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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

NOTICE OF MOTION AND PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, APPLICATION FOR 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 grant Final Approval of the Settlement for which the Court granted Preliminary Approval on December 11, 2017, the terms of which are more specifically described in the

Memorandum and Points of Authority filed in support of this Motion.

This Motion is based upon this Notice of Motion and Unopposed Motion; the accompanying Memorandum of Points and Authorities; the Settlement Agreement; the Joint Declaration of Jeff Ostrow and Hassan A. Zavareei in Support of Final Approval; the Declaration of Riaz Bhamani; the Declaration of Cameron Azari; the Declaration of Stephanie J. Fiereck, Esq.; Plaintiff's and Class Counsel's Application for Attorneys' Fees and Costs and Service Awards, and Plaintiff's Responses to Objections, other 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: May 30, 2018

Respectfully submitted,

/s/ Jeff Ostrow
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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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT, APPLICATION FOR ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

Judge: Hon. M. James Lorenz
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I. INTRODUCTION

Plaintiffs, Joanne Farrell,[1] 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 Motion for Final Approval of Class Settlement, Application for Attorneys' Fees and Costs and Service Awards.[2] The Settlement Agreement and Release ("Settlement" or "Agreement"), attached as ***Exhibit A***, if approved, will resolve all claims against Defendant Bank of America, N.A. ("Bank" or "BANA").[3] The Agreement provides substantial relief for the Settlement Class—valued at over $1.2 billion dollars—and the terms of the Settlement are well within the range of reasonableness and consistent with applicable case law.

Indeed, given the significant risks inherent in this Action, the Settlement is an excellent result for the Settlement Class as it provides for: (1) BANA's agreement to immediately stop assessing Extended Overdrawn Balance Charges ("EOBCs") on consumer checking accounts for a period of five years (resulting in $1.2 billion in savings); (2) $66.1 million in relief, including substantial cash and debt reduction; (3) automatic distributions with no requirement for claim submissions; (4) no reversion to the Bank for any funds that may remain post-distribution; and (5) separate payment by the Bank of an estimated $2 million in notice and administration costs. Providing certainty that Bank

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1 A motion to Substitute Plaintiff Joanne Farrell's adult children (Patrick Michael Farrell, Ryan Thomas Farrell, Timothy Gaelen Farrell and Brooke Ann Farrell) as Plaintiffs and Class Representatives for her surviving adult children was filed on May 25, 2018, pursuant to Fed. R. Civ. P. 25(a), due to her unfortunate death after Preliminary Approval. [DE #100]. As of the date of the filing of this Motion, the Court had not ruled on that motion.

2 Pursuant to this Court's requirement in the Preliminary Approval Order, Plaintiffs and Class Counsel filed an Unopposed Motion and Memorandum in Support of their Application for Attorneys' Fees and Costs and Service Awards on February 19, 2018. [DE #80 and #80-1]. Plaintiffs' Responses to Objections are filed contemporaneously herewith. As discussed therein, the majority of the objections relate to attorneys' fees. The Parties' Settlement does not depend on the amount of the attorneys' fee award. Thus the Court can enter final approval of the Settlement regardless of the amount of the attorneys' fee award, as determined by the Court.

3 All capitalized terms in this memorandum shall have the same meanings as those defined in the Agreement.

customers will not be charged any EOBCs in the future was a goal, and is a crowning achievement of the Settlement, while the Settlement Amount ensures that all Settlement Class members shall receive some monetary relief for the past harm the Bank's EOBC policy inflicted. The Bank's separate payment of settlement administration costs ensures that Settlement Class members receive fair, adequate, and reasonable relief. Based upon controlling Ninth Circuit law and supporting facts, Final Approval is warranted.

The reasonableness and fairness of this Settlement must be judged in the context of similar EOBC actions and the fate they have suffered in federal courts around the country. To date, six other federal courts have granted motions to dismiss in seven nearly identical cases, holding that the respective bank's charges were not interest and therefore not subject to the National Bank Act's usury limit. *See* Joint Declaration of Jeff Ostrow and Hassan Zavareei in Support of Final Approval, attached as ***Exhibit B*** ("Joint Decl.") ¶ 8. In one case against BANA, the U.S. Court of Appeals for the Eleventh Circuit affirmed the Florida district court's judgment of dismissal on the same issue. *Id.* ¶ 9. This Action is the only one of its kind that has survived to date and the only one in which a defendant bank has agreed to pay cash and cease the very practice at the heart of the complaint. *Id.* 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.

Therefore, Plaintiffs and Class Counsel respectfully request that the Court: (1) grant Final Approval of the Settlement; (2) certify for settlement purposes the Settlement Class pursuant to Federal Rules of Civil Procedure 23(b)(3); (3) appoint Plaintiffs as Class Representatives; (4) appoint as Class Counsel the attorneys previously appointed in the Court's Preliminary Approval Order, as amended; (5) deny the timely and valid objections and accept the withdrawal of objections filed in this Action; (6) award Service Awards, Attorneys' Fees and Costs as previously requested in the application and as further modified herein; and (7) enter Final Judgment dismissing this Action.

II. STATEMENT OF FACTS

A. BACKGROUND

This case is a class action focused on the Bank's practice of levying a $35 EOBC against account holders for failing to cure negative balances on overdrawn deposit accounts within five business days. When a customer has insufficient funds in a checking account to cover a check or other debit, the Bank under its deposit agreement has discretion either to pay the overdraft or return it without any payment. If the Bank chooses to pay the overdraft, the deposit agreement allows the Bank to charge an overdraft fee and requires the customer "to repay [the Bank] immediately, without notice or demand from [the Bank]." Plaintiffs' claims in no way challenge this initial overdraft fee and solely concern the EOBC, which the Bank separately charges if a negative account balance is not cured within 5 business days. The deposit agreement explains the EOBC as follows:

> The Extended Overdrawn Balance Charge is an overdraft fee. This fee is in addition to Overdraft Item and NSF: Returned Item fees that may apply to your account for each overdraft or returned item. This additional charge applies to your account when we determine that your account has been overdrawn for 5 or more consecutive business days. You can avoid this fee by promptly covering your overdraft - deposit or transfer enough available funds to cover your overdraft, plus any fees we assessed, within the first 5 consecutive business days that your account is overdrawn.

Plaintiffs allege that the EOBC is a charge for the use of the Bank's money over time, or interest charged pursuant to an extension of credit. Plaintiffs allege that the EOBC is "interest" under the National Bank Act ("NBA") and its associated regulation (12 C.F.R. § 7.4001) because the charge compensates the Bank for continued use of funds it already advanced to a customer when honoring an overdraft transaction. Consequently, Plaintiffs allege that the amount of the EOBC is usurious under the NBA.

B. HISTORY OF THE LITIGATION

On February 25, 2016, Plaintiff Farrell filed a class action Complaint in this Court

seeking monetary damages, restitution and declaratory relief from the Bank, based on its alleged unfair assessment of EOBCs. *See generally* Complaint [DE #1]. Plaintiff Farrell, a customer of the Bank, alleges that EOBCs are not a "fee," but are actually interest charges for the advancement of funds. Accordingly, they are subject to usury interest rate restrictions enacted by the Bank's home state, North Carolina. Plaintiff Farrell alleges the amount of the EOBC exceeds the usury rate set by North Carolina state law and incorporated by the NBA. *Id.*

On April 29, 2016, the Bank moved to dismiss the Complaint under Federal Rule of Civil Procedure 12(b)(6), arguing that, as a matter of law, an EOBC does not constitute interest, and consequently, that Plaintiff Farrell's case should be dismissed with prejudice. [DE #8]. On June 13, 2016, Plaintiff Farrell filed her response in opposition to the motion to dismiss. [DE# 16]. On June 20, 2016, the Bank filed its Reply to the Response to the Motion to Dismiss. [DE #18]. On December 19, 2016, this Court denied the Bank's motion to dismiss. [DE #20].

On January 3, 2017, the Bank filed an Answer to the Complaint, which the Bank then amended on January 24, 2017. [DE #25, 42]. On January 24 and again on January 27, 2017, Plaintiff Farrell moved to strike most of the Bank's affirmative defenses. [DE #41, 45]. The Bank filed its Response in Opposition to the Motion to Strike on February 13, 2017. [DE #53]. Plaintiff Farrell filed a Reply to the Response to Motion to Strike on February 17, 2017. [DE #57].

On January 6, 2017, the Bank moved for certification of the Court's denial of its motion to dismiss to seek interlocutory review under 28 U.S.C. §1292(b) and to stay proceedings pending that review. [DE #29]. Plaintiff Farrell opposed that Motion on January 30, 2017. [DE #48]. The Bank filed a reply to the response to its motion for certification on February 6, 2017. [DE #50].

Plaintiff Farrell filed her Unopposed Motion to Amend Complaint, to Add Class Representatives, and to Modify Case Style on March 13, 2017, for purposes of adding

Ronald Dinkins, Larice Addamo, and Tia Little as additional plaintiffs ("Plaintiffs"). [DE #60]. On April 11, 2017, before ruling on the Motion to Amend, the Court granted the Motion to Stay and certified its order denying BANA's motion to dismiss for interlocutory review. [DE #61].

On April 21, 2017, the Bank filed a petition for permission to appeal with the United States Court of Appeals for the Ninth Circuit. [DE #62]. On May 1, 2017, Plaintiff Farrell filed her Answer to the Bank's petition for permission to appeal in the Ninth Circuit. Circuit Case No. #: 17-80072 (DE #4). On June 14, 2017, the Ninth Circuit granted the Bank's request to appeal and on June 15, 2017, the Bank filed its Notice of Appeal. [DE #63, 64]. A briefing scheduled was set in Ninth Circuit Case No. 17-55847.

Beginning in June 2017, the Parties began to exchange settlement communications. Plaintiff requested a significant amount of data regarding EOBC revenue and sample transactional data, which BANA produced. Plaintiffs' expert extensively analyzed this data.

On August 25, 2017, the Parties mediated the Action in Newport Beach, California with Judge Layn Philips (Ret.), a well-respected neutral. The case did not settle that day, but the Parties continued negotiations over the next several weeks, with the assistance of Judge Phillips, reaching agreement on material terms of settlement in early October 2017.

