many times on various legal topics in almost every major news publication, including the Wall Street Journal, New York Times, Washington Post, Seattle Times, Miami Herald, and Sun-Sentinel. He has also appeared on CNN, ABC, CBS, FoxNews, ESPN, and other major national television networks in connection with his cases, which often involve athletes in the NFL, NBA, and MLB.



Mr. Ostrow is an accomplished trial attorney who represents both Plaintiffs and Defendants, successfully trying cases to verdict in numerous cases involving multi-million dollar damage claims in state and federal courts. Currently, he serves as lead counsel in nationwide and statewide class action lawsuits against many of the world's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$250,000,000 for millions of bank customers, as well as monumental changes in the way banks assess fees. In addition, Mr. Ostrow has litigated consumer class actions against some of the world's largest clothing retailers, health insurance carriers, technology companies, and oil conglomerates, along with serving as class action defense counsel for some of the largest advertising and marketing agencies in the world, banking institutions, real estate developers, and mortgage companies.

He is also the President of ProPlayer Sports LLC, a full service sports agency and marketing firm. Mr. Ostrow is licensed by both the NFL Players Association and the NBA Players Association as a Contract Agent certified to represent NFL and NBA professional athletes in connection with their football and basketball contract negotiations. At the agency, Mr. Ostrow handles all player-team negotiations of agreements, represents his clients in legal proceedings, and oversees all marketing engagements. His clientele represents nearly every major professional sport.

Mr. Ostrow received a Bachelor of Science in Business Administration from the University of Florida and Juris Doctorate from Nova Southeastern University. He is a member of The Florida Bar and is fully admitted to practice before the U.S. Supreme Court, the U.S. District Courts for the Southern, Middle, and Northern Districts of Florida, Eastern District of Michigan, Northern District of Illinois, Western District of Tennessee, Western District of Wisconsin, and the U.S. Court of Appeals for the Eleventh Circuit. Mr. Ostrow is also a member of the American Bar Association and the founder and President of Class Action Lawyers of America.

He is a lifetime member of the Million Dollar Advocates Forum. The Million Dollar Advocates Forum is the most prestigious group of trial lawyers in the United States. Membership is limited to attorneys who have won multi-million dollar verdicts. Additionally, he has been named as one of the top lawyers in Florida by Super Lawyers® for several years running, honored as one of Florida's Legal Elite Attorneys, recognized as a Leader in Law by the Lifestyle Media Group®, and nominated by the South Florida Business Journal® as a finalist for its Key Partners Award. Mr. Ostrow is a recipient of the University of Florida's Warrington College of Business Administration *Gator 100* award for the fastest growing University of Florida alumni-owned law firm in the world.

When not practicing law, Mr. Ostrow serves on the Board of Governors of Nova Southeastern University's Wayne Huizenga School of Business and is a Member of the Broward County Courthouse Advisory Task Force. He is also the Managing Member of One West LOA LLC, a commercial real estate development company with holdings in downtown Fort Lauderdale and the Managing Member of TKSF Management Group LLC, a company that operates a chain of Tilted Kilt Pub & Eatery® restaurants throughout

South Florida. He has also previously sat on the boards of a national banking institution and a national healthcare marketing company. Mr. Ostrow is a founding board member for the Jorge Nation Foundation, a 501(c)(3) non-profit organization that partners with the Joe DiMaggio Children's Hospital to send children diagnosed with cancer on all-inclusive *Dream Trips* to destinations of their choice.

**Primary Practice Area**

Class Action Litigation

**Secondary Practice Area**

Business & Sports Agency Law

**Bar Admissions**

Florida Bar

**Court Admissions**

U.S. Court of Appeals for the Eleventh Circuit

U.S. District Ct, Southern District of Florida

U.S. District Ct, Middle District of Florida

U.S. District Ct, Northern District of Florida

U.S. District Ct, Northern District of Illinois

U.S. District Ct, Eastern District of Michigan

U.S. District Ct, Western District of Tennessee

U.S. District Ct, Western District of Wisconsin

**Education**

Nova Southeastern University – 1997

University of Florida - 1994



**JONATHAN STREISFELD**  
**Partner**

1 West Las Olas Blvd., Suite 500  
Fort Lauderdale, FL 33301  
Main: 954-525-4100  
Direct: 954-332-4218  
Fax: 954-525-4300  
Email: [streisfeld@kolawyers.com](mailto:streisfeld@kolawyers.com)

Jonathan M. Streisfeld joined KO as a partner in 2008. Mr. Streisfeld concentrates his practice in the areas of business litigation, appeals, and consumer class actions. He is a Martindale-Hubbell AV® Preeminent™ rated attorney in both legal ability and ethics, which is the highest possible rating by the most widely recognized attorney rating organization in the world.

Mr. Streisfeld has represented a variety of business entities, business owners, and individuals in a broad base of business litigation matters. Those matters have involved contractual claims, fraud, breach of fiduciary duty, intellectual property claims, real estate and title claims, shareholder disputes in closely-held corporations, wage and hour claims, deceptive trade practices, and other business torts. He has experience in assisting business owners and individuals with documenting contractual relationships, including independent contractor agreements and shareholder agreements. Mr. Streisfeld also provides legal representation to government service providers in bid protest proceedings.

At KO, Mr. Streisfeld oversees the firm's appellate practice, which includes representing clients in the appeal of final and non-final orders, as well as writs of certiorari, mandamus, and prohibition. His appellate practice includes civil and marital and family law matters. Mr. Streisfeld is often called upon to counsel and assist other trial attorneys, both within and outside the firm, to protect the trial record for appeal.

Since joining KO, Mr. Streisfeld has gained vast experience in class action litigation. He currently serves as class counsel in nationwide and statewide consumer class action lawsuits against many of the nation's largest financial institutions in connection with the unlawful assessment of fees. To date, his efforts have successfully resulted in the recovery of over \$250,000,000 for millions of bank customers, as well as profound changes in the way banks assess fees. In addition, Mr. Streisfeld has litigated consumer class actions against some of the world's largest health insurance carriers and oil conglomerates and defended class and collective actions in other contexts.

Previously, Mr. Streisfeld served as outside assistant city attorney for the City of Plantation and Village of Wellington. In that capacity, Mr. Streisfeld gained experience in litigation matters involving municipal code compliance, annexation, inverse condemnation, and litigation involving land use planning determinations made by local governments.

Mr. Streisfeld is admitted to practice in all Florida courts, the Supreme Court of the United States, Eleventh Circuit Court of Appeals, United States District Court for the Northern, Middle, and Southern Districts of Florida, United States District Court for the Northern District of Illinois, and United States District Court for the Western District of Tennessee. He has also been granted temporary admission to practice numerous other state and federal courts throughout the United States. As a member of The Florida Bar, Mr. Streisfeld serves on the Executive Council of the Appellate Practice Section and is Co-Chair of the Section's Communications Committee.

Mr. Streisfeld obtained a Bachelor of Science degree in Law and Public Policy, cum laude, from Syracuse University and his Juris Doctorate, cum laude, from Nova Southeastern University.

Mr. Streisfeld currently serves as a member of the Board of Temple Kol Ami Emanu-El.

**Primary Practice Area**

Class Action Litigation  
Commercial & General Civil Litigation

**Secondary Practice Area**

Appellate Practice

**Bar Admissions**

Florida Bar

**Court Admissions**

All Florida Courts  
U.S. Supreme Court

U.S. Court of Appeals for the Eleventh Circuit  
U.S. District Ct, Southern District of Florida  
U.S. District Ct, Middle District of Florida  
U.S. District Ct, Northern District of Florida  
U.S. District Ct, Northern District of Illinois  
U.S. District Ct, Western District of Tennessee

**Education**

J.D., Nova Southeastern University - 1997  
B.S., Syracuse University - 1994.

# **EXHIBIT 4**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL, on behalf of  
herself and all others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 3:16-cv-00492-L-WVG

**DECLARATION OF HASSAN A.  
ZAVAREEI IN SUPPORT OF  
APPLICATION FOR  
ATTORNEYS’ FEES AND  
REIMBURSEMENT OF COSTS  
AND SERVICE AWARDS**

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018 at  
11:00am

I, Hassan A. Zavareei, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of this Court and attorney of record for Plaintiff Joanne Farrell in this action.

2. I am a partner Tycko & Zavareei LLP (“TZ” or “Firm”), which has been appointed Class Counsel in the above-captioned matter. The information below is stated based on personal knowledge. I actively participated in this action, including negotiation of the Settlement Agreement, and am fully familiar with the proceedings being resolved. I am competent to testify to the facts set forth below, and if called as a witness and placed under oath, I would testify to those facts.

3. I submit this declaration in support of Plaintiffs’ Application for Attorneys’ Fees and Reimbursement of Expenses (“Fee and Expense Application”). This declaration supports the professional time incurred and necessary and reasonable expenses incurred by attorneys at my firm in this matter. Given my role in this litigation, I have personal knowledge of the legal services rendered by the attorneys



1 requesting fees and expenses. This declaration summarizes the work performed by TZ  
2 in this litigation that led to an outstanding result for the class.

3 4. TZ is a national law firm with offices in Washington, D.C. and Oakland,  
4 California. TZ's practice focuses on complex and class action litigation involving  
5 consumer and financial matters, and seeking redress for unfair business practices,  
6 whistleblowers exposing fraud and corruption, tenants' associations battling to  
7 preserve decent and affordable housing, and non-profit entities and businesses facing  
8 difficult litigation.

9 5. TZ has extensive experience in class actions involving financial matters,  
10 and general consumer class action litigation. TZ has been appointed class counsel in  
11 numerous consumer protection class actions across the country. The firms' attorneys  
12 have extensive experience and knowledge of federal and state consumer protection law,  
13 and practical experience bringing cases to trial in federal court. Accordingly, Class  
14 Counsel has the adequate resources and expertise to litigate a federal consumer  
15 protection class action through trial, and are well informed of the risks of continued  
16 litigation in this case. Additionally, TZ has litigated cases involving extended overdraft  
17 fees against Bank of Oklahoma, MB Financial, TD Bank, Bank of Hawaii, and First  
18 Hawaiian Bank. As a result, TZ is uniquely qualified to understand the relative  
19 strengths and weaknesses of usury cases in general and to apply those learnings to the  
20 particular facts of this case. Based on their experience and reasoned judgment, the  
21 information learned from factual research in this case, and legal research for this and  
22 other similar cases, Class Counsel concluded that the Settlement Agreement provides  
23 exceptional results for the Settlement Class while sparing the Settlement Class from  
24 the uncertainties of continued and protracted litigation.

25 6. A true and correct copy of the firm resume is attached as *Exhibit A*.

26 7. I have been a member good standing of the California Bar since 1996, and  
27 licensed in federal courts (including this Court) around the country since 1998. After  
28

1 graduating law school as a member of the Order of Coif from Boalt Hall Law School  
2 at the University of California, Berkeley in 1995, I worked in the litigation department  
3 of Gibson, Dunn & Crutcher in Washington, D.C. In 2002, I formed TZ with Jonathan  
4 K. Tycko, my colleague at Gibson, Dunn & Crutcher and a graduate of Columbia Law  
5 School.

6 8. I have been appointed as Lead Class Counsel and/or Class Counsel in  
7 numerous class actions, including many actions against banks related to the improper  
8 assessment of overdraft fees. Class actions against financial institutions in which I have  
9 been named Class Counsel or Settlement Class Counsel include *Schulte v. Fifth Third*  
10 *Bank*, No. 1:09-cv-06655 (N.D. Ill.); *Mathena v. Webster Bank*, No. 3:0-cv-01448 (D.  
11 Conn.); *Allen v. UMB Bank, N.A.*, No. 1016 Civ. 34791 (Cir. Ct. Jackson Cty., Mo.);  
12 *Casto v. City Nat'l Bank, N.A.*, 10 Civ. 01089 (Cir. Ct. Kanawha Cty., W. Va.); *Eaton*  
13 *v. Bank of Oklahoma, N.A.*, No. CJ-2010-5209 (Dist. Ct. for Tulsa Cty., Okla.); *Taulva*  
14 *v. Bank of Haw.*, No. 11-1-0337-02 (Cir. Ct. of 1st Cir., Haw.); *Duval v. Citizens Fin.*  
15 *Grp.*, No. 1:10-cv-21080 (S.D. Fla.); *Mascaro v. TD Bank, Inc.*, No. 10-cv-21117 (S.D.  
16 Fla.); *Theresa Molina v. Intrust Bank, N.A.*, No. 10-cv-3686 (18th Jud. Dist., Dist. Ct.  
17 Sedgwick Cty., Kan.); and *Trombley v. Nat'l City Bank*, 1:10-cv-00232-JDB (D.D.C.).  
18 Settlements in *National City Bank*, *Fifth Third Bank*, *Webster Bank*, *UMB Bank*, *City*  
19 *National Bank*, *Bank of Oklahoma*, *Intrust Bank*, and *Bank of Hawaii* were finally  
20 approved and resulted in settlements of millions of dollars for consumers across the  
21 country.

22 9. Anna Haac is a partner in the Firm and is a 2006 graduate of University of  
23 Michigan Law School. She is licensed to practice in several state and federal courts  
24 across the country and has been appointed class counsel in multiple class actions. She  
25 regularly publishes articles addressing consumer protection and class action issues in  
26 law-related publications like Law 360 and the National Law Review, as well as national  
27 news sources like The Washington Post and The Wall Street Journal.

1           10. Jeffrey Kaliel is a former partner in the Firm and is a 2005 graduate of  
2 Yale Law School. He is licensed in several state and federal courts around the country  
3 and has been appointed class counsel in numerous class actions.

4           11. Andrew Silver is an associate in the Firm and is a 2012 graduate of Boston  
5 College Law School. He is licensed in multiple state and federal courts and has been  
6 appointed class counsel in multiple class actions.

7           12. Kyra Taylor is a fellow with the firm and is a 2016 graduate of University  
8 of California, Berkeley School of Law. She is licensed in multiple state and federal  
9 courts.