On October 11, 2017, the Parties filed a Joint Status Report advising the Court that the Parties had reached an agreement to settle the Action. [DE #67]. The Parties also filed a Joint Motion for an Extension of Time on October 11, 2017, with the Ninth Circuit, based on the agreement to settle the Action.

The parties negotiated and executed a settlement term sheet confirming the material terms of settlement on October 23, 2017. Joint Decl. ¶ 13. After the Parties executed a Settlement term sheet, Class Counsel performed confirmatory discovery at the Bank's headquarters in Charlotte, North Carolina. Joint Decl. ¶ 14. The Parties then turned to drafting the comprehensive Agreement. Joint Decl. ¶ 15. On October 31, 2017, the Parties signed the Agreement. *Id.*

On October 31, 2017, Plaintiffs filed their Motion and Memorandum in Support of Preliminary Approval of the Class Settlement and for Certification of the Settlement Class. [DE #69]. On December 11, 2017, the Court entered an Order Conditionally Granting Preliminary Approval. [DE #72]. In response, Class Counsel filed a Motion for Approval of Amended Class Notices [DE# 73], which was granted by the Court on December 21, 2017. [DE #75].

Class Counsel led the investigation that resulted in this Action. Indeed, Class Counsel persisted in pursuing the usury claim even after three other district courts had rejected it in other cases. Joint Decl. ¶ 8. So not only were the claims in this litigation untested and novel, but it took Class Counsel a substantial amount of pre-filing work to research and develop the legal arguments and claims to support the finding that EOBCs were interest. Joint Decl. ¶ 9. Nonetheless, Class Counsel persisted in developing this case and the few others like it, relying on their unique expertise in consumer banking practices and litigation related thereto. *Id.* Once the Action was on file, Class Counsel then persisted in overcoming the Bank's vigorous protestations that the case was wrong-headed; and persisted in driving the hard bargain that resulted in this Settlement. *Id.* Not one other firm or governmental entity brought, assumed the risk, and prosecuted these claims. In short, without Class Counsel's persistence, hard work, and investment of resources, BANA's alleged misconduct would have continued and gone without recompense. *Id.*

C. SUMMARY OF THE SETTLEMENT TERMS

The Settlement's terms are detailed in the Agreement. The following is a summary of the material terms.

1. The Settlement Class.

The Settlement Class is an opt-out class under Rule 23(b)(2) and (3) of the Federal Rule of Civil Procedure. The Settlement Class is defined in the Preliminary Approval Order, as:

All holders of BANA consumer checking accounts who, during the period

> between February 25, 2014 and December 30, 2017, were assessed at least one Extended Overdrawn Balance Charge that was not refunded.

[DE #72 at ¶ 2].

2. Relief for the Benefit of the Settlement Class.

a. Practice Change – Cessation of EOBC

The Bank has agreed to stop assessing EOBCs on consumer checking accounts—an approximate $1.2 billion value to the Settlement Class and other account holders. Agreement ¶ 2.2(a). Specifically, for a period of five years (December 31, 2017 through December 31, 2022), it will not implement and/or assess EOBCs, or an equivalent fee. *Id.* The Bank's obligation to cease assessing EOBCs or a similar fee shall be lifted only if a United States Supreme Court decision expressly holds that EOBCs or equivalent fees are not interest under the NBA. *Id.* Even if this occurs, the Bank must wait six months to begin charging the EOBC or an equivalent fee. *Id.* The monthly savings to the Settlement Class and other account holders will be approximately $20 million ($1.2 billion over five years). *See* Declaration of Riaz Bhamani, attached as ***Exhibit C*** ("Bhamani Decl.") ¶ 8.

b. $66.6 Million Settlement Amount

The Settlement Amount consists of a $37.5 million cash Settlement Fund and $29.1 million of Debt Reduction Amount for the benefit of Settlement Class members. Agreement ¶ 2.2(b). Settlement benefits will be automatically delivered to Settlement Class members, eliminating risk of a portion of the fund going unclaimed. Here, every penny of the $66.6 million is guaranteed for the Settlement Class members' benefit.

The cash Settlement Fund will be used to pay: (a) Settlement Class members their respective share of the Net Cash Settlement Amount; (b) Class Counsel for any Court awarded attorneys' fees and litigation costs; (c) any Court awarded Service Awards for the Class Representatives; and (d) any Administrator Hourly Charges. *Id.* ¶¶ 2.2(b)(3), 2.4, 3.1, 3.2. The Bank funded the cash Settlement Fund on January 10, 2018. Joint Decl. ¶ 19. The Settlement does not require claims submissions or any other affirmative step by Settlement

Class members to receive relief or a share of the Net Cash Settlement Amount. Instead, the Bank and the Administrator will *automatically* distribute the Settlement benefits. Agreement ¶ 2.6. Payments to Settlement Class members who are current account holders will be made by the Bank crediting such Settlement Class members' accounts and notifying them of the credit. *Id.* Past account holders will receive payments from the Settlement Fund by checks mailed by the Administrator. *Id.*

Following the Effective Date, all Settlement Class members who are entitled to a Class Member Award will receive a *pro rata* distribution from the Net Cash Settlement Amount based upon the number of EOBCs the Settlement Class member paid during the Class Period. In addition, the $29.1 million in Debt Reduction Payments will be credited to Settlement Class members for money the Bank claims is owed for outstanding EOBCs assessed against Settlement Class members whose accounts have been closed. *Id.* ¶ 2.2(b)(4). Specifically, Settlement Class members who incurred an EOBC after February 14, 2014, and had their account closed by the Bank with an uncollected EOBC outstanding will have their outstanding balance reduced by an amount of up to $35. If the account balance is less than $35, the Bank will adjust the account to reflect a $0.00 account balance. *Id.* Further, to the extent BANA has reported accounts to any credit bureaus, BANA will update the reporting. *Id.* Pursuant to the Agreement, provided it is economically feasible should any funds remain after the initial distribution, the Parties shall do a second distribution to those who received their Class Member Awards, provided it was by direct deposit or by cashed check. Agreement ¶ 3.5. Should residual funds remain following a second distribution, or in the event a second distribution is not economically feasible, it is the intent of the Parites that the funds shall be distributed to cy pres recipient, Consumers for Responsible Lending (www.respnsiblelending.org), a non-profit organization that provides a national voice against abusive financial practices. *Id.*; *see also* Joint Decl. ¶ 18.

c. Payment of the Costs of Notice and Administration

The Court appointed Administrator is Epiq Systems. Epiq is a leading class action

administration firm in the United States. Administration Costs have been and will continue to be paid separately by the Bank, with the exception of any hourly services requested of the Administrator. The Administrator oversees the notice program and settlement administration. The Parties currently estimate that Administration costs to be paid by the Bank shall be approximately $2 million. Joint Decl. ¶ 20.

3. *Class Release.*

In exchange for the benefits conferred by the Settlement, all Settlement Class members will be deemed to have released the BANA Releases from claims relating to the subject matter of the Action. Agreement ¶ 2.3.

4. *The Notice and Administration Program.*

The Notice Program was designed to provide the best notice practicable and was tailored to take advantage of the information BANA has available about the Settlement Class. Joint Decl. ¶ 34. It was reasonably calculated under the circumstances to apprise members of the Settlement Class of the following: a description of the material terms of the Settlement; a date by which persons in the Settlement Class may exclude themselves from or opt-out of the Settlement Class; a date by which members of the Settlement Class may object to the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which persons in the Settlement Class may access the Agreement and other related documents and information. *See* Declaration of Cameron Azari, attached as ***Exhibit D*** and filed herewith pursuant to the Court's requirement in the Preliminary Approval Order ("Azari Decl.") ¶¶ 10, 11, 28-34. The Notice and Notice Program constituted sufficient notice to all persons entitled to notice. *Id.* ¶ 11; Joint Decl. ¶ 35. The Notice Program satisfied all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and constitutional due process. Azari Decl. ¶ 34; Joint Decl. ¶ 11.

As discussed at greater length in Plaintiffs' Response to Objections, certain Settlement Class members, including several represented by professional objector counsel,

filed objections to the settlement. Joint Decl. ¶¶ 41-45.

III. ARGUMENT

A. The Legal Standard for Final Approval

Fed. R. Civ. P. 23(e) requires court approval before a class action can be dismissed via a settlement. The Settlement's proponents (lead plaintiffs and defendant), have the burden of presenting evidence showing that the Settlement should be approved and the action dismissed. *See, e.g., Officers for Justice v. Civil Svc. Comm'n of the City and County of San Francisco*, 688 F.2d 615 625 (9th Cir. 1982); *see also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (finding settlement to be a preferred method for resolving disputes, particularly "where complex class action litigation is concerned"). "The Ninth Circuit maintains a 'strong judicial policy' that favors the settlement of class actions." *Cohorst v. BRE Props.*, No. 3:10-CV-2666-JM-BGS, 2011 U.S. Dist. LEXIS 151719, at *33 (S.D. Cal. Nov. 9, 2011) (citing *In re Pacific Enters. Sec. Litig.*, 47 F.3d. 373, 378 (9th Cir. 1995)). "'Voluntary conciliation and settlement are the preferred means of dispute resolution in complex class action litigation.'" *Dennis v. Kellogg Co.*, 09-CV-1786-L (WMc), 2013 U.S. Dist. LEXIS 64577, at *4 (S.D. Cal. May 3, 2013) (Lorenz, J.) (citations omitted).

"Adequate notice is critical to court approval of a class settlement under Rule 23(e)." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). Also, Rule 23(e) "requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable." *Id.* at 1026. "Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter, or snazzier, but whether it is fair, adequate, and free from collusion.'" *Id.* at 1027. The Court balances the *Hanlon* factors in deciding the Settlement is fair, adequate, and reasonable:

> (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Gutierrez-Rodriguez v. R.M. Galicia, Inc., No. 16-CV-0182 H BLM, 2017 U.S. Dist. LEXIS 170982, at *15 (S.D. Cal. Oct. 16, 2017). "'The relative degree of importance to be attached to any particular factor will depend upon . . . the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case.'" *Woo v. Home Loan Grp., L.P.*, No. 07-CV-202 H (POR), 2008 U.S. Dist. LEXIS 65144, at *8 (S.D. Cal. Aug. 25, 2008) (quoting *Officers for Justice*, 688 F.2d at 625).