10           13. Lauren Kelleher is a former fellow with the Firm and is a 2016 graduate  
11 of Georgetown University Law Center.

12           14. Nathan Laporte is a paralegal at the Firm. He graduated from the  
13 University of Maryland, College Park in May 2013, with a double degree in  
14 Government and Politics and Information Systems. He is a current part-time law  
15 student at the Georgetown Law Center, with an expected graduation date of Summer  
16 2019. He joined the Firm as a paralegal in March 2016, prior to which he was a program  
17 assistant at a legal office at the World Bank.

18           15. The requested rates for the attorneys and paralegal who worked on this  
19 case are set forth in the table below. These rates are all at or below our normal and  
20 customary rates and are at or below the market rates for the Southern District of  
21 California. Courts within this District have held rates commensurate with our requested  
22 rates to be fair and reasonable for similar complex cases.

Name	Position	Years Experience	Requested Rate
Hassan Zavareei	Partner	20+	\$800
Jeffrey Kaliel	Partner	13	\$650
Anna Haac	Partner	12	\$650
Andrew Silver	Associate	6	\$400
Kyra Taylor	Associate	2	\$275
Lauren Kelleher	Associate	2	\$250
Nathan Laporte	Paralegal	N/A	\$180

1           16. I have reviewed the timesheets for the foregoing TZ attorneys and TZ  
 2 paralegal staff (“TZ Staff”). Based on that review, I organized the time spent by the TZ  
 3 Staff on this case into categories which describe the professional services which we  
 4 rendered in this case and in other cases that helped us in the prosecution of this case.

	<b>Task</b>	<b>Hassan Zavareei</b>	<b>Jeff Kaliel</b>	<b>Anna Haac</b>	<b>Andrew Silver</b>	<b>Kyra Taylor</b>	<b>Lauren Kelleher</b>	<b>Nathan Laporte</b>
1	Presuit Investigation, Factual Development, Client Meetings and Correspondence	11.75	53.00	3.75	0.00	0.00	5.75	13.25
2	Litigation of pre- Farrell NBA usury claims, including <i>McGee v. Bank of America</i>	2.25	1.50	0.00	0.00	0.00	0.00	0.00
3	Legal Research	12.00	1.50	17.75	24.75	22.75	19.25	1.75
4	Strategy / Case Analysis / Class Counsel Conferences	13.00	15.00	2.50	5.25	2.50	0.00	4.00
5	Complaint and Amended Complaint Drafting, Interim Lead Counsel Motion, Motion to Strike Affirmative Defenses, and other Miscellaneous Court Filings	1.25	49.50	20.50	6.25	0.00	7.25	10.75
6	Motion to Dismiss	1.50	21.00	0.00	0.00	0.00	0.00	3.50
7	Case Management and Other Court Mandated Tasks	0.00	0.25	0.00	0.00	0.00	0.00	7.50
8	Discovery / Confirmatory Discovery	11.00	14.50	0.00	0.00	0.00	0.00	0.50
9	Motion to Certify Order on Motion to Dismiss Appeal to 9th Circuit	3.25	18.75	0.00	0.00	0.00	13.75	3.50
10	Settlement Discussions, Mediation Statements, Mediation, and Post- Mediation Settlement Negotiations, Settlement Agreement Drafting	74.25	145.50	0.75	11.50	6.25	0.00	5.50

	<u>Task</u>	<u>Hassan Zavareei</u>	<u>Jeff Kaliel</u>	<u>Anna Haac</u>	<u>Andrew Silver</u>	<u>Kyra Taylor</u>	<u>Lauren Kelleher</u>	<u>Nathan Laporte</u>
11	Research and Writing Preliminary Approval Brief	7.50	39.50	0.00	0.00	7.00	0.00	4.50
12	Work with Settlement and Notice Administrator (estimated)	10	0.00	0.00	0.00	0.00	0.00	0.00
13	Class Member Inquiries (estimated)	15	0.00	0.00	0.00	0.00	0.00	1.00
14	Attorneys' Fee and Cost Application	13.75	0.00	0.00	8.25	0.00	0.00	8.75
15	Motion for Final Approval (actual 4.5 and 15.0 estimated)	19.00	0.50	0.00	0.00	0.00	0.00	0.00
16	Post-Final Approval Work (estimated)	15.00	0.00	0.00	0.00	0.00	0.00	0.00
17	Work with Experts	0.00	11.00	0.00	0.00	0.00	0.00	0.00
	<b>Totals</b>	<b>210.5</b>	<b>371.5</b>	<b>45.25</b>	<b>56</b>	<b>38.5</b>	<b>46</b>	<b>64.5</b>

17. The total hours billed by the attorneys and staff at TZ for this case are **832.25**. Applying the above hourly rates, the total lodestar for the firm is **\$495,385.00**.

18. This lodestar includes estimated time that will be spent from the date of this declaration forward, which I expect will include tasks related to preparing the motion for final approval and all supporting declarations, responding to objections if any, attending to class member inquiries, preparing for and attending the final approval hearing, working with the settlement administrator, ensuring proper distribution of funds to class members, and any post-final approval motions.

19. Class Counsel will submit detailed time records for each attorney should the Court so require.

20. Additionally, I have organized the necessary expenses that our firm has incurred in connection with the prosecution of this case. The firm is not seeking reimbursement for internal overhead expenses. Cost receipts will be submitted to the Court should it so require.

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Category	Expenses
Mediator’s Services	\$7,215.73
Travel (billed at 50%)	\$8,924.53
Westlaw	\$1,284.85
Court Fees	\$400.00
<b>Total</b>	<b>\$17,825.11</b>

21. The actual expenses incurred in the prosecution of this case is reflected on the computerized accounting records of my firm prepared by bookkeeping staff, based on receipts and check records, and accurately reflect all expenses incurred.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19<sup>th</sup> day of February, 2018, in Washington, D.C.

/s/ Hassan Zavareei  
Hassan Zavareei

# **EXHIBIT A**



## **TYCKO & ZAVAREEI LLP**

### **HISTORY**

Our firm was founded in 2002, when Jonathan Tycko and Hassan Zavareei left the large national firm at which they both worked to start a new kind of practice. Since then, a wide range of clients have trusted us with their most difficult problems. Those clients include individuals fighting for their rights, tenants' associations battling to preserve decent and affordable housing, consumers seeking redress for unfair business practices, whistleblowers exposing fraud and corruption, and non-profit entities and businesses facing difficult litigation.

Our practice is focused in a few select areas: consumer class action litigation, employment litigation, appellate litigation, whistleblower *qui tam* litigation, intellectual property litigation, First Amendment litigation, and business litigation.

### **EXPERIENCE**

Our firm's practice focuses on complex litigation. This includes representation of plaintiffs in class action litigation. Since the founding of our firm, we have been plaintiff's counsel in dozens of separate lawsuits brought as class actions. In addition to this work on class actions, our practice also involves representing businesses in unfair competition and antitrust litigation, representing employees in employment litigation, and representing whistleblowers in *qui tam* litigation brought under the False Claims Act and other similar whistleblower statutes..

### **PRACTICE AREAS**

#### **CONSUMER CLASS ACTIONS**

Our attorneys have a wealth of experience litigating consumer and other types of class actions. We primarily represent consumers who have been the victims of corporate wrongdoing. Our attorneys bring a unique perspective to such litigation because each of our partners trained at major national law firms where they obtained experience representing corporate defendants in such cases. This unique perspective enables us to anticipate and successfully counter the strategies commonly employed by corporate counsel defending class action litigation.

In addition, because class actions present such high-stakes litigation for corporate defendants, our ability to skillfully oppose motions to dismiss the case at an early stage of the litigation before the class has a chance to have a judge or jury consider the merits of its claims is critical to obtaining relief for our clients. Our attorneys have successfully obtained class certification, the most critical step in winning a class action, and obtained approval of class action settlements with common funds collectively amounting to over \$250 million.

## EMPLOYMENT LITIGATION

Our attorneys have substantial experience representing employees and employers in employment disputes. In most of the employment litigation that we handle, however, we represent groups of plaintiffs who are challenging systemic unlawful employment practices. For instance we successfully represented seven women in their claims of systemic discrimination and sexual harassment by Hooters restaurants in West Virginia, and we represented a group of women seeking class treatment of their allegations of sexual discrimination by Ruth's Chris.

## APPELLATE

Our attorneys have substantial experience in analyzing, briefing and arguing appeals. We have handled appeals in courts around the country, including the U.S. Supreme Court, the U.S. Circuit Courts, and the District of Columbia Court of Appeals.

## QUI TAM AND FALSE CLAIMS ACT

Our firm represents whistleblowers who courageously expose fraud by government contractors, healthcare providers, and other companies doing business with the government through litigation under the False Claims Act. We also represent whistleblowers who expose tax fraud through the IRS Whistleblower Office program, whistleblowers who expose violations of the securities laws through the SEC Whistleblower Office program, and banking industry whistleblowers through the Department of Justice's FIRREA program.

## INTELLECTUAL PROPERTY

Our attorneys have substantial experience litigating cutting-edge intellectual property cases in state and federal courts. Proper handling of intellectual property controversies requires substantive knowledge of the relevant body of law, together with strong litigation experience and skill. We bring these elements together to effectively represent our clients in complex trademark and copyright lawsuits.

We have litigated copyright infringement cases on behalf of corporations and associations, including submitting an amicus brief on behalf of three technology companies in the United States Supreme Court on Internet file sharing in the *MGM, et al. v. Grokster, et al.* case. We have also counseled clients on copyright matters, and written and presented on important copyright issues, such as the intersection of technology, copyright and the First Amendment. The firm briefed and argued an appeal to the Fifth Circuit Court of Appeals on a novel issue of law in a dispute over the competing trademark rights of two test preparation companies operating in the same markets, using the same trade name.

## FIRST AMENDMENT

Partner Hassan Zavareei represented the plaintiff in one of the most important cases of media defamation handled recently by the courts, namely, the case brought by Dr. Steven Hatfill against Condé Nast Publications (the publisher of Vanity Fair magazine) and Reader's Digest for articles that falsely accused Dr. Hatfill of perpetrating the Anthrax murders that occurred in the fall of 2001.

Further, our firm has represented a number of employees who have fought back against former employers for defamatory statements. Our lawyers have obtained very substantial settlements on behalf of our clients. Also, our firm has represented businesses seeking to protect their hard-earned reputations against such defamation by their competitors.

Our attorneys also have experience in other types of First Amendment litigation. For example, partner Jonathan Tycko represented a consortium of media clients in a series of lawsuits to gain access to the sealed proceedings in the Independent Counsel investigation of and impeachment proceedings against President Bill Clinton. And partner Hassan Zavareei successfully challenged a district court injunction that violated our client's First Amendment guarantees to free speech and rights to petition the government.

#### BUSINESS DISPUTES

We represent businesses, large and small, in their most significant business disputes. Indeed, prior to the founding of Tycko & Zavareei LLP, our partners spent many years at a large law firm specialized in representing business interests. We have represented some of the largest, publicly-traded corporations in the world, but also have represented small and medium size businesses.

**JONATHAN K. TYCKO**  
PARTNER

In 2002, Jonathan K. Tycko helped found Tycko & Zavareei LLP. Prior to that, Mr. Tycko was with Gibson, Dunn & Crutcher LLP, one of the nation's top law firms. He received his law degree in 1992 from Columbia University Law School, where he was a Stone Scholar, and earned a B.A. degree, with honors, in 1989 from The Johns Hopkins University.

After graduating from law school, Mr. Tycko served for two years as law clerk to Judge Alexander Harvey, II, of the United States District Court for the District of Maryland.

Mr. Tycko's practice has focused primarily on civil litigation. He has extensive trial and appellate experience in real estate, housing, employment, False Claims Act, environmental, consumer class action, media, and professional malpractice litigation. Mr. Tycko has represented a wide range of clients, including Fortune 500 companies, privately-held business, non-profit associations, and individuals.

In addition, Mr. Tycko has handled many pro bono cases in the area of human rights law, including representation of political refugees seeking asylum, and preparation of amicus briefs on behalf of the Lawyers Committee for Human Rights (now known as Human Rights First) and other organizations and individuals in various appellate matters, including matters before the Supreme Court.

For two years, from 2002 through 2004, Mr. Tycko taught as an Adjunct Professor at the George Washington University Law School.

He is admitted to practice before the courts of the District of Columbia, Maryland and New York, as well as before numerous federal courts, including the Supreme Court, the Circuit Courts for the D.C. Circuit, Third Circuit, Fourth Circuit, Ninth Circuit and Federal Circuit, the District Courts for the District of Columbia, the District of Maryland, the Northern and Southern Districts of New York, and the Court of Federal Claims.

**HASSAN A. ZAVAREEI**  
PARTNER

Hassan Zavareei graduated *cum laude* from Duke University in 1990, with degrees in Comparative Area Studies and Russian. Upon graduation from Duke, Mr. Zavareei worked as a Russian-speaking flight attendant for Delta Air Lines for two years. He later earned his law degree from the University of California, Berkeley School of Law in 1995, where he graduated as a member of the Order of the Coif. After graduation from Berkeley, Mr. Zavareei joined the Washington, D.C. office of Gibson, Dunn & Crutcher LLP. In April of 2002, Mr. Zavareei founded Tycko & Zavareei LLP with his partner, Jonathan Tycko.

Mr. Zavareei has handled numerous trials in state and federal courts across the nation in a wide range of practice areas. In his most recent jury trial, Mr. Zavareei prevailed on behalf of his client after a four month trial in the Los Angeles Superior Court. That jury verdict came after years of hard-fought litigation, including an award of almost \$2 million in sanctions against the opposing party due to revelations of discovery misconduct uncovered through electronic discovery.

Although he is a general litigator, Mr. Zavareei devotes most of his practice to class action litigation. While at Gibson Dunn, Mr. Zavareei managed the defense of a nationwide class action brought against a major insurance carrier. In recent years, Mr. Zavareei's class action practice has focused on the representation of plaintiffs in consumer fraud cases, primarily relating to the financial services industry. For instance, Mr. Zavareei was class counsel in over a dozen cases against banks across the country regarding their practices of charging unlawful overdraft fees for debit card transactions. Those cases have returned hundreds of millions of dollars to consumers. Mr. Zavareei also served as Lead Counsel in Multi-District Litigation against a financial services company that provided debit cards to college students. That case also resulted in the return of millions of dollars to consumers. He is currently lead counsel or co-lead counsel in numerous class actions and putative class actions.

In his civil rights practice, Mr. Zavareei has represented individuals, groups of employees, and tenant associations in employment and fair housing litigation. Mr. Zavareei has obtained substantial judgments and settlements for his civil rights clients.

As a general litigator, Mr. Zavareei has been involved in numerous high profile cases. For example, Mr. Zavareei represented Christian Laettner *pro bono* in a successful battle with investors and rogue business partners to stabilize Mr. Laettner's historic development of downtown Durham, North Carolina. Mr. Zavareei also represented Dr. Steven Hatfill, who was wrongfully accused by the media and the FBI of perpetrating the Anthrax attacks of 2001. Mr. Zavareei successfully represented Dr. Hatfill in defamation litigation against *Vanity Fair* and *The Reader's Digest*.

Mr. Zavareei is an accomplished appellate lawyer, having argued cases before the D.C. Circuit, the Fifth Circuit, the Fourth Circuit, and the Ohio Court of Appeals.

Mr. Zavareei is admitted to the State Bar of California, the Bar of the District of Columbia and the Bar of the State of Maryland. Mr. Zavareei is admitted to practice before the federal district courts of the District of Columbia, Maryland, the Northern District of California, the Central District of California, the Southern District of California, and the Eastern District of Michigan. He is also admitted to the Supreme Court Bar and to the Circuit Courts of the District of Columbia, the Ninth Circuit, the Fourth Circuit and the Fifth Circuit.

Mr. Zavareei is married to Dr. Natalie Zavareei and has three daughters, Hayden, Jordan and Isabella. He is a member of the Board of Directors of Public Justice and is the President of Hayden's Journey of Inspiration, a non-profit that provides housing to families of pediatric stem cell transplant recipients.

**ANDREA R. GOLD**  
PARTNER

Andrea Gold, a two-time graduate of the University of Michigan, has spent her legal career advocating for consumers, employees, and whistleblowers. Ms. Gold has deftly litigated numerous complex cases, including through trial. Her extensive litigation experience benefits the firm's clients in both national class action cases as well as in qui tam whistleblower litigation.

She has served as trial counsel in two lengthy jury trials. First, she was second-chair in a four month civil jury trial in state court in California. She more recently served as second-chair in a multi-week jury trial in Maryland.

In her class action practice, Ms. Gold has successfully defended dispositive motions, navigated complex discovery, worked closely with leading experts, and obtained contested class certification. Her class action cases have involved, amongst other things, unlawful bank fees, product defects, violations of the Telephone Consumer Protection Act, and deceptive advertising and sales practices. Ms. Gold's tireless efforts have resulted in millions of dollars in recovery for consumers.

Ms. Gold also has significant civil rights experience. She has represented individuals and groups of employees in employment litigation, obtaining substantial recoveries for employees who have faced discrimination, harassment, and other wrongful conduct. In addition, Ms. Gold has appellate experience in both state and federal court.

Prior to joining Tycko & Zavareei, Ms. Gold was a Skadden fellow. The Skadden Fellowship Foundation was created by Skadden, Arps, Slate, Meagher & Flom, LLP, one of the nation's top law firms, to support the work of new attorneys at public interest organizations around the country. The Skadden Fellowship Foundation receives hundreds of applications each year, but only a very small number of Skadden fellows are selected. Ms. Gold was awarded this prestigious fellowship in 2004 and, for two years, she represented survivors of domestic violence in family law and employment matters. Ms. Gold also provided legal counsel to clients, members of the legal community, and social service providers regarding the Illinois Victim's Safety and Security Act (VESSA), a state law protecting survivors of abuse from employment discrimination and providing for unpaid leave.

Ms. Gold earned her law degree from the University of Michigan Law School, where she was an associate editor of the Journal of Law Reform, co-President of the Law Students for Reproductive Choice, and a student attorney at the Family Law Project clinical program. Ms. Gold graduated with high distinction from the University of Michigan Ross School of Business in 2001, concentrating her studies in Finance and Marketing.

Ms. Gold is admitted to practice before the courts of the District of Columbia, Illinois, and Maryland, as well as numerous federal courts including the U.S. District Court for the District of Columbia, the U.S. District Court for the District of Maryland, and the U.S. Court of Appeals for the District of Columbia Circuit.



**KRISTEN L. SAGAFI**  
**PARTNER**

Kristen Law Sagafi is a 2002 graduate of the University of California, Berkeley School of Law, where she served as articles editor for Ecology Law Quarterly and a student law clerk to the Hopi Appellate Court in Keams Canyon, Arizona. After graduating from law school, Ms. Sagafi joined the San Francisco office of Lieff Cabraser Heimann & Bernstein, LLP, one of the nation's premier class action firms. Ms. Sagafi was recognized as a "Rising Star for Northern California" by Super Lawyers every year between 2009 and 2014, before being named as a "Super Lawyer" in 2015.

Ms. Sagafi focuses her practice on consumer fraud cases, including matters involving false advertising and unfair competition. In 2014, Ms. Sagafi drafted and advanced a bill to strengthen the protections afforded to consumers under California's Consumers Legal Remedies Act, an effort that included presenting testimony to the California State Senate Judiciary Committee. Beyond her consumer protection practice, Ms. Sagafi has received more than 40 hours of accredited mediation training and has served as a volunteer mediator at Contra Costa Superior Court, successfully mediating small claims and landlord-tenant cases.

In addition, Ms. Sagafi has been a guest lecturer on class action law at UC Berkeley and law firm management at UC Hastings. Since 2010, she has been co-chair of the Berkeley Consumer Law Alumni Group. Ms. Sagafi currently sits on the Board of the Justice and Diversity Center of the Bar Association of San Francisco, which advances fairness and equality by providing pro bono legal services to low-income people and educational programs that foster diversity in the legal profession. From 2009-2014, Ms. Sagafi served on the Board of Governors of California Women Lawyers, where she was a member of the executive committee and co-chair of the membership committee.

**ANNA C. HAAC**  
**PARTNER**

Anna C. Haac is a Partner in Tycko & Zavareei's Washington, D.C. office. She focuses her practice on consumer protection class actions and whistleblower litigation. Her prior experience at Covington & Burling LLP, one of the nation's most prestigious defense-side law firms, gives her a unique advantage when representing plaintiffs against large companies in complex cases. During her time at Covington, Ms. Haac represented corporate clients in high stakes cases, focusing her practice on complex civil litigation, white collar defense work, and employment disputes. Among other matters, Ms. Haac represented Fortune 500 companies in government investigations into violations of federal laws and regulations, advised employers on applicable federal and state employment laws, and litigated on behalf of companies and individuals in patent, insurance, and other civil matters.

Since arriving at Tycko & Zavareei, Ms. Haac has represented consumers in a wide range of practice areas, including product liability, false labeling, deceptive and unfair trade practices, and predatory financial practices. She also serves as the D.C. Co-Chair of the National Association of Consumer Advocates. Her whistleblower practice involves claims for fraud on federal and state governments across an equally broad spectrum of industries, including health care fraud, customs fraud, and government contracting fraud. During her tenure at Tycko & Zavareei, Ms. Haac has helped secure multimillion dollar relief on behalf of the classes and whistleblowers she represents. In addition, she has been instrumental in securing key appellate victories, including a recent landmark decision by the U.S. Court of Appeals for the Third Circuit, which held as a matter of first impression that the evasion of customs duties for failing to mark imported goods with their foreign country of origin gives rise to a claim under the False Claims Act.

Ms. Haac earned her law degree cum laude from the University of Michigan Law School in 2006 and went on to clerk for the Honorable Catherine C. Blake of the United States District Court for the District of Maryland. Prior to law school, Ms. Haac graduated with a B.A. in political science with highest distinction from the Honors Program at the University of North Carolina at Chapel Hill.

Ms. Haac is a member of the District of Columbia and Maryland state bars. She is also admitted to the United States Court of Appeals for the Second, Third, and Fourth Circuits and the United States District Courts for the District of Columbia, District of Maryland, and the Eastern District of Michigan.

**ANNICK M. PERSINGER**  
**PARTNER**

Annick M. Persinger graduated magna cum laude as a member of the Order of the Coif from the University of California, Hastings College of the Law in 2010. While in law school, Ms. Persinger served as a member of Hastings Women's Law Journal, and authored two published articles. In 2008, Ms. Persinger received an award for Best Oral Argument in the first year moot court competition. In 2007, Ms. Persinger graduated cum laude from the University of California, San Diego with a B.A. in Sociology, and minors in Law & Society and Psychology.

Prior to joining Tycko & Zavareei LLP, Ms. Persinger was a litigation associate at Bursor & Fisher, P.A., a prestigious consumer class action firm. During her time at Bursor & Fisher, Ms. Persinger represented classes of purchasers of homeopathic products, mislabeled food products, mislabeled toothpaste products, and purchasers of large appliances that were mislabeled as Energy Star qualified. While working at Bursor & Fisher, Ms. Persinger developed cases for filing, drafted countless successful briefs in support of class certification, and defeated numerous motions to dismiss and motions for summary judgment. Ms. Persinger also routinely appeared in court, and regularly deposed and defended witnesses.

Following law school, Ms. Persinger also worked as a legal research attorney for Judge John E. Munter in Complex Litigation at the San Francisco Superior Court.

Since joining Tycko & Zavareei in 2017, Ms. Persinger has focused her practice on consumer class actions and other complex litigation.

Ms. Persinger is admitted to the State Bar of California and the bars of the United States District Courts for the Northern District of California, Central District of California, Eastern District of California, and Southern District of California.

**ANDREW J. SILVER**  
ASSOCIATE

Andrew J. Silver graduated magna cum laude as a member of the Order of the Coif from Boston College Law School in 2012. While in law school, he was an Articles Editor of the Boston College International & Comparative Law Review, for which he previously served as a Staff Writer. In 2007, Mr. Silver graduated from Tufts University with a B.A. in Economics and a concentration in Communication and Media Studies.

At Tycko & Zavareei LLP, Mr. Silver has worked on all aspects of complex civil litigation matters in federal and state courts, with a focus on consumer class action and qui tam litigation. The substantive issues in these cases have involved financial products, contracts, product labels, privacy, and product defects, and frequently touch on questions of statutory interpretation, federal regulations, and civil procedure. Mr. Silver is experienced in pre-complaint investigations, written discovery, deposition practice, all aspects of motion practice—including dispositive motions, class certification, and appeals—and has worked on multiple matters on which a court has granted a contested motion for class certification.

Prior to joining Tycko & Zavareei, Mr. Silver worked as a student-attorney at the Boston College Legal Assistance Bureau, practicing housing law, family law, and administrative law on behalf of indigent clients. During law school, he spent summers at the Appeals Bureau of the Manhattan District Attorney's Office and as a judicial intern for the Honorable Williams K. Sessions III at the United States District Court for the District of Vermont.

Mr. Silver is a member of the Massachusetts and District of Columbia bars and is admitted to practice before the United States District Court for the District of Columbia.

**KATHERINE M. AIZPURU**  
ASSOCIATE

Katherine M. Aizpuru graduated *cum laude* from Harvard Law School in 2014. While in law school, Ms. Aizpuru held positions as Executive Submissions Editor of the *Harvard Journal of Law & Gender* and as a Board Member of Law Students for Reproductive Justice. Ms. Aizpuru graduated with High Honors from Swarthmore College in 2010 with a B.A. in Political Science and a minor in Chinese Language and Literature. She is a member of Phi Beta Kappa.

Ms. Aizpuru joined Tycko & Zavareei in 2017. Prior to joining the firm, Ms. Aizpuru clerked for the Honorable Theodore D. Chuang on the United States District Court for the District of Maryland and the Honorable Catharine F. Easterly on the District of Columbia Court of Appeals. Ms. Aizpuru has practiced law in the Washington, D.C. office of a large international law firm, where she worked on administrative proceedings and civil litigation matters, including several *qui tam* lawsuits. While at that firm, Ms. Aizpuru was recognized for her *pro bono* work on behalf of a domestic violence survivor, a client seeking Social Security disability benefits, and an international nonprofit organization.

While attending Harvard Law School, Ms. Aizpuru worked as a student attorney at the Family Law and Domestic Violence Clinic, where she successfully represented a client in a bench trial and helped secure restraining orders against abusive partners for numerous others. She successfully represented an incarcerated client in a prison disciplinary hearing through the Prison Legal Assistance Program. Ms. Aizpuru interned at the Center for Reproductive Rights and Cambridge & Somerville Legal Services. She also co-produced the Harvard Law School Drama Society's annual Parody performance. Prior to law school, Ms. Aizpuru represented the United States as a Student Ambassador in the USA Pavilion at the 2010 World Expo in Shanghai, People's Republic of China.

Ms. Aizpuru is a member of the District of Columbia, Massachusetts, and New York state bars. She is also admitted to practice before the United States Court of Appeals for the Fourth Circuit and the United States District Court for the District of Maryland.

**DAVID W. LAWLER**  
OF COUNSEL

David Lawler received his law degree from Creighton University School of law in 1997. Mr. Lawler graduated from the University of California, Berkeley in 1989 with a degree in Political Science.

Mr. Lawler joined Tycko & Zavareei LLP in January 2012. He has over fifteen years of commercial litigation experience, including an expertise in eDiscovery and complex case management. At the firm Mr. Lawler has worked extensively on overdraft fee litigation and *In re Automotive Parts Antitrust litigation*.