When a court exercises its discretion to approve a settlement, the Ninth Circuit has instructed:

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Officers for Justice, 688 F.2d at 625. "The proposed settlement is not to be judged against a hypothetical or speculative measure of what *might* have been achieved by the negotiators." *Id.* (emphasis in original).

B. This Settlement Satisfies the Criteria for Final Approval

As detailed below, each of the relevant *Hanlon* factors weighs in favor of Final Approval. The Settlement is also the product of good-faith, informed, and arms-length negotiations between competent counsel, as the Settlement was reached in the absence of collusion in conjunction with using an experienced and highly regarded mediator, the Honorable Layn Phillips (Ret.). A full day formal mediation served as the foundation for the eventual resolution of this Action. Although the Parties did not settle that day, much progress was made, with the Parties continuing their settlement discussions in subsequent months with the assistance of Judge Phillips. Joint Decl. ¶ 12. "The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *E.g.*, *Todd v. STARR Surgical Co.*, CV 14-5263 MWF (GJSx), 2017 WL 4877417, at *2 (C.D. Cal. Oct. 24, 2017) (quoting *Satchell v. Fed. Express Corp.*, No. C 03 2878 SI,

2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007)). As such, the Court should give a presumption of fairness to arms-length settlements reached by experienced counsel. *Rodriquez v. West Pub'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive negotiated resolution . . . .").

Furthermore, when determining settlement fairness, parties are required to balance the merits of the claims and defenses asserted against the attendant risks of continued litigation and delay. Although Plaintiffs believe that their claims are meritorious, and that they would prevail at trial, BANA disagrees, denies any potential liability and, up to the point of settlement, indicated a willingness to litigate vigorously. Plaintiffs and Class Counsel are confident in their case, but are also pragmatic in their awareness of the Bank's various defenses, and the risks inherent to litigation of this magnitude that challenges engrained banking industry practice. Joint Decl. ¶ 23. Indeed, before this Action, cases brought against financial institutions on a similar legal theory were dismissed, including a case against the Bank. *See McGee v. Bank of Am., N.A.*, 2015 WL 4594582 (S.D. Fla. July 30, 2015), *aff'd* 674 F. App'x 958 (11th Cir. Jan. 18, 2017); *Shaw v. BOKF, Nat'l Ass'n*, 2015 WL 6142903 (N.D. Okla. Oct. 19, 2015); *In re TD Bank, N.A. Debit Card Overdraft Fee Litig.*, 150 F. Supp. 3d 593, 641-642 (D.S.C. 2015). Since then others lost on the same theory. *See Johnson v. BOKF, N.A. d/b/a Bank of Texas*, No. 3:17-cv-663, Dkt. No. 30 (N.D. Tex. Oct. 24, 2017) (dismissal with leave to amend but renewed motion to dismiss pending); *Moore v. MB Fin. Bank, N.A.,* No. 17 C 4716, 2017 U.S. Dist. LEXIS 189585 (Nov. 16, 2017); *Dorsey v. T.D. Bank, N.A.*, No. 6:17-cv-01432, Dkt. No. 30 (D.S.C. Feb. 28, 2018), *appeal filed*, Case No. 18-1356 (4th Cir.); *Fawcett v. Citizens Bank, N.A.*, No. 17-11043, Dkt. No. 37 (D. Mass., Apr. 19, 2018). In all, seven similar complaints have been dismissed.

1. The Risk, Expense, Complexity, and Likely Duration of Further Litigation.

Plaintiffs faced the risk of losing during the pending appeal of this Court's order denying BANA's Motion to Dismiss, at summary judgment, at trial, or on a subsequent

appeal based on various factual and legal defense theories. Joint Decl. ¶ 24. Each of these risks, standing alone, could have impeded Plaintiffs' and the Settlement Class' success at a trial and in an eventual appeal, delaying any recovery for years or resulting in zero benefit to the Settlement Class. *See Dennis v. Kellogg Co.*, 09-CV-1786-L (WMc), 2013 U.S. Dist. LEXIS 163118, at *9 (S.D. Cal. Nov. 14, 2013) (Lorenz, J.) ("[I]t is plainly reasonable for the parties at this stage to agree that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication."); *McPhail v. First Command Fin. Plan., Inc.*, No. 05cv179-IEG-JMA, 2009 U.S. Dist. LEXIS 26544, at *12-13 (S.D. Cal. Mar. 30, 2009) (noting that the potential complexity and possible duration of trial weighs in favor of granting final approval, and that post-judgment appeal would require many years to resolve and delay payment to class members). In addition, continued litigation would require tremendous time and expenses for both sides associated with contested class certification proceedings and possible interlocutory appellate review, completing merits discovery, pretrial motion practice, trial, and final appellate review. Joint Decl. ¶ 31. Under the circumstances, Plaintiffs and Class Counsel appropriately determined that the Settlement's terms far outweigh the gamble of continued litigation by providing, without further delay, over $1.2 billion of substantial current and future relief to almost seven million Bank customers. *Id.*

2. The Risk of Maintaining Class Action Status Throughout Trial.

Whether the Action would have been tried as a class action is also relevant in assessing the fairness of the Settlement. As the Court had not yet certified a class at the time the Agreement was executed, it is unclear whether certification would have been granted. Joint Decl. ¶ 28. Given the Bank's vigorous defense of this Action thus far, the Bank would have opposed Plaintiffs' certification motion, and "would surely [have] challenge[d] class certification on appeal" in the event of an adverse judgment. *Rodriguez v. West Pub. Corp.*, No. CV05-3222, 2007 WL 2827379, at *8 (C.D. Cal. Sept. 10, 2007) (finding that the likelihood that a certification decision would be appealed meant this factor

weighed in favor of approval), *rev'd on other grounds*, 563 F.3d 948 (9th Cir. 2009). *See also Dennis*, 2013 U.S. Dist. LEXIS 163118 at *8-9. This litigation activity would have required the Parties to expend significant resources. Joint Decl. ¶ 28. Accordingly, this factor weighs in favor of preliminary approval. The proposed Settlement is the best vehicle for the Settlement Class to receive the relief to which they are entitled. *See, e.g.*, *Officers for Justice*, 688 F.2d at 625 (approving settlement based in part on the possibility that a judgment after a trial, when discounted, might not reward class members for their patience and the likely delay reflected in the "track record" for large class actions).

3. The Amount Offered in the Settlement.

The Settlement is squarely more than sufficient to warrant approval. It is the product of arms-length negotiations conducted by the Parties' experienced counsel and initially under the supervision of a reputable and skilled mediator. These negotiations led the Parties to a Settlement that is fair, reasonable, and in the Settlement Class' best interests. Despite objections to the contrary—none of which acknowledge the tremendous risk that Plaintiffs undertook in pursuing this theory of liability—that will be addressed and responded to in a separate document filed contemporaneously with this Motion, Class Counsel's assessment in this regard is entitled to considerable deference.

The cessation of BANA's EOBC practice at the heart of Plaintiffs' Complaint, which would have continued but for this case, is a massive benefit for the Settlement Class—valued at $1.2 billion. The additional $66.6 million cash recovery adds to this outstanding result. These benefits are especially valuable given the significant barriers looming in the absence of settlement, including motions for class certification and summary judgment, trial, and appeals before and after a Plaintiffs' verdict. And this is all against a very stark backdrop: a loss on the legal issue at the center of this case—whether or not EOBCs are interest charges—that could occur via the pending Ninth Circuit appeal, would extinguish the Settlement Class' ability to receive any recovery whatsoever.

Based on the Bank's data, which Plaintiffs confirmed during discovery provided by

BANA, the most likely recoverable damages at trial would have been $725,508,808.51. Bhamani Decl., ¶ 2.[4] This figure was calculated by aggregating the total EOBCs assessed multiplied by the amount of each EOBC and then factoring in the total amount of chargeoffs and refunds. Joint Decl. ¶ 29. That figure is dwarfed by the $1.2 billion that the Settlement Class will save in EOBCs during the five-year period during which BANA has agreed to cease charging the fee. Bhamani Decl. ¶ 8 (expressed as $20 million/month, which amounts to $1.2 billion over five years). Even counting *only* the direct financial payments that will be made as a result of the Settlement—$66.6 million in payments and credits to Settlement Class members and another approximate $2 million in notice and administration costs paid by the Bank—Plaintiffs and the Settlement Class are recovering approximately 9% of their most probable damages, without further risks attendant to litigation. Joint Decl. ¶ 30

Courts in this Circuit routinely grant final approval to settlements providing between 5 and 10% of maximum potential damages, even without additional prospective relief, which has been obtained here. *See Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, *10 (C.D. Cal. Feb.16, 2017) (approving net class recovery at approximately 7.5% of projected maximum recovery); *Roberti v. OSI Sys.*, No. CV-13-09174 MWF (MRW), 2015 U.S. Dist. LEXIS 164312, at *12-13 (C.D. Cal. Dec. 8, 2015) (8.8% of maximum potential recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal 2015) (approving gross class recovery of approximately 8.5% of the maximum recovery); *Custom LED, LLC v. eBay, Inc.*, No. 12-cv-00350-JST, 2014 U.S. Dist. LEXIS 87180, at *13-14 (N.D. Cal. June 24, 2014) (noting courts have held that recovery of only 3% of the maximum potential recovery is fair and reasonable in face of real possibility of recovering nothing absent

[4] The recoverable damages amount is below the $756 million figure in the Preliminary Approval Order because the results of confirmatory discovery revealed a lower figure after accounting for EOBCs that had been refunded or charged off. *Id.*

settlement); *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2007) (approving settlement of 9% of maximum potential recovery). "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *Officers for Justice*, 688 F.2d at 628 (lauding fact that settlement involved monetary and non-monetary relief). "[I]t is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness." *Id.*

The Settlement benefits are tremendous achievements and are fair and reasonable in light of the Bank's defenses (all other courts have rejected Plaintiffs' theory of liability, concluding fees equivalent to the EOBC are not NBA interest charges), and the challenging and unpredictable path of litigation Plaintiffs would have faced absent settlement. *See Jaffe v. Morgan Stanley & Co.*, No. C 06-3903 THE, 2008 WL 346417, at *9 (N.D. Cal. Feb. 7, 2008) ("[A] sizeable discount is to be expected in exchange for avoiding uncertainties, risks, and costs that come with litigation a case to trial. Again, the issue is not whether the settlement 'could be better,' but whether it falls within the range of appropriate settlements. *Hanlon*, 150 F.3d at 1027.").