Before joining Tycko & Zavareei LLP, Mr. Lawler was an attorney in the litigation departments at McKenna & Cuneo LLP and Swidler Berlin Shereff Friedman LLP.

Among Mr. Lawler's accomplishments include the co-drafting of appellate briefs which resulted in reversal and remand of lower court decision, US Court of Appeals for the Fourth Circuit.

Mr. Lawler is a member of the District of Columbia Bar, as well as numerous federal courts.

# **EXHIBIT 5**



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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL, on behalf of  
herself and all others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 3:16-cv-00492-L-WVG

**DECLARATION IN SUPPORT OF  
CRISTINA M. PIERSON  
APPLICATION FOR  
ATTORNEYS' FEES AND  
REIMBURSEMENT OF COSTS  
AND SERVICE AWARDS**

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018 at 11:00am

I, Cristina M. Pierson, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a litigation attorney with Kelley/Uustal, PLC. (“Kelley Uustal”), admitted to practice *pro hac vice* in this Court and appointed as Class Counsel in this action. We are a 21-lawyer firm based in Fort Lauderdale, Florida. I have been a member good standing of The Florida Bar since 1993, and licensed in federal courts in Florida since 1994. Over the past 24 years, I have practiced full time primarily in the areas of business and commercial litigation. I have been board-certified by the Florida Bar as a Business Litigation specialist since 2011. I have been appointed as Class Counsel in other class actions over the years.

2. I submit this declaration in support of Plaintiffs’ Application for Attorneys’ Fees and Reimbursement of Expenses (“Fee and Expense Application”). This declaration supports the professional time incurred and necessary and reasonable expenses incurred by attorneys and a paralegal at my firm in this matter.

3. Kelley Uustal has devoted the time and resources of its attorneys and staff to ensure the vigorous prosecution of the claims brought on behalf of the putative class in this litigation, as detailed in the Fee and Expense Application.

4. In addition to my personal experience, both John Uustal and John Hargrove

1 have extensive experience as class counsel in a number of class action cases. John Uustal  
 2 was admitted to practice in Florida in 1996 and John Hargrove was admitted to practice  
 3 in Florida in 1974. Our firm resume and biographical information regarding attorneys,  
 4 John Uustal, John Hargrove, and Cristina M. Pierson are attached hereto as *Exhibit A*.

5 5. The current hourly rates for those who worked on this case are as follows:

- 6 a. John Uustal - \$800.00  
 7 b. John Hargrove - \$800.00  
 8 c. Cristina M. Pierson - \$600.00  
 9 d. Johnnet Grimm (paralegal) - \$200.00

10 6. I have organized the time spent by John Uustal, John Hargrove, Johnnet  
 11 Grimm, and me into categories which describe the professional services which we  
 12 rendered in this case and in other cases that helped us in the prosecution of this case.

	<b>Task</b>	<b>John Uustal</b>	<b>John Hargrove</b>	<b>Cristina Pierson</b>	<b>Johnnet Grimm</b>
1	Presuit investigation, Factual Development, Client Meetings and Correspondence	3.00	12.00	10.00	0.00
2	Litigation of pre-Farrell NBA usury claims, including <i>McGee v. BANA</i>	5.00	73.25	35.50	8.00
3	Legal Research	0.00	4.00	5.00	0.00
4	Strategy / Case Analysis / Class Counsel Conferences	7.00	8.00	24.0	0.00
5	Complaint and Amended Complaint Drafting, Interim Lead Counsel Motion, Motion to Strike Affirmative Defenses, and other Miscellaneous Court Filings	0.00	10.50	9.50	0.00
6	Motion to Dismiss	2.00	3.00	0.00	0.00
7	Case Management and Other Court Mandated Tasks	0.00	16.0	3.0	10.00
8	Discovery / Confirm. Discovery	0.00	0.00	1.50	0.00
9	Motion to Certify Order on Motion to Dismiss Appeal to 9th Circuit	2.00	2.00	0.00	0.00
10	Settlement Discussions, Mediation Statements, Mediation, and Post-Mediation Settlement Negotiations, Settlement Agreement Drafting	23.5	36.0	67.00	6.50
11	Research and Writing Preliminary Approval Brief	0.00	0.00	3.00	0.00
12	Work with Settlement and Notice Administrator	0.00	0.00	0.00	0.00

13	Class Member Inquiries (actual 1.0 and estimated 4.0)	0.00	0.00	5.00	0.00
14	Attorneys' Fee and Cost Application	0.00	0.00	3.00	1.50
15	Motion for Final Approval (actual 4.0 and 12.0 estimated)	0.00	0.00	16.0	0.00
16	Post-Final Approval Work (estimated)	0.00	0.00	2.00	0.00
17	Work with Experts	0.00	0.00	0.00	0.00
	<b>Totals</b>	42.50	164.75	184.50	28.00

8. The total hours billed by the law firm of Kelley Uustal for this case are **419.75**. Applying the above hourly rates, the total lodestar for the firm is **\$282,100.00**.

9. This lodestar includes estimated time that will be spent from the date of this declaration forward, which I expect will include tasks related to preparing the motion for final approval and all supporting declarations, responding to objections if any, attending to class member inquiries, preparing for and attending the final approval hearing, working with the settlement administrator, ensuring proper distribution of funds to class members, and any post-final approval motions.

10. Class Counsel will submit detailed time records should the Court so require.

11. Additionally, I have organized the necessary expenses that our firm has incurred in connection with the prosecution of this case. The firm is not seeking reimbursement for internal overhead expenses. Cost receipts will be submitted to the Court should it so require.

Category	Expenses
Mediator's Services	\$13,129.58
Appellate Filing fees	\$230.00
Pro Hac Admission Fees	\$618.00
Travel (billed at 50%)	\$3,287.45
<b>Total</b>	<b>\$17,265.03</b>

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19<sup>th</sup> day of February 2018, in Fort Lauderdale, Florida.

/s/ Cristina M. Pierson  
**Cristina M. Pierson**

# EXHIBIT A



**CRISTINA M. PIERSON** / [cmp@kulaw.com](mailto:cmp@kulaw.com)

**“During my legal career, I have diligently represented the best interests of my clients with unwavering dedication and perseverance. As a zealous advocate, it is my goal to exceed client expectations each and every day.”**

#### **BOARD CERTIFIED BUSINESS LITIGATOR**

Attorney Cristina Pierson is an experienced trial attorney with a diverse track record of successfully representing both individuals and companies with her legal knowledge, litigation skills, and courtroom effectiveness. Pierson will focus her practice on complex civil cases including class action, qui tam and commercial litigation.

Cristina is Board Certified as a Business Litigation Specialist by the Florida Bar, a designation reserved for just 1% of Florida's 90,000 lawyers. Obtaining this certification requires a favorable showing of her skills, actual business litigation experience, positive reports from other lawyers and judges familiar with her abilities, and the successful completion of a comprehensive examination testing her knowledge. Board certified business litigators must complete continuing legal education in this field and the requirements for board certified lawyers are significantly higher than those required for non-certified lawyers. When working with her, your case is in the hands of a thoroughly experienced and knowledgeable advocate.

Cristina is also AV® Rated by Martindale-Hubbell® - the highest rank awarded by the national rating agency. She is respected and trusted by peers and clients alike, and she is well-known for her exemplary advocacy, dedication, and professionalism.

#### **BACKGROUND**

Cristina Pierson is a Cuban-American native of South Florida and is fluent in Spanish. She graduated from Pine Crest School in Fort Lauderdale, and completed her undergraduate work in criminal justice at the University of Florida in 1987. After spending time working in the insurance industry, Cristina went on to law school and received her law degree from Nova Southeastern University in 1993. She graduated magna cum laude and received honors for her work on law review and moot court. She is a member of the Florida Bar, the Federal Bar Association and the Broward County Bar Association. She is admitted to practice before the U.S. District Court for the Northern, Middle, and Southern Districts of Florida, and the U.S. District Court of Appeals for the Eleventh Circuit.



TRIAL ATTORNEYS

**CRISTINA M. PIERSON**

cmp@kulaw.com

**Education**

Nova University Center for the Study of Law, Fort Lauderdale, Florida  
J.D. *magna cum laude* – 1993  
Honors: Moot Court Society  
Law Review: Nova Law Review, Member, 1991 – 1993  
University of Florida, Gainesville, Florida  
B.A., Bachelor of Arts – 1987  
Major: Criminal Justice



**Areas of Practice**

Business Litigation  
Professional/Directors and Officers Liability  
Probate, Trust, and other Fiduciary Litigation  
First Amendment and Privacy Class Actions  
Annuity and Insurance  
Construction and Liens

**Bar Admissions**

The Florida Bar, 1993  
Board Certified in Business Litigation, 2011  
U.S. District Court Southern District of Florida, 1993  
U.S. District Court Middle District of Florida, 2000  
U.S. District Court Northern District of Florida, 2001  
U.S. Court of Appeals 11th Circuit

**Professional Associations and Leadership Activities**

Broward County Bar Association, Member, 1993  
Federal Bar Association, Member, 1993  
The Florida Bar, Member, 1993



**JOHN UUSTAL** / [jju@kulaw.com](mailto:jju@kulaw.com)

**“Yes, we have incredible results. But I’m most proud of the fact that our clients tell us we care about them as people first.”**

Attorney John Uustal works to protect the rights of real people against massive corporations and insurance companies. He specializes in helping catastrophically injured victims. For example, Uustal obtained a \$51 million verdict for a client who had been in a horrible car accident involving a defective seatbelt. The verdict was one of the largest ever awarded on behalf of an individual. Uustal’s client was a Marine veteran who became paralyzed after his seatbelt failed. He was driving home from work for a Fourth of July barbeque when another driver ran a red light and slammed into his truck. He was ejected from his truck even though he was wearing his seatbelt. Uustal brought suit against the truck manufacturer, the seatbelt manufacturer and the driver who ran the red light. The manufacturers settled for an unprecedented amount prior to trial.

Uustal has repeatedly been named one of the *Best Lawyers in America*. He has obtained many multi-million dollar verdicts. He has repeatedly been recognized nationally in American Lawyer’s Top Verdicts of the Year. He has also been recognized in several editions of Florida Super Lawyers. In addition to catastrophic injury cases, Uustal’s practice covers class actions, fraud and contingency business litigation.

Prior to entering private practice, Uustal served as a law clerk for the Honorable Peter T. Fay of the United States Court of Appeals, Eleventh Circuit. Judge Fay was a renowned trial attorney appointed to the Federal Bench by President Nixon, and elevated to the Court of Appeals by President Ford. Judge Fay reinforced Uustal’s interest in representing the “underrepresented.” Before joining Judge Fay, Uustal worked in the prosecutor’s office of the Florida State Attorney in Dade County, Florida.



**JOHN UUSTAL**

jju@kulaw.com

**Education**

J.D., *Summa Cum Laude*, University of Miami

B.S., Georgetown University's School of Foreign Service



**Areas of Practice**

Catastrophic Injury  
Defective Products  
Medical Malpractice  
Automobile Accidents  
Consumer Fraud  
Business Litigation  
Wrongful Death

**Bar Admissions**

The Florida Bar  
U.S. District Court for the  
Middle District of Florida  
U.S. District Court for the  
Southern District of Florida  
U.S. Court of Appeals,  
11th Circuit  
4th District Court of Appeal

**Awards & Honors**

Best Lawyers in America  
Florida Super Lawyer – Top 5%  
of Attorneys in Florida  
Legal Aid Law Firm of the Year  
Top Attorney – Wall Street  
Journal  
Best Law Firms in America –  
U.S. News and World Report

**Professional Associations  
and Activities**

*Member* – American  
Association for Justice  
*Member* – Broward County  
Justice Association  
*Board of Directors* – Florida  
Justice Association  
*Member* – Martindale-  
Hubbell's Bar Register of  
Preeminent Lawyers

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[www.justiceforall.com](http://www.justiceforall.com)

**Kelley/Uustal**

Courthouse Law Plaza, 700 S.E. Third Avenue, Suite 300  
Fort Lauderdale, FL 33316  
888.522.6601



## **John R. Hargrove, Esq.**

John Hargrove represents both individual and corporate clients in complex disputes both as individuals and as class actions. He devotes a substantial amount of his practice to probate litigation, fiduciary and commercial litigation, class actions, appeals, as well as both first amendment and media law. He appears routinely as an advocate in state and federal courts throughout Florida, and is well known for his ability to represent clients at all levels of appeals.

Best Lawyers in America recognizes John Hargrove in four categories – Appellate Law, Commercial Litigation, First Amendment Law, and Trusts and Estates. For the 2015 edition of Best Lawyers, he was named “First Amendment Lawyer of the Year” in south Florida. He is board certified in appellate law by the Florida Bar and represents both individual and corporate clients in complex disputes. Mr. Hargrove routinely appears as counsel of record in state and federal trial and appellate courts, including Florida’s five intermediary appellate courts, the Florida Supreme Court, the Eleventh Circuit Court of Appeals and the United States Supreme Court. He has achieved national prominence as a First Amendment lawyer. John Hargrove is widely known as an advocate for the elderly regarding the sale of unsuitable annuities to seniors. He also represented the Estate of Doctor Sam Sheppard — which inspired “The Fugitive” — regarding cutting-edge DNA litigation. Florida Super Lawyers has listed Mr. Hargrove among Florida’s best every year since that publication’s inception. He is a Fellow in the Florida Academy of Trust and Probate Litigation, and carries a Martindale-Hubbell professional rating of “AV”.

Mr. Hargrove is actively involved in charitable endeavors. He served three terms as Chairman of the Board of Trustees of Butler University in Indianapolis, Indiana. In 2014, he was named Chairman Emeritus of Butler’s Board of Trustees – the first time in the history of the University that the designation had been given. In 2016, Mr. Hargrove was selected as the recipient of The Butler Medal, the highest honor conferred by the University’s Alumni Association. The award recognizes individuals for a life of distinguished service to Butler and their local community, while at the same time achieving a distinguished career in one’s chosen profession and attaining a regional or national reputation. Mr. Hargrove is past Board Chair of the United Way of Broward County, where he served as general counsel and is currently director emeritus. The Urban League of Fort Lauderdale has also recognized Mr. Hargrove for his philanthropy.

Born in Chicago, Illinois, John Hargrove attended Culver Military Academy, where he was a member of the famed Black Horse Troop. He received his undergraduate degree from Butler University and his law degree from the Indiana University School of Law, where he graduated magna cum laude. He was voted by the faculty as the most outstanding member of the graduating class of 1972. While in law school he was an editor of the Indiana Law Review. After graduation from law school, Mr. Hargrove spent two years as law clerk to the Honorable Roy L. Stephenson, Circuit Judge, United States Court of Appeals for the Eighth Circuit.

Mr. Hargrove holds a master's degree in public administration from Harvard University, where he trained in leadership, negotiation, mediation and persuasion skills under several of the world's most highly regarded professors in those fields. He regularly lectures at Harvard's Kennedy School on negotiations and at George Washington University's Graduate School of Professional Studies on law office management. Mr. Hargrove has also lectured on leadership at The United States Military Academy located at West Point, New York.

# **EXHIBIT 6**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL, on behalf of  
herself and all others similarly situated,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 3:16-cv-00492-L-WVG

**DECLARATION OF BRYAN S.  
GOWDY IN SUPPORT OF  
APPLICATION FOR  
ATTORNEYS' FEES AND  
REIMBURSEMENT OF COSTS  
AND SERVICE AWARDS**

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018 at 11:00am

I, Bryan S. Gowdy, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am one of two shareholders of Creed & Gowdy, P.A., a six-lawyer firm based in Jacksonville, Florida. I have been a member in good standing with The Florida Bar since September 1999 and with the Massachusetts Bar since January 2000. I have been Board Certified in Appellate Practice by The Florida Bar since July 2008. I have been licensed in federal courts around the country since 2000. I have argued appeals in multiple appellate courts, including the U.S. Supreme Court, federal circuit courts of appeal, and the Supreme Court of Florida. I am admitted to practice *pro hac vice* in this court for this action. Over the past 11 plus years, I have practiced full time primarily in the area of appellate law; however, I frequently appear in trial courts and take the lead role on legal issues. From September 2001 to September 2006, I practiced commercial litigation at a national law firm, McGuireWoods LLP. From August 1999 to August 2001, I was a law clerk for the U.S. District Court, Northern District of Florida, and the U.S. Court of Appeals for the Eleventh Circuit. Over the past 17 years, I have served as counsel in numerous class actions, both representing plaintiffs and defendants.





7. I have organized the time spent by Rebecca Creed, Jessie Harrell, and me into the following categories which describe the professional services which we rendered in this case and in *McGee v. Bank of America, N.A.*, filed in the Southern District of Florida, that helped us in the prosecution of this case. I removed some time, not listed below, in the exercise of billing judgment, including all time incurred by my firm's legal assistants and law clerks.

	<u>Task</u>	<u>Bryan Gowdy</u>	<u>Jessie Harrell</u>	<u>Rebecca Creed</u>
1	Presuit investigation, Factual Development, Client Meetings and Correspondence	0.0	0.0	0.0
2	Litigation of pre-Farrell NBA usury claims, including <i>McGee v. Bank of America</i>	150.50	0.5	0.0
3	Legal Research	18.25	4.50	5.00
4	Strategy / Case Analysis / Class Counsel Conferences	10.50	0.0	0.0
5	Complaint and Amended Complaint Drafting, Interim Lead Counsel Motion, Motion to Strike Affirmative Defenses, and other Miscellaneous Court Filings	17.25	4.75	0.0
6	Motion to Dismiss	5.75	0.0	0.0
7	Case Management and Other Court Mandated Tasks	3.00	0.0	0.0
8	Discovery / Confirmatory Discovery	0.0	0.0	0.0
9	Appeal-related Tasks and Preparations, Briefing on Motions for Section 1292 Review	43.50	7.25	0.0
10	Settlement Discussions, Mediation Statements, Mediation, and Post-Mediation Settlement Negotiations, Settlement Agreement Drafting	85.00	0.0	0.0
11	Research and Writing Preliminary Approval Brief	0.0	0.0	0.0
12	Work with Settlement and Notice Administrator	0.0	0.0	0.0
13	Class Member Inquiries (2.0 future, estimated)	2.00	0.0	0.0
14	Attorneys' Fee and Cost Application	2.00	0.0	0.0
15	Motion for Final Approval	2.0	0.0	0.0



16	Post-Final Approval Work (2.0 future, estimated)	2.0	0.0	0.0
17	Work with Experts	0.0	0.0	0.0
	<b>Totals</b>	341.75	17.0	5.0

8. The total hours billed by the attorneys at Creed & Gowdy, P.A., for this case are **363.75**. Applying the above hourly rates, the total lodestar for the firm is **\$250,725.00**

9. This lodestar includes estimated time that will be spent from the date of this declaration forward, which I expect will include tasks related to preparing the motion for final approval and all supporting declarations, responding to objections if any, attending to class member inquiries, preparing for and attending the final approval hearing, working with the settlement administrator, ensuring proper distribution of funds to class members, and any post-final approval motions.

10. Class Counsel will submit detailed time records for each attorney, should the Court so require.

11. Additionally, I have organized the necessary expenses that our firm has incurred in connection with the prosecution of this case. The firm is not seeking reimbursement for internal overhead expenses. Cost receipts will likewise be submitted to the Court should it so require.

Category	Expenses
Filing Fee for Pro Hac Vice Application	\$206.00
Travel (Billed at 50%)	\$1,243.65
Westlaw	\$1154.08
<b>Total</b>	<b>\$2,603.73</b>

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19<sup>th</sup> day of February, 2018, in Jacksonville, Florida.

/s/ Bryan S. Gowdy  
**Bryan S. Gowdy**

# Exhibit "A"

# **BRYAN S. GOWDY**

## **Curriculum Vitae**

### **Contact Information**

Creed & Gowdy, P.A.  
865 May Street  
Jacksonville, Florida 32204  
(904) 350-0075 Telephone  
(904) 503-0441 Facsimile  
Email: [bgowdy@appellate-firm.com](mailto:bgowdy@appellate-firm.com)  
Bio: <http://www.appellate-firm.com/our-lawyers/bryan-gowdy.aspx>  
Firm website: [www.appellate-firm.com](http://www.appellate-firm.com)

### **Professional Employment**

**Creed & Gowdy, P.A.**, Oct. 2006 to present  
(formerly known as Mills & Carlin, P.A., Mills & Creed, P.A., and Mills Creed & Gowdy)  
865 May Street, Jacksonville, Florida 32204  
(904) 350-0075  
Shareholder

**McGuire Woods LLP**, Sept. 2001 – Sept. 2006  
50 N. Laura St., Ste. 3300, Jacksonville, Florida 32202  
(904) 798-3200  
Associate

**Hon. Susan H. Black**, Aug. 2000 – Aug. 2001  
United States Court of Appeals, Eleventh Circuit  
300 North Hogan Street, Suite 14-150, Jacksonville, Florida 32202  
(904) 301-6610  
Law Clerk

**Hon. Maurice M. Paul**, Aug. 1999 – Aug. 2000  
United States District Court, Northern District of Florida  
401 S.E. First Ave, Gainesville, Florida 32601  
(904) 380-2415  
Law Clerk

### **Education**

**University of Florida Levin College of Law**, J.D. 1999  
Graduated with High Honors and ranked number one in class  
Management Editor, *Florida Law Review*

Order of the Coif

Book Awards: Legal Research and Writing, Antitrust Law, Comparative Law

**Georgetown University**, B.S.F.S. 1992

International Economics

Dean's List (four semesters)

## **Notable Cases**

*Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011 (2010) (represented juvenile defendant before the U.S. Supreme Court, which categorically applied the Eighth Amendment for the first time in a non-capital case and ruled that life-without-parole sentences were unconstitutional for juvenile offenders who have not committed a homicide; the Court's decision invalidates the sentencing laws of 37 states, the federal government, and the District of Columbia).

*Charles v. S. Baptist Hosp. of Florida, Inc.*, 209 So. 3d 1199 (Fla. 2017), *pet. for cert. denied*, 2017 WL 2444641 (U.S. Oct. 2, 2017). (represented patient who exercised her right under state constitutional amendment, commonly known as Amendment 7, to request access to all of a hospital's adverse incident reports; the Supreme Court of Florida reversed a lower court's holding that Amendment 7 was preempted by the federal Patient Safety Quality Improvement Act).

*Hernandez v. Crespo*, 211 So. 3d 19 (Fla. 2016), *pet. for cert. denied*, 2017 WL 2444694 (U.S. Oct. 2, 2017) (represented a patient and her husband who sued her physicians for medical malpractice; the Supreme Court of Florida held the arbitration agreement between the patient and her physicians was unenforceable under Florida's Medical Malpractice Act).

*Adinolfi v. United Technologies Corp.*, 768 F.3d 1161 (11th Cir. 2014) (represented hundreds of homeowners claiming damages for diminution of property value due to contamination from nearby industrial facility; the Eleventh Circuit reversed the district court's dismissal with prejudice by holding, among other things, that Florida law did not require homeowners to plead or prove actual contamination of their properties to seek damages for the diminution in their property values caused by the nearby contamination).

*G.S. v. T.B.*, 985 So. 2d 978 (Fla. 2008) (represented maternal grandparents who successfully persuaded the Supreme Court of Florida that, despite the objections of the paternal grandparents, they were entitled under Florida law to adopt their orphaned grandchildren).

## **Professional Qualifications and Awards**

Board Certified in Appellate Practice, The Florida Bar (2008-present)

Admitted to practice in Florida, Massachusetts, and Supreme Court of the United States, United States Court of Appeals for the Fourth, Ninth, and Eleventh Circuits, and United States District Courts for the Southern, Middle, and Northern Districts of Florida

Florida Super Lawyer (2010-2017)  
Top 100 Florida Super Lawyer (2011, 2013-2017)

Legal Elite, *Florida Trend Magazine* (2009-2017)

Florida Justice Association, Bronze Eagle Award (2012)

Florida Justice Association, S. Victor Tipton Award (2011)

Florida Association of Criminal Defense Lawyers, Stephen Goldstein Award (2011)

The Florida Bar President's Pro Bono Service Award, Fourth Judicial Circuit (2011)

Jacksonville Area Legal Aid Pro Bono Award (2010)

The Florida Bar Appellate Practice Section Pro Bono Award (2009)

### **Professional Memberships and Community Service**

Florida Supreme Court Standard Jury Instruction Committee (Civil) (2014-present)

Jacksonville Area Legal Aid, Board Member (2007-2014)  
Board President (2013)

Leadership Jacksonville, Class of 2012

Leadership Jacksonville Development Team (2016-present)

The Florida Bar Appellate Practice Section  
Chair, Pro Bono Committee (2008 - 2011)  
Executive Council (2009- 2012)

The Florida Bar Criminal Law Section (2009-13)

The Florida Bar's Standing Committee on Pro Bono Legal Services, Ad Hoc Member (July 1, 2011-present)

The Florida Bar Trial Lawyers Section (2016-2017)

Jacksonville Bar Association  
Chair, Appellate Practice Section (2007-2009)

Federal Bar Association (2006 to present)

Florida Association of Criminal Defense Lawyers (2009-present)

Florida Justice Association (2010-present)

Chair of the Appellate Section (2011 – 2012)

Vice Chair of the Appellate Section (2010-2011)

American Association of Justice (2011-12, 2013-14)

First District Appellate American Inn of Court, (Barrister 2008-2009, Master 2011-present)

Chester Bedell Inn of Court, Barrister (2007-2010)

Westside Soccer Club, Volunteer Coach (2007-13)

Friends of Landon, Inc., Director (2016-present)

Assumption Catholic School Soccer League, Volunteer Coach (2017)

## **Military Service**

United States Navy & Naval Reserve (July 1992-Sept. 2002)

Active-duty service in Italy and Japan as Surface Warfare Office on two guided-missile cruisers (1992-1996).

Awarded Navy Commendation Medal for fighting major engine room fire.

Served in Persian Gulf operations.

Commanding Officer of 56-person naval reserve unit and promoted to Lt. Commander (Oct. 2000-Sept. 2002).