4. The Extent of Discovery Completed and the Stage of the Proceedings.

"In regards to class action settlements, 'formal discovery is not a necessary ticket to the bargaining table where the parties have sufficient information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). *See also Roberts v. City of Chula Vista*, No. 16cv1955-MMA (DHB), 2017 U.S. Dist. LEXIS 210384, at *12-13 (S.D. Cal. Dec. 21, 2017) (approving settlement after substantial informal discovery without formal discovery); *Franklin v. Wells Fargo Bank, N.A.*, No. 14cv2349-MMA (BGS), 2016 U.S. Dist. LEXIS 13696, at *11-13 (S.D. Cal. Jan. 29, 2016) (same); *In re Infosonics Corp. Secs. Litig.*, No. 06CV1231JLS(WMc), 2009 U.S. Dist. LEXIS 136057, at *22-23 (S.D. Cal. May 5, 2009) (same).

Plaintiffs settled the Action with the benefit of important informal discovery resulting in an expert analysis of key documentation and data regarding the Bank's assessment and collection of EOBCs. Joint Decl. ¶ 10. As noted above, the review of this information and data positioned Class Counsel to evaluate with confidence the claims' strengths and weaknesses and the prospects for success at class certification, summary judgment, and trial. *Id.* Confirmatory discovery conducted after the Parties executed the Term Sheet further aided Plaintiffs' analysis. *Id.*

In addition, the Parties briefed one motion to dismiss, an opposition to an interlocutory appeal motion, and had begun research and writing to brief an appeal at the Ninth Circuit. Thus, the Settlement was reached after considerable investigation and careful consideration and discussions of the central legal issue. The Parties were thus fully aware of the issues and risks associated with their respective claims and defenses.

The record provides sufficient information for the Court to find that the Settlement is fair. Further, there is no reason to doubt the fairness. Plaintiffs have litigated this Action for more than two years. Joint Decl. ¶ 2. Plaintiffs' counsel have been involved in other overdraft fee litigation against major American banks for almost a decade. The litigation has been hard-fought, as the Parties have engaged in motion practice, briefing as to whether the Ninth Circuit would grant the Bank interlocutory appeal of the Court's Order denying BANA's Motion to Dismiss, extensive mediation briefing, and discovery. Accordingly, this factor weighs in favor of preliminary approval. Joint Decl. ¶ 3.

5. The Experience and Views of Counsel.

Employing their experience and skill, Class Counsel aggressively and swiftly worked to litigate, then resolve, this case in an efficient manner. A great deal of weight is accorded to the recommendation of counsel, who are the most closely acquainted with the facts of the underlying litigation. *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007). Class Counsel's expertise allowed it to build a case no others have. Indeed, it may be that no other firm or group of firms in the country could have succeeded here—

even if they had tried (which they have not).

Class Counsel has successfully litigated and resolved several other consumer class actions against national banks involving overdraft fees. Joint Decl. ¶ 5. In doing so, Class Counsel has been at the forefront of litigating NBA usury claims pertaining to continuous (a/k/a sustained) overdraft fees like the EOBCs. *Id.* ¶ 33. Class Counsel possesses extensive knowledge of and experience in prosecuting class actions in courts throughout the United States, and have recovered hundreds of millions of dollars for the classes they represented. *Id.* In addition, Class Counsel includes firms with significant appellate expertise—expertise that was used to extensively analyze the chances of success in both the Ninth Circuit and the U.S. Supreme Court. *Id.* In this context, "[s]ignificant weight should be attributed to counsel's belief that settlement is in the best interest of those affected by the settlement." *In re NVIDIA Corp. Derivative Litig.*, 2008 WL 5382544 at *4 (N.D. Cal. 2008). The experience, resources and knowledge Class Counsel has is extensive and formidable. Joint Decl. ¶ 33. Class Counsel is qualified to represent the Settlement Class and will, along with the Plaintiffs, vigorously protect members' interests. *Id.*

6. The Presence of a Governmental Participant.

No governmental actor is relevant to this Action, rendering this factor immaterial to Final Approval. Plaintiffs and Class Counsel do note that as reflected in the Declaration of Stephanie J. Fiereck, Esq. on Implementation of CAFA Notice, which is attached as ***Exhibit E***, and filed herewith pursuant to the Court's requirement in the Preliminary Approval Order, the required CAFA Notice[5] was delivered to each state's respective Attorney General and those of the District of Columbia and the United States Territories; the United States Department of Justice; and, perhaps most important, to the Office of the Comptroller of the Currency ("OCC"), the chief regulator of BANA, pursuant to the

[5] CAFA requires a settling defendant give notice of a proposed class action settlement to appropriate state and federal officials. 28 U.S.C. § 1715(b). The CAFA Notice fully complied with the requirements set forth in 28 U.S.C. § 1715(b)(1)-(8).

NBA. The purpose of CAFA notice is to protect class members from being involved in a settlement that may be deemed unfair or inconsistent with regulatory policies, and to protect consumers from class action abuse, particularly settlements that generate large attorney's fees which consume most of the economic value of the settlement. Notably, none of those authorities have objected to the Settlement, including Class Counsel's application for attorneys' fees. [DE# 80]; Joint Decl. ¶ 46.

7. The Reaction of the Class Members to the Proposed Settlement.

The Reaction of the Settlement Class has been overwhelmingly positive. Of approximately seven million class members, only 100 have timely opted out,[6] and only 13 have filed objections, two of which are untimely. Azari Decl. ¶ 26-27. Timely Objector Khobragade has since notified Class Counsel of his intention to withdraw his objection. Joint Decl. ¶ 41. None of those objections, which are addressed *infra*, offer a reason to deny Final Approval of the Settlement.

C. Notice to the Class was Adequate and Satisfied Rule 23 and Due Process

In addition to having personal jurisdiction over the Plaintiffs, who are parties to this Action, the Court also has personal jurisdiction over all members of the Settlement Class because they received the requisite notice and due process. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950)). "The class must be notified of a proposed settlement in a manner that does not systematically leave any group without notice." *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d at 1170 (quoting *Officers for Justice*, 688 F.2d at 624).

The Notice Program was completed pursuant to this Court's instructions in the Preliminary Approval Order, and was comprised of three parts: (1) email notice ("Email Notice") designed to reach those Settlement Class members for which the Bank maintains email addresses; (2) direct mail postcard notice ("Postcard Notice") to all Settlement Class

[6] The proposed Final Approval Order identifies those who opted-out.

members for whom BANA did not provide an email address and those who were sent an email that was returned undeliverable; and (3) a "Long Form Notice" containing more detail than the two other notices that has been available on the Settlement website (*www.eobcsettlement.com*) and via U.S. mail upon request. Joint Decl. ¶ 36; Azari Decl. ¶¶ 13-25. Each facet of the Notice Program was timely and properly accomplished. Azari Decl. ¶¶ 13-25, 28-32, 34.

The Administrator received the data files identifying the Settlement Class members' names, last known addresses and email addresses, and ran the mailing addresses through the National Change of Address Database; Azari Decl. ¶¶ 14-15. The Postcard Notice facet was timely completed. Azari Decl. ¶¶ 16, 18, and 29. From February 6, 2018, through February 18, 2018, the Settlement Administrator timely and successfully sent 7,065,538 emails to Settlement Class members for which the Bank maintained addresses. *Id.* ¶ 19. Postcard Notice was mailed to 758,293 Settlement Class Members. In addition, the Settlement Website, with a Long Form Notice[7] and other important filings relating to the Settlement, was established on February 5, 2018. Azari Decl. ¶ 22. It allowed Settlement Class members to obtain detailed information about the Action and the Settlement. *Id.* As of May 24, 2018, the Settlement Website had 178,181 visitor sessions with 266,310 page views. *Id.* ¶ 24. The Notice Program was effective as approximately 93% of Settlement Class members received individual notice. Azari Decl. ¶ 36.

On February 5, 2018, the Administrator also established and maintained an automated toll-free telephone line, available 24 hours/day, 7 days/week, for Settlement Class members to call to listen to answers to frequently asked questions and to request Long Form Notices be sent via mail. *Id.* ¶ 25; Agreement ¶ 2.4(c). As of May 24, 2018, the

[7] Among the additional information the Long Form Notice provided was the opt-out and objection procedures and requirements for Settlement Class members to follow, notifying them that objections could be made to the Settlement, Class Counsel's application for attorneys' fees, costs and expenses, and to the requested Service Awards. Agreement ¶ 2.4 and Exhibit C thereto.

toll-free number has handled 69,329 calls representing 211,347 minutes of use. Azari Decl. ¶ 25. The Administrator also worked with Class Counsel to communicate with Settlement Class members who had questions the Administrator could answer. Joint Decl. ¶ 39.

In this Circuit, it has long been the case that a notice of settlement pursuant to Fed. R. Civ. P. 23(c)(2) is satisfactory if it "'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575 (citing *Mendoza v. Tucson Sch. Dist. No.1*, 623 F.3d 1338, 1352 (9th Cir. 1980)). Here, the Notice Program satisfied these content requirements. Thus, the Notice Program in this case was adequate and satisfied the requirements of both Rule 23 and due process.

D. Certification of the Settlement Class Is Appropriate

For settlement purposes, Plaintiffs respectfully request that the Court certify the Settlement Class defined above, and in paragraph 2.1 of the Agreement. "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). For purposes of this Settlement only, the Bank does not oppose class certification. For the reasons set forth below, certification is appropriate under Rule 23(a) and (b)(3).

Certification under Rule 23(a) of the Federal Rules of Civil Procedure requires that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23(a). Under Rule 23(b)(3), certification is appropriate if questions of law or fact common to members of the class predominate over individual issues of law or fact and if a class action is superior to other available methods for the fair and efficient adjudication of the controversy. *See* Fed. R. Civ. P. 23(b)(3).

Rule 23(a)(1)'s numerosity requirement is satisfied because the Settlement Class consists of several million customers, and joinder of all such persons is impracticable. *See* Fed. R. Civ. P. 23(a)(1); *see also Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2008 WL 4279550, at *14 (N.D. Cal. Sept. 11, 2008) ("Given the large number of checking account customers at Wells Fargo, the numerosity requirement is met."); *Nunez v. BAE Sys. San Diego Ship Repair Inc.*, No. 16-CV-2162 JLS (NLS), 2017 U.S. Dist. LEXIS 188192, at *12-13 (Nov. 14, 2017) (courts generally find any class consisting of more than forty members satisfies numerosity).

"Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" and the plaintiff's common contention "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-350 (2011) (citation omitted). "All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient" to meet the requirement of Fed. R. Civ. P. 23(a)(2). *Hanlon*, 150 F.3d at 1019. Here, commonality is readily satisfied. There are multiple common questions of law and fact based on the Bank's systematic practice of assessing EOBCs, which is alleged to have injured all Settlement Class members the same way. These common questions would generate common answers central to the viability of Plaintiffs' claims were the Action to proceed to trial.

For similar reasons, Plaintiffs' claims are reasonably coextensive with those of the absent members of the Settlement Class, such that the Fed. R. Civ. 23(a)(3) typicality requirement is satisfied. *See Nunez*, 2017 U.S. Dist. LEXIS 188192 at *14. The Ninth Circuit interprets typicality permissively. *Id.* (citing *Hanlon*, 150 F.3d at 1020). Plaintiffs are typical of absent members of the Settlement Class because they were subjected to the same Bank practices and claim to have suffered from the same injuries. *Id.*

Plaintiffs and Class Counsel likewise satisfy the adequacy of representation

requirement of Fed. R. Civ. P. 23(a)(4). Adequacy of representation requires that the class representatives do not have conflicts of interest with other class members and that the named plaintiffs and their counsel will prosecute the action vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs' interests are coextensive with—not antagonistic to—the interests of the Settlement Class, because Plaintiffs and the absent Settlement Class members have the same interest in the relief afforded by the Settlement, and they have no diverging interests. Further, Plaintiffs are represented by qualified and competent counsel who has extensive experience and expertise prosecuting complex class actions, including consumer actions similar to the instant case. Joint Decl. ¶ 33. Class Counsel has devoted substantial time and resources to this Action and has vigorously protected the Settlement Class's interests. *Id.*

Certification of the Settlement Class is further appropriate because the questions of law or fact common to members of the Settlement Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the Action. *See* Fed. R. Civ. P. 23(b)(3). The "predominance inquiry tests whether proposed class members are sufficiently cohesive to warrant adjudication by representation." *Hanlon*, 150 F.3d at 1022 (quoting *Amchem*, 521 U.S. at 623). The predominance requirement is readily satisfied because liability questions common to all members of the Settlement Class substantially outweigh any possible issues that are individual to each Settlement Class member. For example, each Settlement Class member's banking relationship arises from an account agreement that is the same or substantially similar in all relevant respects. Most importantly, each was subjected to the same EOBC policy.

Rule 23(b)(2) certification is also warranted because where the defendant has "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). "In other words, Rule 23(b)(2) applies only when a single injunction or

declaratory judgment would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 360. Indeed,

> [t]hese requirements are unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole. . . . That inquiry does not require an examination of the viability or bases of the class members' claims for relief, does not require that the issues common to the class satisfy a Rule 23(b)(3)-like predominance test, and does not require a finding that all members of the class have suffered identical injuries.

Parsons v. Ryan, 754 F.3d 657, 688 (9th Cir. 2014) (citing *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010)). Here, until agreeing to cease the practice for the Settlement, BANA's EOBC policy was uniformly applied to all Settlement Class members. BANA has agreed, subject to Final Approval, to change its business practices beginning on or before December 31, 2017, not to implement or assess EOBCs, or any equivalent fee, in connection with consumer checking accounts, until December 31, 2022.

Further, resolution of millions of claims in one action is far superior to individual lawsuits, because it promotes consistency and efficiency of adjudication. *See* Fed. R. Civ. P. 23(b)(3). For these reasons, the Court should certify the Settlement Class.

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court: (1) grant Final Approval to the Settlement; (2) certify for settlement purposes the proposed Settlement Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure; (3) appoint Joanne Farrell's children, Patrick Michael Farrell, Ryan Thomas Farrell, Timothy Gaelen Farrell, and Brooke Ann Farrell, Ronald Dinkins, Larice Addamo, and Tia Little as Class Representatives; (4) appoint as Class Counsel the attorneys previously appointed in the Preliminary Approval Order, as amended; (5) deny the timely and valid objections filed in this Action and accept the withdrawn objections; (6) award Class Representatives Service Awards in the amount of **$5,000.00** each, with the exception of Joanne Farrell's children

who shall be awarded **$1,250.00** each; (7) award attorneys' fees to Class Counsel in an amount of **$14.5 million**[8]; (8) award Class Counsel reimbursement of litigation costs and expenses in the amount of **$53,119.92**; and (9) enter final judgment dismissing this Action, and reserving jurisdiction over settlement implementation pursuant to the Parties' Consent to Magistage Judge for Post-Judgment Class Action Implementation, attached hereto as ***Exhibit F***. A copy of a proposed Final Approval Order is attached as ***Exhibit G.***

Dated: May 30, 2018

Respectfully submitted,

s/ Jeff Ostrow
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Counsel for Plaintiffs and the Settlement Class

[8] Plaintiffs have voluntarily reduced their attorneys' fee request from $16.65 million to $14.5 million. An explanation for the reduction is contained in the Plaintiffs' Responses to Objecdtions filed contemporaneously with this Motion.

EXHIBIT A

Farrell v. Bank of America, N.A.

United States Court of Appeals for the Ninth Circuit

Appeal No. 17-55847

United States District Court for the Southern District of California

Case No. 3:16-CV-00492-L-WVG

Settlement and Release Agreement

This Settlement and Release Agreement ("Agreement") dated as of October 30, 2017 is entered into by Plaintiffs Joanne Farrell, Ronald Dinkins, Larice Addamo, and Tia Little ("Plaintiffs") on behalf of the Settlement Class defined herein, and Bank of America, N.A. ("BANA"). Plaintiffs and BANA are each individually a "Party" and are collectively the "Parties." The Parties hereby agree to the following terms in full settlement of the action titled *Farrell v. Bank of America, N.A.*, No. 3:16-CV-00492-L-WVG (S.D. Cal.) ("Action"), subject to Final Approval, as defined below, by the United States District Court for the Southern District of California ("Court").

I RECITALS

WHEREAS, on February 25, 2016, Plaintiff Farrell filed the Action and alleges in the Complaint that the EOBC, as defined below, is a form of usurious "interest" under Sections 85 and 86 of the National Bank Act ("NBA");

WHEREAS, on April 29, 2016, BANA moved to dismiss the Action on the grounds that overdraft fees, including the EOBC, are excluded as a matter of law from the definition of "interest" under the NBA, which motion was denied by the Court on December 19, 2016;

WHEREAS, on January 6, 2017, BANA filed a motion for certification of the Court's order for interlocutory appeal and to stay the case pending appeal;

WHEREAS, on March 13, 2017, Plaintiff Farrell filed an unopposed motion to amend her Complaint to add Ronald Dinkins, Larice Addamo, and Tia Little as three additional named plaintiffs;

WHEREAS, on April 11, 2017, the Court granted BANA's motion for certification of the dismissal order for interlocutory appeal and stayed the case pending resolution by the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit");

WHEREAS, on April 21, 2017, BANA filed a petition for permission to appeal the Court's dismissal order with the Ninth Circuit;

WHEREAS, on June 14, 2017, the Ninth Circuit granted BANA's petition for permission to appeal, and the appeal is pending as of the date of this Agreement;

WHEREAS, BANA has denied, and continues to deny, each and every claim and allegation of wrongdoing asserted in the Action, and BANA believes it would ultimately be successful in its defense of all claims asserted in the Action;

WHEREAS, BANA has nevertheless concluded that because further litigation involves risks and could be protracted and expensive, settlement of the Action is advisable;

WHEREAS, Plaintiffs, individually and on behalf of the Settlement Class as defined below, believe that the claims asserted in the Action have merit and that there is evidence to support their claims;

WHEREAS, Plaintiffs nevertheless recognize and acknowledge the expense and length of continued litigation and legal proceedings necessary to prosecute the Action through trial and through any appeals; and

WHEREAS, Plaintiffs have also, in consultation with their counsel, assessed the legal risks faced in the Action, and on the basis of that assessment believe that the Settlement set forth in this Agreement and as defined below provides substantial benefits to Plaintiffs and the Settlement Class, is fair, reasonable, and adequate, and is in the best interests of Plaintiffs and the Settlement Class.

NOW THEREFORE, the Parties agree that the Action shall be fully and finally compromised, settled, released, and dismissed with prejudice, subject to the terms and conditions of this Agreement and subject to Final Approval as set forth herein.

II TERMS OF THE SETTLEMENT

Section 1. Definitions

In addition to the terms defined elsewhere in this Agreement, the following capitalized terms used in this Agreement shall have the meanings specified below:

1.1 "Administrative Costs" means all out-of-pocket costs and third-party expenses of the Administrator that are associated with providing notice of the Settlement to the Settlement Class, administering and distributing the Settlement Amount to Class Members, or otherwise administering or carrying out the terms of the Settlement, including but not limited to postage and telecommunications costs. Administrative Costs shall not include the Administrator's Hourly Charges.

1.2 "Administrator" means Epiq Systems.

1.3 "Administrator's Hourly Charges" means any fees paid to the Administrator on an hourly basis for its services in administering the Settlement, excluding Administrative Costs, printing, postage, National Change of Address Database charges, and any other costs not customarily billed by the Administrator on an hourly basis.

1.4 "Adjustments" means, collectively, the Class Representatives Service Awards, the Fee & Expense Award, and the amount of the Administrator's Hourly Charges.

1.5 "BANA Releasees" has the meaning ascribed to it in Section 2.3(a).

1.6 "Cash Settlement Amount" has the meaning ascribed to in Section 2.2(b)(1).

1.7 "Class Counsel" means Tycko & Zavareei LLP, Kopelowitz Ostrow Ferguson Weiselberg Gilbert, Kelley Uustal, PLC, and Creed & Gowdy, P.A.