## **Publications**

*Amendment 7 Lives Again But Be Prepared for More Attempts to Kill It*, Florida Justice Association Journal (March/April 2017)

*Get Your Client's Treating Physician Paid Reasonable Fees for Deposition and Trial Testimony*, Florida Justice Association Journal (September 2014) (co-author: Jennifer Shoaf Richardson)

*Dealing with the Media in a U.S. Supreme Court Case*, The Defender (Summer 2014)

*Four Years Later: Terrance Graham's Attorney on Issues Created by the Landmark Decision*, The Defender (Winter 2013/2014)

*Best Strategies for Challenging Coding Experts in Auto Accident Cases*, Florida Justice Association Journal (June-July 2012) (co-author: Jennifer Shoaf Richardson)

*Graham v. Florida: A Juvenile's Hope for Redemption*, The Defender (Summer 2010)

*Securing Your Judgment While on Appeal*, Florida Justice Association Journal (May-June 2009)

*Leniency Bribes: Justifying the Federal Practice*. . ., 60 La. L. Rev. 447 (2000)

*Should the Federal Government Have an Attorney-Client Privilege?*, 51 Fla. L. Rev. 695 (1999)

## **Recent Lectures, Seminars, and Panel Discussions**

*Nuts & Bolts of Practice Before the U.S. Supreme Court*, Appellate Practice Section Webinar CLE (August 15, 2017)

*Dealing with Coding Experts / Using Daubert Motions*, Florida Justice Association Webinar CLE (January 27, 2017)

*Brief Writing and Use of Technology*, Eleventh Circuit Appellate Practice Institute, Atlanta, GA (October 28, 2016)

*New Ways to Overcome the Resistance to Amendment 7 Compliance*, Advanced Trial Skills, Florida Justice Association Annual Convention, Palm Beach, FL (June 22, 2016)

*Mediation in the Eleventh Circuit Court of Appeals*, 5<sup>th</sup> District Court of Appeals Appellate Mediation Seminar, Daytona Beach, Florida (June 9, 2016)

*Amendment 7/PSO Privilege*, Advanced Medical Malpractice, The Florida Bar Continuing Legal Education Committee and the Trial Lawyers Section, Tampa, FL (March 11, 2016) (co-presented with Andrew S. Bolin)

*Advanced Appellate Practice and Certification Review, Federal Practice*, Florida Bar Appellate Practice Section, Tampa, FL (January 14, 2016)

*Inside the First DCA*, Appellate Attorney's Fees, Florida Bar Appellate Practice Section, Tallahassee, FL (April 10, 2015) (co-presented with Courtney Brewer)

*Lecture, Discussion of Adinolfi v. United Technologies Corp.* 768 F. 3d 1161 (11<sup>th</sup> Cir. 2014), Florida Coastal School of Law, Jacksonville, FL (April 2, 2015)

*Advanced Appellate Practice and Certification Review, Federal Practice*, Florida Bar Appellate Practice Section, Tampa, FL (January 15, 2015)

*Case Law Insider*, Florida Justice Association Telephonic CLE (November 14, 2014)



*Case Law Insider*, Florida Justice Association Telephonic CLE (August 9, 2013)

*Coding Experts*, Florida Justice Association Advanced Trial Skills Seminar, St. Petersburg Beach, FL (June 12, 2013)

*Oral Argument*, Jacksonville Area Legal Aid Seminar, Jacksonville, FL (May 1, 2013)

*Case Law Insider*, Florida Justice Association Telephonic CLE (March 8, 2013)

*Preservation of Error*, Florida Justice Association Workhorse Seminar, Kissimmee, FL (Feb. 20, 2013)

*Eleventh Circuit Technicalities: How To Comply With The New Expanded Record Excerpts, Electronic Filing, and Other Requirements*, Eleventh Circuit Appellate Practice Institute, Miami, FL (Feb. 7, 2013)

*Miller v. Alabama Panel Discussion*, Annual Convention for the Campaign for Fair Sentencing of Youth, Washington, DC (Nov. 15, 2012)

*Oral Argument Skit*, American Board of Trial Advocates, Pajcic Seminar, Jacksonville, FL (Oct. 25, 2012)

*Expert Financial Discovery*, Florida Justice Association Masters of Justice Seminar, Boca Raton, FL (Oct. 3, 2012)

*Expert Financial Discovery*, Jacksonville Justice Association Webinar, (June 27, 2012)

*Appellate Attorney's Fees, Inside the First DCA*, Florida Bar Appellate Practice Section, E. Earle Zehmer Inside the First DCA Seminar (March 1, 2012)

*Offensive and Defensive Strategies for the Proposal for Settlement*, Workhorse Seminar, Florida Justice Association (March 2012)

*Graham v. Florida*, Guest Lecturer, Flagler University, Class for Ethical Issues in the Judiciary (Oct. 11, 2011)

*Preservation of Error, Erhlich Seminar*, Jacksonville Bar Association (June 3, 2011)

*Workshop on Life-Without-Parole Resentencing Evaluations*, sponsored by Barry University, Juvenile Justice Center, Tampa, FL (April 15, 2011)

*Presentation on Graham v. Florida*, Kentucky Children's Law Center, Seventh Annual Juvenile Defender Summit, Dayton, OH (April 7, 2011)

*Panel Discussion on U.S. Supreme Court Practice*, Federal Bar Association, Orlando, FL chapter (March 11, 2011)

*Hot Topics, U.S. Supreme Court Update*, Florida Bar Appellate Practice Section, Jacksonville, FL (March 4, 2011 (afternoon) and May 17, 2011 (telephonic))

*Winning or Losing at Trial is Not the End: Practical, Front-Line Trial Examples to Help You Preserve Error and Win on Appeal*, Florida Bar Trial Lawyers Section, Tampa, FL (Mar. 4, 2011 (morning)).

*Graham v. Florida*, Florida Coastal School of Law, Jacksonville, FL (Jan. 27, 2011)

*Litigating Graham in Florida*, Barry University, Juvenile Justice Center, Orlando, FL (Dec. 10, 2010).

*Spirit of Giving* Speech, Federal Bar Association, Jacksonville, FL chapter (Dec. 3, 2010)

*Juvenile Life Without Parole Sentences*, Annual Convention for the Campaign for the Fair Sentencing of Youth, Washington, DC (Nov. 3, 2010)

*Amicus Briefs*, Eleventh Circuit Appellate Institute, Atlanta, GA (Oct. 15, 2010)

*Graham v. Florida*, Children Legal Services Conference, Tampa, FL (Sept. 30, 2010)

*The Best Strategies for Avoiding Bifurcation*, Florida Justice Association Seminar, Tampa and Ft. Lauderdale, FL (Sept. 15-16, 2010)

*Juvenile Life Without Parole Sentences*, NAACP Convention, Kansas City, KS (July 12, 2010)

*Preservation of Error and Practice Before the U.S. Supreme Court, Erhlich/Nimmons Seminar*, Jacksonville Bar Association and Federal Bar Association (June 2010)

*Art of Objecting*, Florida Bar Appellate Practice Section, Ft. Lauderdale, FL (May 2010)

*Practice Before the U.S. Supreme Court*, Florida Bar Appellate Practice Section, Tallahassee, FL (January & July 2010)

*Preservation of Error, Criminal Law*, Jacksonville Bar Association (June 2009)

*Hot Topics*, Florida Bar Appellate Practice Section, Ft. Lauderdale, FL (May 2009)

*Appellate Strategy for In-House Counsel*, Jacksonville Bar Association In-House Counsel Section (February 2009)

*Amicus Briefs*, Florida Bar Appellate Practice Section Telephonic Seminar (Sep. 2008)

*Representing Pro Bono Clients*, Florida Bar Appellate Practice Section Telephonic Seminar (Aug. 2008)

*Moderator*, E. Earle Zehmer Inside the First DCA Appellate Seminar, Jacksonville, Florida (May 2008)

*Moderator*, Art of Objecting, Florida Bar Appellate Practice Section, Orlando, FL (November 2007)

*Preservation of Error*, Jacksonville Bar Association Ray Erlich Seminar (June 2007)

## **Other Selected Cases**

*Amerisure Insurance Co. v. Correia*, No. 1D16-4355, 2017 WL 4324860 (Fla. 1st DCA Sept. 29, 2017) (represented automobile driver and his spouse in suit against his uninsured motorist carrier).

*Cortes-Gascot v. Kamat*, No. 2D17-667, 2017 WL 3564525 (Fla. 2d DCA Aug. 18, 2017) (represented patient in medical malpractice suit against his providers and hospital).

*Gallardo by and through Vassallo v. Dudek*, No. 4:16cv116-MW/CAS, 2017 WL 1405166 (N.D. Fla. April 18, 2017) (represented Medicaid recipient who argued Florida's Medicaid lien law was unconstitutional and preempted by federal law; district court agreed; case currently on appeal before the Eleventh Circuit).

*City of Jacksonville v. Ratliff*, 217 So.3d 183 (Fla. 1st DCA 2017) (represented claimant in workers' compensation appeal).

*In re Amendments to Florida Evidence Code*, 10 So.3d 1231 (Fla. 2017) (drafted and filed comment on several past presidents of The Florida Bar and multiple other attorneys advocating that the Supreme Court of Florida decline to adopt the *Daubert* standard for expert evidence).

*Searcy, Denny, Scarola, Barnhart & Shipley, etc. v. State*, 209 So.3d 1181 (Fla. 2017) (represented Florida Justice Association as amicus in case concerning the constitutionality of a claims bill that impaired the client's contract with counsel).

*Doctors Company v. Plummer*, 210 So.3d 711 (Fla. 5th DCA 2017) (represented the estate in a wrongful death and medical malpractice action).

*McGee v. Bank of America, N.A.*, 674 Fed.Appx. 958 (11<sup>th</sup> Cir. 2017) (represented a bank customer claiming the bank's overdraft fee was usurious)

*Klemish v. Villacastin*, 6 So.3d 14 (Fla. 5th DCA 2016) (represented patient claiming arbitration agreement with provider was unenforceable under Florida Medical Malpractice Act).

*Morana v. Craig*, Nos. 2D15-476 & 1886, 2016 WL 2761150 (Fla. 2d DCA May 13, 2016) (represented automobile driver injured by defendant driver).

*Durgin v. Woloson*, 187 So.3d 1236 (Fla. 1st DCA 2016) (represented automobile driver injured by defendant driver).

*Lesnik v. Duval Ford, LLC*, 185 So.3d 577 (Fla. 1st DCA 2016) (represented automobile driver in products liability suit against the vehicle's retailers).

*Dempsey & Associates, P.A. v. Lindon*, 186So.3d 1040 (Fla. 5th DCA 2016) (represented client in fee dispute with his former attorney).

*Mid-Continent Cas. Co. v. Treace*, 186 So.3d 11 (Fla. 5th DCA 2015) (represented homeowners in coverage action against their contractor's insurer).

*Hunter v. City of Jacksonville Fire & Rescue*, 179 So.3d 322 (Fla. 1st DCA 2015) (represented fireman in worker's compensation claim).

*Horton v. Horton*, 179 So.3d 459 (Fla. 1st DCA Nov. 16, 2015) (represented former wife in post-dissolution dispute with her former husband).

*Ahearn v. Mayo Clinic*, 180 So.3d 165 (Fla. 1st DCA 2015) (represented class action representative alleging hospital overcharged self-pay patients).

*Praise v. Selph*, 5 So.3d 389 (Fla. 1st DCA 2015) (represented *pro bono* respondent who had restraining order entered against him).

*Inlet Condominium Ass'n, Inc. v. Childress Duffy, Ltd., Inc.*, 615 Fed.Appx. 533 (11<sup>th</sup> Cir. 2015) (represented condominium association in legal malpractice action against former counsel).

*Colbert v. U.S.*, 785 F.3d 1384 (11<sup>th</sup> Cir. 2015) (represented estate of automobile driver who was injured by employee of the Navajo Nation in the course and scope of her employee; appeal concerned the liability of the federal government for a tort committed by an employee of the Navajo Nation).

*Escobar v. Colony Ins. Co.*, 206 So.3d 42 (Fla. 2d DCA 2015) (represented insured in coverage action against insurance company).

*Gridine v. State*, 175 So.3d 672 (Fla. 2015) (filed amicus brief on behalf of the Florida Association of Criminal Defense Lawyers in case concerning whether 70-year sentence for a juvenile was unconstitutional).

*Stalley v. ADS Alliance Data Systems, Inc.*, 602 Fed. Appx. 732 (11<sup>th</sup> Cir. 2015) (represented class representative in case concerning defendant's recording of telephone calls).

*Botto v. State*, 160 So.3d 452 (Fla. 5th DCA 2015) (represented criminal defendant claiming a double jeopardy violation).

*Richardson v. Everbank*, 152 So.2d 1282 (Fla. 4th DCA 2015) (represented bank in commercial foreclosure action).

*In re Adoption of K.A.G.*, 152 So.3d 1271 (Fla. 5th DCA 2014) (successfully overturned trial court's dismissal of grandmother's petition to adopt child)

*Doering v. The Villages Operating Co.*, 153 So.3d 417 (Fla. 5th DCA 2014) (successfully challenged trial court's order of final summary judgment in a tripping hazard case)

*In re Vassell*, 751 F.3d 267 (4th Cir. 2014) (represented defendant sentenced to life without parole for conspiracy to traffic in controlled substances while a minor)

*Campion v. Campion*, 136 So. 3d 596 (Fla. 1st DCA 2014) (represented former wife challenging issuance of orders directed to child who was not a party to dissolution proceedings and seeking disqualification of trial judge)

*Koshenina v. Buvens*, 130 So. 3d 276 (Fla. 1st DCA 2014) (represented husband seeking his appointment as wife's plenary guardian and challenging trial court's application of Florida guardianship law)

*Franks v. Bowers*, 116 So. 3d 1240 (Fla. 2013) (represented Florida Justice Association as amicus supporting the estate of a patient who challenged arbitration agreement that limited damages below those authorized by Florida's Medical Malpractice Act)

*Forgione v. HCA, Inc.*, 954 F. Supp. 2d. 1349 (N.D. Fla. 2013) (successfully challenged the validity of a federal regulation that purported to authorize federal officials the power to block state employees from testifying under a state court subpoena)

*HCA, Inc. v. Forgione*, 113 So. 3d 838 (Fla. 1st DCA 2013) (represented estate in wrongful death action in appeal by defendant seeking to disqualify the trial judge)

*Cheek v. Hesik*, 113 So. 3d 838 (Fla. 1st DCA 2013) (represented former wife in custody dispute against former husband who lived out of state)

*Kotzian v. Murphy*, 109 So. 3d 786 (Fla. 1st DCA 2013) (represented party seeking contribution from co-tortfeasor on an out-of-state judgment)

*Geico General Insurance Co. v. Ethel Cousin*, 109 So. 3d 1157 (Fla. 1st DCA 2013) (represented plaintiff injured in auto accident by underinsured driver)

*Lindon v. Dalton Hotel Corp.*, 113 So. 3d 985 (Fla. 5th DCA 2013) (represented minority shareholder in dispute with majority shareholder)

*Romero v. State*, 105 So. 3d 550 (Fla. 1st DCA 2012) (represented 18-year-old defendant sentenced to life without parole for second degree murder)

*State v. Fernandez*, Nos. 1D12-3885 & 3886 (Fla. 1st DCA 2012 Sept. 27, 2012) (represented child accused of murder in defending suppression order appeal by the State; State dismissed the appeal)

*Memorial Health Care Group v. Chandler*, No. 1D12-2742 (Fla. 1st DCA Sept. 19, 2012) (represented patient injured by medical malpractice in defending verdict on appeal; settled)