1.8 "Class Member" means a person who falls within the definition of the Settlement Class.

1.9 "Class Member Award" means an award to a Class Member of funds from the Net Cash Settlement Amount.

1.10 "Class Notices" means Exhibits B, C, and D attached hereto.

1.11 "Class Period" means the period between February 25, 2014 and December 30, 2017.

1.12 "Class Representative Service Award" has the meaning ascribed to it in Section 3.1.

1.13 "Complaint" means the complaint filed in the Action on February 25, 2016.

1.14 "Direct Deposit Payment" has the meaning ascribed to it in Section 2.6(b).

1.15 "Debt Reduction Payments" means the debt reduction payments described in Section 2.2(b)(4).

1.16 "Debt Reduction Amount" has the meaning ascribed to it in Section 2.2(b)(1).

1.17 "Effective Date" shall mean when the last of the following has occurred: (1) the day following the expiration of the deadline for appealing Final Approval if no timely appeal is filed, or (2) if an appeal of Final Approval is taken, the date upon which all appeals (including any requests for rehearing or other appellate review), as well as all further appeals therefrom (including all petitions for certiorari) have been finally resolved without material change to the Final Approval Order, as determined by BANA, and the deadline for taking any further appeals has expired such that no future appeal is possible; or (3) such date as the Parties otherwise agree in writing.

1.18 "EOBC" or, plural, "EOBCs," means the Extended Overdrawn Balance Charge that BANA applies to a consumer checking account when that account is overdrawn by the accountholder and the account remains overdrawn for five (5) or more consecutive business days, as described in the Personal Schedule of Fees, a specimen copy of which is attached as Exhibit F hereto.

1.19 "Fee & Expense Award" has the meaning ascribed to it in Section 3.2.

1.20 "Final Approval" means entry of the Final Approval Order.

1.21 "Final Approval Hearing" means the date the Court holds a hearing on Plaintiffs' motion seeking Final Approval.

1.22 "Final Approval Order" means the document attached as Exhibit E hereto.

1.23 "National Change of Address Database" means the change of address database maintained by the United States Postal Service.

1.24 "Net Cash Settlement Amount" means the Cash Settlement Amount, less the Adjustments.

1.25 "Objection Deadline" means one-hundred twenty (120) calendar days after Preliminary Approval (or other date as ordered by the Court).

1.26 "Opt-Out Deadline" means one-hundred twenty (120) calendar days after Preliminary Approval (or other date as ordered by the Court).

1.27 "Preliminary Approval" means entry of the Preliminary Approval Order.

1.28 "Preliminary Approval Order" means the document attached as Exhibit A hereto.

1.29 "Released BANA Claims" has the meaning ascribed to it in Section 2.3(a).

1.30 "Settlement" means the settlement of the Action by the Parties and the terms thereof contemplated by this Agreement.

1.31 "Settlement Amount" means Sixty-Six Million Six-Hundred Thousand Dollars ($66,600,000.00).

1.32 "Settlement Class" has the meaning ascribed to it in Section 2.1.

1.33 "Settlement Fund Account" means the account into which BANA will deposit the Cash Settlement Amount.

1.34 "Settlement Value" means, collectively, the Cash Settlement Amount, the Debt Reduction Amount, and the Administrative Costs.

1.35 "Taxes" shall have the meaning ascribed to it in Section 3.4.

Section 2. The Settlement

2.1 Conditional Certification of the Settlement Class

(a) Solely for purposes of this Settlement, the Parties agree to certification of the following Settlement Class under Fed. R. Civ. P. 23(b)(2) and (b)(3):

> All holders of BANA consumer checking accounts who, during the Class Period, were assessed at least one EOBC that was not refunded.

(b) In the event that the Settlement does not receive Final Approval, or in the event the Effective Date does not occur, the Parties shall not be bound by this definition of the Settlement Class, shall not be permitted to use it as evidence or otherwise in support of any argument or position in any motion, brief, hearing, appeal, or otherwise, and BANA shall retain its right to object to the maintenance of this Action as a class action and the suitability of the Plaintiffs to serve as class representatives.

2.2 Settlement Benefits

(a) Change to Business Practices

(1) Beginning on or before December 31, 2017, BANA agrees not to implement or assess EOBCs, or any equivalent fee, in connection with BANA consumer checking accounts, for a period of five (5) years, or until December 31, 2022.

(2) Nothing in Section 2.2(a) shall require BANA to violate any law or regulation. BANA's obligation to cease assessing EOBCs as provided in this section shall be lifted in the event a United States Supreme Court decision expressly holds that EOBCs or equivalent fees are not interest under the NBA; BANA's obligation will be lifted no sooner than 6 months after any such decision.

(b) Monetary Relief

(1) Settlement Amount. BANA will provide the $66.6 million Settlement Amount as follows:

> Thirty-Seven Million Five-Hundred Thousand Dollars ($37,500,000.00) of the Settlement Amount will be paid in cash (the "Cash Settlement Amount"),
>
> and
>
> Twenty-Nine Million One Hundred Thousand Dollars ($29,100,000.00) in currently owed debt shall be reduced by BANA (the "Debt Reduction Amount").

(2) Escrow Account. Within thirty (30) calendar days of Preliminary Approval, BANA shall deposit the Cash Settlement Amount into the Settlement Fund Account, which shall be held with BANA.

(3) Calculation of Class Member Awards. Each Class Member who paid at least one EOBC that was assessed during the Class Period and not refunded or charged off shall be entitled to receive a cash payment from the Net Cash Settlement Amount. The Net Cash Settlement Amount will be divided by the number of EOBCs collectively paid by all Class Members who paid at least one EOBC during the Class Period, to yield a per-instance figure. Each Class Member Award shall equal the per-instance figure multiplied by the number of EOBCs paid by that Class Member during the Class Period. Joint accountholders shall each be entitled to their pro rata share of a single Class Member Award.

(4) Debt Reduction Payments. For Class Members who were assessed an EOBC during the Class Period, and whose accounts were closed while an EOBC was still due and owing, the Debt Reduction Amount will be used by BANA to make Debt Reduction Payments toward the outstanding balance on the account that was closed with the EOBC still due and owing in an amount up to $35 to reflect a credit for the outstanding EOBC. If the outstanding balance exceeds $35, the Debt Reduction Payment will be $35. If the outstanding balance is less than $35, the account balance will be adjusted to zero dollars. Under no circumstances will BANA be required to make any cash payments as a result of the Debt

Reduction or make Debt Reduction Payments exceeding the Debt Reduction Amount. To the extent BANA has reported the accounts to any credit bureaus, BANA will update the reporting. In the event the Debt Reduction Payment brings the account balance to zero, the reporting will be updated to state that the account was paid in full. In the event the Debt Reduction Payment does not bring the account balance to zero, the reporting will be updated only to state that a partial payment has been made on the account. No Debt Reduction Payment shall be considered an admission by any Class Member that the underlying debt is valid.

(5) For the avoidance of doubt, it is agreed by the Parties that a Class Member may qualify for relief from both the Cash Settlement Amount and Debt Reduction Amount by virtue of having paid one or more EOBCs during the Class Period that was not refunded and having been assessed at least one other EOBC during the Class Period that was still due and owing when the account was closed.

2.3 Releases.

(a) Class Member Release. Upon the Effective Date, Plaintiffs and each Class Member who has not opted out of the Settlement Class pursuant to the procedures set forth in Section 2.5 releases, waives, and forever discharges BANA and each of its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint venturers, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, insurers, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting or purporting to act for them or on their behalf, including, but not limited to, Bank of America Corporation and all of its subsidiaries and affiliates (collectively, "BANA Releasees") from any and all claims they have or may have against the BANA Releasees with respect to the assessment of EOBCs as well as (i) any claim or issue which was or could have been brought relating to EOBCs against any of the BANA Releasees in the Action and (ii) any claim that any other overdraft charge imposed by BANA during the Class Period, including but not limited to EOBCs and initial overdraft fees, constitutes usurious interest, in all cases including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses (the "Released BANA Claims").

(b) Unknown Claims. With respect to the Released BANA Claims, Plaintiffs and the Class Members shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR**

Thus, subject to and in accordance with this Agreement, even if the Plaintiffs and/or Class Members may discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released BANA Claims, Plaintiffs and each Class Member, upon entry of Final Approval of the Settlement, shall be deemed to have and by operation of the Final Approval Order, shall have, fully, finally, and forever settled and released all of the Released BANA Claims. This is true whether such claims are known or unknown, suspected, or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

(c) Covenant Not to Sue. Plaintiffs and the Settlement Class covenant not to sue or otherwise assert any claims for usury against BANA challenging BANA's practices with respect to overdraft fees, including EOBCs and initial overdraft item fees, including, but not limited to, any claims arising under the NBA or any other usury statute, during the period of time the changes to business practices set forth in Section 2.2(a) remain in effect, but in no case beyond December 31, 2022.

2.4 Notice Procedures

(a) Class Action Administrator. The Administrator shall perform the duties, tasks, and responsibilities associated with providing notice and administering the Settlement. BANA shall pay all Administrative Costs. The Administrator's Hourly Charges will be paid out of the Cash Settlement Amount.

(b) Provision of Information to Administrator. Within fifteen (15) calendar days of Preliminary Approval, BANA will provide the Administrator with the following information, which will be kept strictly confidential between the Administrator and BANA, for each Class Member: (i) name; (ii) last known e-mail address; (iii) last known mailing address; (iv) the number of EOBCs that each Class Member paid during the Class Period, if any; (v) whether the account that incurred the EOBC remains open; (vi) if the account that incurred the EOBC no longer remains open, whether there was an EOBC due and owing at the time the account was closed; and (vii) if the account that incurred the EOBC no longer remains open, the balance remaining due and owing. The Administrator shall use the data provided by BANA to make the calculations required by the Settlement, and the Administrator shall share the calculations with Class Counsel. The Administrator shall use this information solely for the purpose of administering the Settlement.

(c) Class Notices. Within sixty (60) calendar days of Preliminary Approval, or by the time specified by the Court, the Administrator shall send the Class Notices in the forms attached hereto as Exhibits B, C, and D, or in such form as is approved by the Court, to the Class Members. The Administrator shall send the "Email Notice," attached hereto as Exhibit D, to all Class Members for whom BANA has provided the Notice Administrator with an e-mail address. The Administrator shall send the "Postcard Notice," attached hereto as Exhibit B, to all Class Members for whom BANA has not provided an email address and to all Class Members to whom the Administrator sent Exhibit D via email but for whom the Administrator receives

notice of an undeliverable email. Exhibit B shall be mailed after the Administrator updates mailing addresses provided by BANA with the National Change of Address database and other commercially feasible means. The Administrator shall also maintain a website containing the Complaint, the "long-form notice," attached hereto as Exhibit C, Plaintiffs' motion seeking Preliminary Approval, the Preliminary Approval Order, Plaintiffs' motion seeking Final Approval, and the Final Approval Order until at least ninety (90) calendar days after Final Approval. The Administrator shall send the long-form notice by mail to any Class Member who requests a copy. It will be conclusively presumed that the intended recipients received the Class Notices if the Administrator did not receive a bounce-back message and if mailed Class Notices have not been returned to the Administrator as undeliverable within fifteen (15) calendar days of mailing.

2.5 Opt-Outs and Objections.

As set forth below, Class Members shall have the right to opt-out of the Settlement Class and this Settlement or to object to this Settlement.

(a) Requirements for Opting-Out. If a Class Member wishes to be excluded from the Settlement Class and this Settlement, that Class Member is required to submit to the Administrator at the website address listed in the Class Notices, a written, signed, and dated statement that he or she is opting out of the Settlement Class and understands that he or she will not receive a Class Member Award or a Debt Reduction Payment from the Settlement of the Action. To be effective, this opt-out statement (i) must be received by the Administrator by the Opt-Out Deadline, (ii) include the Class Member's name, last four digits of his or her social security number, and BANA account number(s), and (iii) must be personally signed and dated by the Class Member(s). The Administrator will, within five (5) business days of receiving any opt-out statement, provide counsel for the Parties with a copy of the opt-out statement. The Administrator will, at least five (5) court days before the Final Approval Hearing, file copies of all opt-out statements with the Court. The Settlement Class will not include any individuals who send timely and valid opt-out statements, and individuals who opt out are not entitled to receive a Class Member Award or Debt Reduction Payment under this Settlement.

(b) Objections. Any Class Member who has not submitted a timely opt-out form and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement must both file a written objection with the Court by the Objection Deadline and send that written objection to BANA's counsel and to Class Counsel at the addresses listed below.

To be valid and considered by the Court, an objection must (i) be postmarked on or before the Objection Deadline; (ii) state each objection the Class Member is raising and the specific legal and factual bases for each objection; (iii) include proof that the individual is a member of the Settlement Class; (iv) identify, with specificity, each instance in which the Class Member or his or her counsel has objected to a class action settlement in the past five (5) years, including the caption of each case in which the objector has made such objection, and a copy of any orders or opinions related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case; (v) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (vi) any

and all agreements that relate to the objection or the process of objecting – whether written or verbal – between objector or objector's counsel and any other person or entity; and (vii) be personally signed by the Class Member. All evidence and legal support a Class Member wishes to use to support an objection must be filed with the Court and sent to the Parties by the Objection Deadline.

Plaintiffs and BANA may file responses to any objections that are submitted. Any Class Member who timely files and serves an objection in accordance with this section may appear at the Final Approval Hearing, either in person or through an attorney, if the Class Member files a notice indicating that he/she wishes to appear at the Final Approval Hearing with the Clerk of Court no later than twenty (20) calendar days before the Final Approval Hearing. A Class Member who wishes to appear at the Final Approval Hearing must also send a copy of the notice indicating that he/she wishes to appear to BANA's counsel and to Class Counsel twenty (20) calendar days before the Final Approval Hearing. Failure to adhere to the requirements of this section will bar a Class Member from being heard at the Final Approval Hearing, either individually or through an attorney, unless the Court otherwise orders.

The Parties shall have the right to take discovery, including via subpoenas *duces tecum* and depositions, from any objector.

(c) Waiver of Objections. Except for Class Members who opt-out of the Settlement Class in compliance with the foregoing, all Class Members will be deemed to be members of the Settlement Class for all purposes under this Agreement, the Final Approval Order, and the releases set forth in this Agreement and, unless they have timely asserted an objection to the Settlement, shall be deemed to have waived all objections and opposition to its fairness, reasonableness, and adequacy.

(d) No Encouragement of Objections. Neither the Parties nor any person acting on their behalf shall seek to solicit or otherwise encourage anyone to object to the Settlement or appeal from any order of the Court that is consistent with the terms of this Settlement.

2.6 Benefit Distribution

(a) Within ten (10) days of Final Approval, the Administrator shall provide to BANA: (1) for accounts entitled to receive Class Member Awards, a list of the Class Members who are entitled to receive Class Member Awards, along with the bank account numbers for each account entitled to receive a Class Member Award and the amount of each Class Member Award due to each eligible bank account, and (2) for accounts entitled to receive a Debt Reduction Payment, a list of such accounts, along with the bank account numbers for each account entitled to receive a Debt Reduction Payment, and the amount of the Debt Reduction Payment due to each eligible bank account. The information provided by the Administrator shall be considered conclusive as to which individuals are entitled to receive a Class Member Award or Debt Reduction Payment and as to the amount of the Class Member Award and/or Debt Reduction Payment to which each Class Member is entitled.

(b) Distribution of Class Member Awards. In the event that the accounts from which Class Members paid the EOBCs and that make the Class Members eligible for Class Member Awards remain open, the Class Member Awards will be credited via direct deposit by BANA to Class Members' BANA accounts ("Direct Deposit Payments"). The Direct Deposit Payments will be accompanied by a description on bank statements to be determined by BANA after consulting with Class Counsel. BANA shall make Direct Deposit Payments to Class Members within thirty (30) calendar days of the Effective Date. Within forty-five (45) calendar days of the Effective Date, BANA shall provide to the Administrator a list of Class Members, and corresponding account numbers, to whom BANA distributed Direct Deposit Payments and the amount of each Direct Deposit Payment.

(c) Within sixty (60) calendar days of the Effective Date, the Administrator shall send Class Member Awards from the Settlement Fund Account via check to all Class Members entitled to Class Member Awards who did not receive the entirety of the Class Member Awards to which they are entitled under this Settlement via Direct Deposit Payments. If the Class Members who are entitled to Class Member Awards are joint accountholders, the Class Member Award check shall be made payable to both accountholders.

(d) Mailing Addresses. Prior to mailing Class Member Award checks, the Administrator shall attempt to update the last known addresses of the Class Members through the National Change of Address Database or similar databases. No skip-tracing shall be done as to any checks that are returned by the postal service with no forwarding address. Class Member Award checks returned with a forwarding address shall be re-mailed to the new address within seven (7) calendar days. The Administrator shall not mail Class Member Award checks to addresses from which Class Notices were returned as undeliverable.

(e) Interest. All interest on the funds in the Settlement Fund Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Administrator. The Administrator is responsible for the payment of all taxes on interest on the funds in the Settlement Fund Account.

(f) Time for Depositing Class Member Award Checks. If a Class Member's Class Member Award check is not deposited (or cashed) within one hundred and twenty (120) calendar days after the check is mailed, (a) the check will be null and void; and (b) the Class Member will be barred from receiving a further Class Member Award under this Settlement.

(g) Distribution of Debt Reduction Payments. Within thirty (30) calendar days of the Effective Date, BANA shall make the Debt Reduction Payments as described in Section 2.2(b)(4). Within forty-five (45) calendar days of the Effective Date, the Administrator shall send notifications of such Debt Reduction Payments to each eligible Settlement Class Member, which notice shall include the amount of the Debt Reduction Payment and notification that if the Debt Reduction Payment brought the balance to zero the account will be reported as paid in full and that if the Debt Reduction Payment did not bring the balance to zero, the account will be reported as having had a partial payment made.

(h) Deceased Class Members. Any Class Member Award paid to a deceased Class Member shall be made payable to the estate of the deceased Class Member, provided that the Class Member's estate informs the Administrator of the Class Member's death at least thirty (30) calendar days before the date that Class Member Award checks are mailed and provides a death certificate confirming that the Class Member is deceased. If the Class Member's estate does not inform the Administrator of the Class Member's death at least thirty (30) calendar days before Class Member Award checks are mailed, the deceased Class Member will be barred from receiving a Class Member Award under this Settlement.

(i) Tax Obligations. The Parties shall have no responsibility or liability for any federal, state, or other taxes owed by Class Members as a result of, or that arise from, any Class Member Awards or any other term or condition of this Agreement.

(j) Tax Reporting. The Administrator shall prepare, send, file, and furnish all tax information reporting forms required for payments made from the Settlement Fund Account as required by the Internal Revenue Service pursuant to the Internal Revenue Code and related Treasury Regulations. The Parties hereto agree to cooperate with the Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this section.

(k) Reports. The Administrator shall provide the Parties with a reconciliation and accounting of the Settlement Fund Account at each of the following times: (i) no later than ten (10) calendar days after the Class Member Award checks are mailed, and (ii) no later than ten (10) calendar days after the expiration of the 120-day period for depositing Class Member Award checks.

Section 3. Class Representative Service Award and Class Counsel's Fee & Expense Award

3.1 Class Representative Service Awards. Plaintiffs, through their undersigned counsel, shall each be entitled to apply to the Court for an award from the Cash Settlement Amount of up to $5,000 for their participation in the Action and their service to the Settlement Class ("the Class Representative Service Award"). BANA shall not oppose or appeal such application that does not exceed $5,000. The Class Representative Service Awards shall be paid from the Settlement Fund Account. BANA shall place the Class Representative Service Awards into the Settlement Fund Account within ten (10) days of the Effective Date.