*Nelson v. State*, 95 So. 3d 368 (Fla. 1<sup>st</sup> DCA 2012) (challenged amount of restitution awarded to the State)

*Swaniger v. U.S. Bank Nat'l Assoc.*, 83 So. 3d 716 (Fla. 1st DCA 2012) (represented attorney in dispute with client over charging lien)

*State Farm Mut. Auto. Ins. Co. v. Bowling*, 81 So. 3d 538 (Fla. 2d DCA 2012) (represented amicus in case concerning admissibility of expert opinion on medical coding)

*Petty v. Fla. Ins. Guar. Ass'n*, 80 So. 3d 313 (Fla. 2012) (represented insured policyholder in appeal concerning whether the Florida Insurance Guaranty Association must fulfill an insolvent insurer's obligation to pay the insured's attorney's fees incurred in seeking benefits under a homeowner's policy)

*Legacy Place Apartment Homes LLC v. PGA Gateway Ltd.*, 65 So. 3d 644 (Fla. 4th DCA 2011) (represented developer of luxury apartments in dispute with developer of adjacent commercial property)

*Frank v. Bowers*, 62 So. 3d 16 (Fla. 1st DCA 2011) (represented amicus in case concerning enforceability of arbitration agreement in medical malpractice case)

*Sher v. Raytheon*, No. 09-15798, 2011 WL 814379 (11th Cir. Mar. 9, 2011) (unpublished) (represented property owners who were impacted by contamination plume and who sought class certification)

*Glary v. Israel*, 53 So.3d 1095 (Fla. 1st DCA 2011) (represented law firm whose due process rights were violated when trial court ordered it to transfer monies held in trust to court-appointed receiver)

*Tripoli v. State*, 50 So. 3d 776 (Fla. 4th DCA 2010) (represented criminal defendant whose conviction was reversed due to erroneous admission of collateral act evidence)

*Baptist Med. Center of Beaches, Inc. v. Rhodin*, 40 So. 3d 112 (Fla. 1st DCA 2010) (represented injured patient in appeal interpreting the pre-suit requirements under Florida's medical malpractice act).

*CSX Transp., Inc. v. Williams*, 33 So. 3d 40 (Fla. 2d DCA 2010) (represented injured employee in appeal from judgment and jury verdict concerning employee's claims under the Federal Employers Liability Act).

*Rando v. GEICO*, 39 So. 3d 244 (Fla. 2010) (represented insured policyholder in the Supreme Court of Florida on a certified question from U.S. Court of Appeals for the Eleventh Circuit concerning question of first impression under Florida's uninsured motorist statute)

*State v. Hinson*, 23 So.3d 1187 (Fla. 1st DCA 2009) (represented criminal defendant in defending an order finding that the police had violated his Fourth Amendment rights)

*Roberts v. Stidham*, 19 So. 3d 1155 (Fla. 5th DCA 2009) (represented injured driver in an appeal of dismissal for untimely service of process)

*Hafterson v. United States*, 558 U.S. 948, 130 S.Ct. 416 (2009) (represented family of deceased service member in their petition for certiorari to U.S. Supreme Court seeking to overturn *Feres* decision that prohibits service members from asserting tort claims against the Government)

*Ross v. Ross*, 11 So.3d 359 (Fla. 1st DCA 2009) (represented ex-wife seeking alimony)

*Salmi v. Salmi*, 5 So.3d 674 (Fla. 1st DCA 2009) (represented ex-wife seeking alimony)

*Trammell v. Thomason*, No. 08-13801, 2009 WL 1706591 (11th Cir. June 18, 2009) (unpublished) (civil rights claim under 42 U.S.C. § 1983 on behalf of client, not suspected of any criminal activity, who was attacked by police dog)

*Jackson v. United States*, 3:09-CV-26-J-34TEM, 2009 WL 2436577 (M.D. Fla. 2009) (defended against the Government's request for order that would have limited the rights of the plaintiff and his counsel to communicate with the press)

*Griffin v. McNeil*, 995 So. 2d 1178 (Fla. 4th DCA 2008) (petition for writ of habeas corpus resulting in the immediate release of client, who had served thirty-three years in prison on a life sentence, because his sentence exceeded the maximum authorized sentence (15 years))

*Alterra Healthcare Corp. v. Constantin*, No. 1D07-5056 (1st DCA 2008) (represented estate of deceased nursing home patient in an appeal concerning interpretation of an arbitration agreement; settled after briefing)



*Gatlin v. U.S. Anti-Doping Agency, Inc.*, No. 08-13572-F, 2008 WL 2567657 (11th Cir. June 26, 2008) (unpublished) (represented Olympic gold medalist appealing decision that prohibited him from participating in Olympic trials)

*Carolina Cas. Ins. Co. v. Smith*, 993 So. 2d 516 (Fla. 1st DCA 2008) (represented injured driver in opposing petition for writ of certiorari in auto accident case)

*Brooks v. Green*, 993 So. 2d 58 (Fla. 1st DCA 2008) (represented tenant-purchaser in commercial real estate dispute)

*Woodward v. State*, 992 So. 2d 391 (Fla. 1st DCA 2008) (represented criminal defendant on appeal that claimed trial court should have appointed him counsel for post-conviction motion)

*S.D.S. Autos, Inc. v. Chrzanowski*, 982 So. 2d 1 (Fla. 1st DCA 2008) (represented consumers who sought certification of class for claims under Florida Deceptive and Unfair Trade Practices Act)

*Southeast Tissue Alliance v. King*, 980 So. 2d 495 (Fla. 1st DCA 2008) (represented family members who sought punitive damages from tissue bank for its use of deceased family member's donated tissue as part of a for-profit enterprise)

*Calahan v. Calahan*, 979 So. 2d 358 (Fla. 5th DCA 2008) (represented ex-husband in appeal of denial of petition to modify alimony and child support)

*Williams v. Stanford*, 977 So. 2d 722 (Fla. 1st DCA 2008) (represented majority shareholder in defense of shareholder derivative action alleging fraud and breach of fiduciary duty)

*S.D.S. Autos, Inc. v. Chrzanowski*, 976 So. 2d 600 (Fla. 1st DCA 2008) (represented consumer in challenge to arbitration provision in auto sales contracts)

*Egwuatu v. South Lubes, Inc.*, 976 So. 2d 50 (Fla. 1st DCA 2008) (appeal of order denying class certification for class of consumers)

*Retail Equities, LLC v. Sleiman*, 975 So. 2d 1139 (Fla. 1st DCA 2008) (represented business owners in petition for certiorari to vacate notice of lis pendens that hindered their ability to sell or mortgage the properties)

*Taylor v. Penske Truck Leasing Corp.*, 975 So. 2d 588 (Fla. 1st DCA 2008) (represented injured driver in certiorari proceeding challenging order requiring disclosure of attorney work product)

*Outler v. United States*, 485 F.3d 1273 (11<sup>th</sup> Cir. 2007) (represented habeas petitioner in case addressing whether equitable tolling applies to re-characterized post-conviction motion under 28 U.S.C. § 2255)

*The St. Joe Co. v. McIver*, 950 So. 2d 418 (Fla. 1st DCA 2007) (represented landowner whose land was condemned by the state and who was then sued for failure to pay a brokerage commission)

*The St. Joe Co. v. Leslie*, 912 So. 2d 21 (Fla. 1st DCA 2005) (represented paper mill company accused of environmental contamination by residents seeking certification of class)

*Abusaid v. Hillsborough County Bd. of County Com'rs*, 405 F. 3d 1258 (11<sup>th</sup> Cir. 2005) (represented small business owner whose civil rights claims had been dismissed under the Eleventh Amendment to the U.S. Constitution)

*Brauch v. Bank of Am. Corp.*, 3:03-CV-1097-J-16TEM, 2005 WL 1027907 (M.D. Fla. 2005) (represented bank sued by putative class of former executives of acquired bank in dispute over employment contracts)

*Thompson v. Sprint Corp.*, No. 4:02-CV-183-RH-WCS (N.D. Fla. Sept. 16, 2003) (represented Sprint telephone company in putative class action brought by consumers under the Fair Credit Reporting Act)

# Exhibit "B"

**Rebecca Bowen Creed**  
865 May Street  
Jacksonville, Florida 32204  
(904) 350-0075  
[rcreed@appellate-firm.com](mailto:rcreed@appellate-firm.com)

## **Professional Employment**

### **Creed & Gowdy, P.A.**

(formerly known as Mills & Carlin, P.A., Mills & Creed, P.A., and  
Mills Creed & Gowdy, P.A.)  
Jacksonville, Florida  
January 2003 – present

### **Smith, Gambrell & Russell, LLC**

(formerly Baumer, Bradford & Walters, P.A.)  
Jacksonville, Florida  
Partner, 1997 – 2002  
Associate, 1992 – 1997

### **Turner, Enochs & Lloyd, P.A.**

Greensboro, North Carolina  
Associate, 1991 – 1992

## **Education**

### **University of North Carolina School of Law**

Chapel Hill, North Carolina  
Juris Doctor with Honors (1991)

#### Honors and Activities

Order of the Coif	1991
Legal Research Assistant, Professor Ron Link	1990-1991
Staff Member, North Carolina Law Review	1989-1990
Dean's List	1988-1991
Recipient, Charles S. Mangum, Jr. Scholarship (merit)	1988-1991

### **University of Virginia**

Charlottesville, Virginia  
Bachelor of Arts (English) (1988)

#### Honors and Activities

Dean's List	1984, 1985-1988
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## **Professional Qualifications and Awards**

Admitted to practice in Florida (1992) and North Carolina (1991)

Admitted to practice before the Supreme Court of the United States, the United States Court of Appeal for the Third and Eleventh Circuits, and the United States District Court for the Southern, Middle, and Northern Districts of Florida

Board Certified in Appellate Practice by The Florida Bar (2001 – present)

Florida Super Lawyer (2006 – 2017)  
Top 50 Women Florida Super Lawyer

Lawyer of the Year: Appellate Practice  
*Jacksonville Magazine* (2016)

Legal Elite, *Florida Trend* (2012, 2014-2017)

Florida Justice Association, S. Victor Tipton Award (2014)

## **Professional Memberships and Community Service**

The Florida Bar Appellate Practice Section  
Executive Council (2010 – 2014)  
Editor, Appellate Practice Guide (September 2007 – present)

Jacksonville Bar Association  
Appellate Practice Section (Chairman, 2004 – 2005)  
Solo and Small Firm Section

Florida Justice Association (2010 – present)  
Chair, Appellate Section (2015 – 2016)

First District Appellate American Inn of Court  
Master (2012 – present)

Florida Family Law Inn of Court  
Barrister (2012 – 2016)  
Master (2017 – present)

Chester Bedell American Inn of Court  
Barrister (2005 – 2008)

Supreme Court of Florida Committee on Judicial Evaluations (2006 – 2007)

Riverside Presbyterian Day School  
Trustee (2010 – 2014)  
Assistant Chair, Building and Grounds Committee (2011 – 2012)  
Assistant Chair, Trustees Committee (2012 – 2013)

Riverside Presbyterian Church  
Stewardship Committee (2011 – 2012)  
Elder (2016 – present)  
Human Resources Committee  
Assistant Chair (2016 – 2017)  
Chair (2017 – present)

Community Hospice Foundation, Sunset in Costa Rica Committee  
(2010, 2012, 2014)

## **Notable Cases**

*Bennett v. St. Vincent's Medical Center, Inc.*, 71 So. 3d 828 (Fla. 2011)  
Represented parents of a severely brain-damaged infant who successfully challenged an overly broad statutory interpretation of Florida's Birth-Related Neurological Injury Compensation Plan (NICA) before the Supreme Court of Florida.

*Anderson v. Helen Ellis Memorial Hospital Foundation, Inc.*,  
66 So. 3d 1095 (Fla. 2d DCA 2011)  
Persuaded the Second District Court of Appeal, on behalf of parents of a brain-damaged child, to enforce the parents' right to elect and pursue civil remedies against the hospital in circuit court.

*Nationwide Mutual Fire Insurance Co. v. Harrell*  
53 So. 3d 1084 (Fla. 1st DCA 2010)  
Represented privately-insured plaintiff in enforcing her right to present evidence to the jury of the gross amount of her total medical bills, rather than the lesser amount paid by the private health insurer.

## **Selected Lectures, Seminars, Publications, and Panel Discussions**

*Offers of Judgment: Proposals for Settlement*

Florida Justice Association: CLE Webinar

October 2016

*Mistakes Made in the Underlying Verdict and the Trial Itself in the Bad Faith Case*

Florida Justice Association: Insurance Bad Faith Seminar

September 2016

*The Record: Perspectives on Preservation from the Bench and Bar*

Jacksonville Bar Association, Raymond Ehrlich Trial Advocacy Seminar

February 2016

*Overview and Analysis of Recent Changes to the Florida Rules of Appellate Procedure*

Florida Justice Association Journal, January/February 2016

*Offers of Judgment: Proposals for Settlement*

Florida Justice Association: CLE Webinar

October 2015

*Discussion with the Florida Supreme Court: A Reminder of Our Responsibilities as Florida Lawyers,*

The Record, Fall 2012

*New Appellate Rule for Probate and Guardianship Proceedings*

The Florida Bar Journal, Sept.-Oct. 2012

(co-authored with Jennifer Shoaf Richardson)

*Offensive and Defensive Strategies for the Proposal for Settlement*

Florida Justice Association: Workhorse Seminar

March 2012

*Preservation of Error at Trial*

Raymond Ehrlich Trial Advocacy Seminar

Jacksonville Bar Association

June 2011



*Immediately Appealable Orders*

Solo and Small Firm Section of the Jacksonville Bar Association  
April 2011

Moderator and Chair, Hot Topics in Appellate Practice Seminar  
The Florida Bar Appellate Practice Section  
March 2011

*Goble: Implications of the Common Law Collateral Source Rule*

Auto Negligence Seminar (Fort Lauderdale and Tampa)  
Florida Justice Association  
September 2010

*Preservation of Error*

Raymond Ehrlich Trial Advocacy Seminar  
Jacksonville Bar Association  
June 2010

*Appellate Strategies for County Attorneys*

Florida Association of County Attorneys  
June 2009

*Immediately Appealable Orders*

Jacksonville Justice Association  
April 2009

*Federal Case Law Update*

Hot Topics in Appellate Practice Seminar  
The Florida Bar Appellate Practice Section  
November 2006

# Exhibit "C"

## Jessie Leigh Harrell

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### EDUCATION

#### University of Florida – Levin College of Law

Juris Doctorate *with honors*, May 2001

#### University of Florida

B.A. in Classical Studies *with highest honors*, May 1998

#### Activities and Honors

- Law School
  - Order of the Coif
  - Class Rank: 7
  - Book Awards: Family Law, Criminal Procedure – Police Practices, Intellectual Property, and Pro Se Clinic
  - Journal of Law & Public Policy, Articles Senior
  - Legal Research & Writing and Appellate Advocacy Teaching Assistant
  - Trial Team, 2L-3L
    - Outstanding Graduate, Spring 2001
- Undergraduate Studies
  - Florida Academic Scholar, 1995-98
  - Outstanding Student Award, 1998
  - Anderson Scholar, 1996
  - Eta Sigma Phi (Classics Honor Society) – Vice President

### PROFESSIONAL RECOGNITION

- Florida Bar Board Certified Appellate Specialist, 2013-present
- AV-rated by Martindale-Hubbell, 2013-present
- Appellate Practice Section of the Florida Bar, 2008-present
  - Executive Council, 2013-2016
  - Chair, CLE committee, 2012-2016
- First District Appellate Inn of Court, Master, 2014-present
- Chester Bedell Inn of Court
  - Barrister, 2010-2013
  - Associate, 2004-2005
- Jacksonville Bar Association, 2002-present
  - Chair, Appellate Practice Section, 2011-2013
- Florida *Super Lawyer* in Appellant Practice, 2015-17
  - Recognized as among the Top 50 Women Lawyers in Florida, 2017
- Florida Justice Association, S. Victor Tipton Award (2017)
- Florida *Super Lawyers* “Rising Star” in Appellate Practice, 2009-2014
- Selected by the American Registry as among Florida’s Outstanding Young Lawyers in Appellate Law, June 2011, 2012 and 2013, July 2014
- Top Lawyers Selected by Peer Recognition, Jacksonville Magazine’s 904, October 2014 and 2015



# **EXHIBIT 7**

1 JEFF OSTROW (admitted *pro hac vice*)  
2 **KOPELOWITZ OSTROW FERGUSON**  
3 **WEISELBERG GILBERT**  
4 One West Las Olas Blvd., Suite 500  
5 Fort Lauderdale, FL 33301  
6 Telephone: (954) 525-4100  
7 Facsimile: (954) 525-4300  
8 *ostrow@kolawyers.com*

9 HASSAN ZAVAREEI (CA 181547)  
10 **TYCKO & ZAVAREEI LLP**  
11 1828 L Street, N.W., Suite 1000  
12 Washington, DC 20036  
13 Telephone: (202) 973-0900  
14 Facsimile: (202) 973-0950  
15 *hzavareei@tzlegal.com*

16 *Counsel for Plaintiff and the Settlement Class*

17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 JOANNE FARRELL, on behalf of herself and  
20 all others similarly situated,

21 Plaintiff,

22 vs.

23 BANK OF AMERICA, N.A.,

24 Defendant.

25 CASE NO. 3:16-cv-00492-L-WVG

26 **DECLARATION OF JASON HARTLEY**  
27 **REGARDING THE REASONABLENESS**  
28 **OF CLASS COUNSELS' HOURLY**  
**RATES IN THE SAN DIEGO**  
**COMMUNITY**

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018 at 11:00am

29 I, Jason S. Hartley, declare as follows:

30 1. I am a member in good standing of the State Bar of California and am admitted to  
31 practice before the United States Courts of Appeal for the Second and Ninth Circuits, the United  
32 States District Courts for the Southern, Central, and Eastern Districts of California, and the United  
33 States Court of International Trade. I am a partner at Stueve Siegel Hanson, LLP. The following  
34

1 statements are based on my personal knowledge and the files and records in this case of which I am  
2 aware. If called on to do so, I could and would testify competently thereto.

3 2. I respectfully submit this declaration in support of Class Counsel’s Application for  
4 Attorney’s Fees and Reimbursement of Expenses. By this declaration, I articulate my opinion that  
5 the hourly rates proposed to be charged by Class Counsel are typical for attorneys in the San Diego  
6 community, and in fact are similar to the rates that my office charges (and San Diego courts regularly  
7 approve as fair and reasonable) for similar complex litigation.

8 3. I have been licensed to practice law in California since 1997. I earned my  
9 undergraduate degree from the University of California, San Diego and my law degree *cum laude*  
10 from Tulane University. I have practiced my entire career of over 20 years in San Diego.

11 4. I was selected to be a lawyer representative for the Southern District of California last  
12 year. I am on the Board of Trustees for the San Diego Museum of Man, Balboa Park, the Board of  
13 Governors of both the American Association for Justice and the Consumer Attorneys of California,  
14 as well as the Policy Committee for the San Diego Regional Economic Development Corporation. I  
15 am also a member of the San Diego Bar Association and Consumer Attorneys of San Diego. In 2016,  
16 I was recognized by “The National Trial Lawyers” as one of the top 100 trial lawyers in the country.  
17 I have an AV rating from Martindale Hubbell. I have been recognized as a “Super Lawyer” in San  
18 Diego from 2013 to 2018 and as the “Best of the Bar” by the San Diego Business Journal in 2017.

19 5. The vast majority of my career has been spent representing plaintiffs in a wide variety  
20 of class action lawsuits, antitrust and unfair competition litigation, and music law matters. My law  
21 firm has offices in San Diego and Kansas City. Our practice includes antitrust cases, consumer and  
22 securities class actions, and other complex business litigation. My practice involves litigation in San  
23 Diego state and federal courts.

24 6. I have substantial experience representing lead plaintiffs in class actions, and  
25 throughout my career in the legal field, I have achieved a number of ground-breaking decisions for  
26 my clients. For example, I helped obtain the first ever certification of a class of purchasers in a *Walker*  
27 *Process* antitrust claim (*Giuliano v. SanDisk Corporation*, (class action) Case No. 4:1-cv-02787 (N.D.  
28



1 Cal. 2015), Dkt. No. 302); I obtained the first and only court-ordered denial of ACPERA protection  
2 claimed by Defendants cooperating with the Department of Justice, thus increasing three-fold the  
3 potential damages available to the plaintiff class I represented (*In re Aftermarket Automotive Lighting*  
4 *Products Antitrust Litigation*, Case No. 2:09-ml-02007 (C.D. Cal. 2013)); and I obtained the denial  
5 of a motion to dismiss based upon the Foreign Trade Antitrust Improvements Act (“FTAIA”) in a  
6 case that helped set the standard for FTAIA dismissal motions (*Fond du Lac Bumper Exchange, Inc.*  
7 *v. Jui Li Enterprise Co. Ltd.*, Case No. 2:09-cv-00852 (E.D. Wis. 2010)). I have led at least 15 class  
8 actions on behalf of plaintiffs in various areas of the law. I am currently part of the Direct Purchaser  
9 Plaintiffs’ leadership appointed by this Court in the antitrust class action, *In re Packaged Seafood*  
10 *Antitrust Litigation*, 15-md-2670-JLS-MDD.

11 7. I have reviewed: (1) the Complaint in this Action, (2) the complete case docket report,  
12 and (3) the Settlement Agreement that was preliminarily approved in this matter.

13 8. I have also reviewed the recent orders of judges in this District approving attorney’s  
14 fees and rates for similarly complex work, including: *Makaeff v. Trump Univ., LLC*, No. 10CV0940  
15 GPC WVG, 2015 WL 1579000, at \*4 (S.D. Cal. Apr. 9, 2015) (approving hourly rates ranging from  
16 \$250 to \$440 for associates, and \$600 to \$825 for partners); *Richardson v. Colvin*, No. 15-CV-1456-  
17 MMA-BLM, 2017 WL 1683062, at \*2 (S.D. Cal. May 2, 2017) (approving rate of \$770 and citing  
18 other cases approving rates of \$800, \$656, and \$666.68); *Oxina v. Lands’ End, Inc.*, No. 14CV2577-  
19 MMA (NLS), 2016 WL 7626190, at \*5 (S.D. Cal. Dec. 2, 2016) (stating that “[t]he National Law  
20 Journal data reveals that rates at six national defense firms with San Diego offices averaged between  
21 \$550 and \$747 per hour for partners and \$346 and \$508 per hour for associates” and approving rate  
22 of \$595); *In re: Easysaver Rewards Litig.*, No. 09-CV-02094-BAS-WVG, 2016 WL 4191048, at \*4  
23 (S.D. Cal. Aug. 9, 2016) (finding rates of \$625 to \$750 for partners; \$340 to \$450 for associates; \$125  
24 to \$260 for paralegals; \$575 for of counsel; and \$105 for legal assistants were reasonable and “reflect  
25 the prevailing rate seen by this Court in other similar cases” and awarding a 2.0 multiplier on top);  
26 *Fontes v. Heritage Opening, L.P.*, No. 14CV1413-MMA (NLS), 2016 WL 1465158, at \*6 (S.D. Cal.  
27 Apr. 14, 2016) (approving rates of \$495 per hour to \$695 per hour); and *Grant v. Cap. Mgmt. Servs.*,

28

1 *L.P.*, No. 10-CV-2471-WQH (BGS), 2014 WL 888665, at \*6 (S.D. Cal. Mar. 5, 2014) (approving as  
 2 “reasonable” rates of \$875, \$695, \$525, \$395, and \$245 for attorneys and \$150 for paralegals in a  
 3 consumer class action).

4 9. I understand that Class Counsel is requesting the following hourly rates:

5 **Creed and Gowdy**

6

Name	Position	Years Experience	Rate
Brian Gowdy	Partner	19	\$700
Rebecca Creed	Partner	20+	\$600
Jessie L. Harnell	Associate	17	\$500

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10 **Kelley Uustal**

Name	Position	Years Experience	Rate
John J. Uustal	Partner	20+	\$800
John R. Hargrove	Partner	20+	\$800
Cristina M. Pierson	Partner	20+	\$600
Johnet Grimm	Paralegal	N/A	\$200

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14 **Kopelowitz Ostrow Ferguson Weiselberg Gilbert**

Name	Position	Years Experience	Rate
Jeff Ostrow	Partner	20+	\$775
Jonathan Streisfeld	Partner	20+	\$750
Jason Alperstein	Partner	10	\$600

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19 **Tycko & Zavareei LLP**

Name	Position	Years Experience	Rate
Hassan Zavareei	Partner	20+	\$800
Jeffrey Kaliel	Partner	13	\$650
Anna Haac	Partner	12	\$650
Andrew Silver	Associate	6	\$400
Kyra Taylor	Associate	2	\$275
Lauren Kelleher	Associate	2	\$250
Nathan Laporte	Paralegal	N/A	\$180

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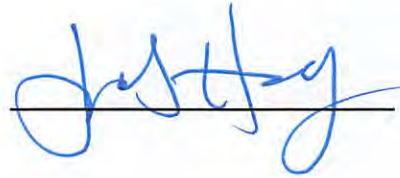
24

25 10. Based on my experience litigating cases in state and federal courts in San Diego, I  
 26 believe that the hourly rates charged for the complex litigation in this Action are appropriate and  
 27 typical in this community.

1           11. My opinion is also based on the rates I charge my own clients and my experience  
2 reviewing fee requests and fee awards in litigation in San Diego courts. The lawyers in my office  
3 bill at hourly rates as follows: \$895 for a named partner with 23 years of experience, \$850 for a  
4 partner with 20 years' experience, \$675 for of counsel with 17 years' experience, \$550 for an  
5 associate with 11 years' experience, \$525 for an associate with 10 years' experience, \$450 for an  
6 associate with 7 years' experience, and \$395 for an associate with 3 years' experience. We charge  
7 hourly rates between \$225 and \$275 for staff and paralegals.

8           12. Based on the hourly rates used and routinely approved for my firm, and based on my  
9 experience litigating in the San Diego community, I believe the rates suggested as reasonable by  
10 Class Counsel are fair and proper within the San Diego community.

11           I declare, under penalty of perjury, under the laws of the State of California and the United  
12 States, that the foregoing is true and correct. Executed this 16th day of February, 2018, in San  
13 Diego California.

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1 JEFF OSTROW (*pro hac vice*)  
2 **KOPELOWITZ OSTROW**  
3 **FERGUSON WEISELBERG GILBERT**  
4 One West Las Olas Blvd., Suite 500  
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12 Washington, DC 20036  
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14 Facsimile: (202) 973-0950  
15 hzavareei@tzlegal.com

16 *Attorneys for Plaintiffs and the Settlement Class*

17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 JOANNE FARRELL, on behalf of  
20 herself and all others similarly situated,

21 Plaintiff,

22 vs.

23 BANK OF AMERICA, N.A.,

24 Defendant.

25 CASE NO. 3:16-cv-00492-L-WVG  
26 **CERTIFICATE OF SERVICE**

27 I, Jeff Ostrow, on this 19th day of February, 2018, hereby certify that the foregoing  
28 documents were filed via the Court's CM ECF system, thereby causing a true and correct  
copy to be sent to all ECF-registered counsel of record.

s/ Jeff Ostrow

**Jeff Ostrow**  
Fla. Bar No. 121452  
ostrow@kolawyers.com  
**KOPELOWITZ OSTROW**  
**FERGUSON WEISELBERG GILBERT**  
One West Las Olas Blvd., Suite 500  
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*Counsel for Plaintiffs and the Settlement Class*