3.2 Fee & Expense Award. The Parties consent to the Court appointing Class Counsel in this Action for purposes of the Settlement. Class Counsel shall be entitled to apply to the Court for an award from the Cash Settlement Amount not to exceed 25% of the Settlement Value to reimburse Class Counsel for attorneys' fees incurred in researching, preparing for, and litigating this Action, and Class Counsel may also apply for reimbursement for costs and expenses incurred in the Action ("the Fee & Expense Award"). BANA agrees not to oppose or appeal any such application that does not exceed 25% of the Settlement Value plus reimbursement for costs and expenses incurred in the Action. The Fee & Expense Award shall constitute full satisfaction of any obligation on the part of BANA to pay any person, attorney, or law firm for costs, litigation expenses, attorneys' fees, or any other expense incurred on behalf of

Plaintiffs or the Settlement Class. The Administrator shall pay the the Fee & Expense Award to Class Counsel from the Settlement Fund Account within ten (10) days of the date the Fee & Expense Award is granted. In the event the Effective Date does not occur or the Fee & Expense Award is reduced following an appeal, Class Counsel shall repay the BANA the full amount of the Fee & Expense Award or the amount of the reduction, for which all Class Counsel shall be jointly and severally liable.

3.3 Demarcation. It is the intention of the Parties to demarcate clearly between proceeds from the Settlement in which Class Members have an interest, which may subject them to tax liability, and the Fee & Expense Award. Accordingly, the amount paid separately to Class Counsel for the Fee & Expense Award is independent of and apart from the amounts paid to Class Members, and Class Members shall at no time have any interest in the Fee & Expense Award. The Parties make no representation regarding and shall have no responsibility for the tax treatment of the Fee & Expense Award, or any other payments paid to Class Counsel or the tax treatment of any amounts paid under this Agreement.

3.4 The funds in the Settlement Fund Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-l at all times since creation of the Settlement Fund Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund Account or otherwise, including any taxes or tax detriments that may be imposed upon BANA, BANA's counsel, Plaintiffs and/or Class Counsel with respect to income earned by the Settlement Fund Account for any period during which the Settlement Fund Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Settlement Fund Account. BANA and BANA's counsel and Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes. The Settlement Fund Account shall indemnify and hold BANA and BANA's counsel and Plaintiffs and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

3.5 Residual. In the event that there is any residual in the Settlement Fund Account after the distributions required by this Agreement are completed, said funds shall in no circumstance revert to BANA. At the election of Class Counsel and counsel for BANA, and subject to the approval of the Court, the funds may be distributed to Settlement Class Members via a secondary distribution if economically feasible or through a residual *cy pres* program. Any residual secondary distribution or *cy pres* distribution shall be paid as soon as reasonably possible following the completion of distribution of funds to the Settlement Class Members.

Section 4. Settlement Approval

4.1 Preliminary Approval. On or before October 31, 2017, Plaintiffs will submit for the Court's consideration a motion seeking Preliminary Approval of the Settlement and apply to the Court for entry of the Preliminary Approval Order attached as Exhibit A. In the event the Court does not enter the Preliminary Approval Order in the same form as Exhibit A, BANA has the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless BANA waives in writing its right to terminate the Agreement due to any changes or deviations from the form of the Preliminary Approval Order.

In Plaintiffs' motion seeking Preliminary Approval, Plaintiffs shall request that the Court approve the Class Notices attached at Exhibits B, C and D. The Court will ultimately determine and approve the content and form of the Class Notices to be distributed to Class Members.

The Parties further agree that in Plaintiffs' motion seeking Preliminary Approval, Plaintiffs will request that the Court enter the following schedule governing the Settlement: (i) deadline for sending the Class Notices: sixty (60) calendar days from Preliminary Approval; (ii) deadline for filing motions for Class Representative Service Award and Fee & Expense Award: one hundred (150) calendar days from Preliminary Approval; (iii) deadline for opting out or serving objections: one-hundred twenty (120) calendar days from Preliminary Approval; and (iv) Final Approval Hearing: one-hundred eighty (180) calendar days from Preliminary Approval.

4.2 Final Approval. Plaintiffs will submit for the Court's consideration, by the deadline set by the Court, the Final Approval Order attached as Exhibit E. The motion for Final Approval of this Settlement shall include a request that the Court enter the Final Approval Order and, if the Court grants Final Approval of the Settlement and incorporates the Agreement into the final judgment, that the Court dismiss this Action with prejudice, subject to the Court's continuing jurisdiction to enforce the Agreement. In the event that the Court does not enter the Final Approval Order in materially the same form as Exhibit E, as determined by BANA, BANA has the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless BANA waives in writing its right to terminate the Agreement due to any material changes or deviations from the form of the Final Approval Order. While materiality remains subject to BANA's determination in its reasonable discretion, material changes shall not include any changes to the legal reasoning or format used by the Court to justify the substantive relief sought by the Final Approval Order. In the event that the Effective Date does not come to pass, the Final Approval Order is vacated or reversed or the Settlement does not become final and binding, the Parties agree that the Court shall vacate any dismissal with prejudice.

4.3 Effect of Disapproval. If the Settlement does not receive Final Approval or the Effective Date does not come to pass, BANA shall have the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless BANA waives in writing its right to terminate the Agreement under this section. In addition, the Parties agree that if this Agreement becomes null and void, BANA shall not be prejudiced in any way from opposing class certification in the Action, and Plaintiffs and the Class Members shall not use anything in this Agreement, in any terms sheet, or in the Preliminary Approval Order or Final Approval Order to support a motion for class certification or as evidence of any wrongdoing by BANA. No Party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including but not limited to, claims or objections to class certification, or claims or defenses on the merits. Each Party reserves the right to prosecute or defend this Action in the event that this Agreement does not become final and binding.

Section 5. General Provisions

5.1 Cooperation. The Parties agree that they will cooperate in good faith to effectuate and implement the terms and conditions of this Settlement.

5.2 Judicial Enforcement. If the Court enters the Final Approval Order in substantially the same form as Exhibit E to this Agreement, then the Court shall have continuing authority and jurisdiction to enforce this Agreement. The Parties shall have the authority to seek enforcement of this Agreement and any of its aspects, terms, or provisions under any appropriate mechanism, including contempt proceedings. The Parties will confer in good faith prior to seeking judicial enforcement of this Agreement.

5.3 Effect of Prior Agreements. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the Settlement of this Action, contains the final and complete terms of the Settlement of the Action and supersedes all prior agreements between the Parties regarding Settlement of the Action. The Parties agree that there are no representations, understandings, or agreements relating to the Settlement of this Action other than as set forth in this Agreement. Each Party acknowledges that it has not executed this Agreement in reliance upon any promise, statement, representation, or warranty, written or verbal, not expressly contained herein.

5.4 No Drafting Presumption. All Parties hereto have participated, through their counsel, in the drafting of this Agreement, and this Agreement shall not be construed more strictly against any one Party than the other Parties. Whenever possible, each term of this Agreement shall be interpreted in such a manner as to be valid and enforceable. Headings are for the convenience of the Parties only and are not intended to create substantive rights or obligations.

5.5 Notices. All notices to the Parties or counsel for the Parties required or desired to be given under this Agreement shall be in writing and sent by overnight mail as follows:

To Plaintiffs and the Settlement Class:

Jeffrey D. Kaliel
Tycko & Zavareei LLP
1828 L Street, NW
Suite 1000
Washington, DC 20036

Jeff Ostrow
Kopelowitz Ostrow P.A.
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale, FL 33301

Bryan Gowdy
Creed & Gowdy, P.A.
865 May Street
Jacksonville, FL 32204

Cristina Pierson
John R. Hargrove
Kelley Uustal PC
500 North Federal Highway
Suite 200
Fort Lauderdale, FL 33301

To BANA:

Matthew W. Close
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071-2899

Danielle N. Oakley
O'Melveny & Myers LLP
610 Newport Center Drive, Suite 1700
Newport Beach, CA 92660

5.6 Modifications. No modifications to this Agreement may be made without written agreement of all Parties and Court approval.

5.7 No Third-Party Beneficiaries. This Agreement shall not inure to the benefit of any third party.

5.8 Execution in Counterparts. This Agreement may be executed in counterparts. Each signed counterpart together with the others shall constitute the full Agreement. Each signatory warrants that the signer has authority to bind his/her party.

5.9 CAFA. The Administrator shall timely send the notices required by 28 U.S.C. § 1715 within ten (10) calendar days after Plaintiffs files the motion seeking Preliminary Approval of the Settlement.

5.10 Deadlines. If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day.

FOR PLAINTIFFS AND THE SETTLEMENT CLASS:

DocuSigned by:
6A8A5EE545C54DC...
10/30/2017
Joanne Farrell — Date

DocuSigned by:
Ronald Dinkins
6A8A5EE545C54DC...
10/30/2017
Ronald Dinkins — Date

DocuSigned by:
Larice Addamo
6A8A5EE545C54DC...
10/30/2017
Larice Addamo — Date

DocuSigned by:
Tia Little
6A8A5EE545C54DC...
10/30/2017

Tia Little

Date

10/31/17

Jeffrey D. Kaliel
Tycko & Zavareei LLP
1828 L Street, NW
Suite 1000
Washington, DC 20036
(202) 973-0900

Jeff Ostrow
Kopelowitz Ostrow P.A.
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale, FL 33301

Brian Gowdy
Creed & Gowdy, P.A.
865 May Street
Jacksonville, FL 32204
(904) 350-0075

Date

John R. Hargrove
Kelley Uustal PC
500 North Federal Highway
Suite 200
Fort Lauderdale, FL 33301
(954) 522-6601

FOR BANK OF AMERICA, N.A.:

_____

_____

Title:_____

Date

Tia Little

Date

Jeffrey D. Kaliel
Tycko & Zavareei LLP
1828 L Street, NW
Suite 1000
Washington, DC 20036
(202) 973-0900

Jeff Ostrow
Kopelowitz Ostrow P.A.
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale, FL 33301

Brian Gowdy
Creed & Gowdy, P.A.
865 May Street
Jacksonville, FL 32204
(904) 350-0075

Date

John R. Hargrove
Kelley Uustal PC
500 North Federal Highway
Suite 200
Fort Lauderdale, FL 33301
(954) 522-6601

FOR BANK OF AMERICA, N.A.:

Title: Managing Director
Sr Product Management Executive
Retail & Preferred Products

Date 10/30/2017

EXHIBIT A

JEFFREY D. KALIEL (CA 238293)
TYCKO & ZAVAREEI LLP
1828 L Street, N.W., Suite 1000
Washington, DC 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950
jkaliel@tzlegal.com

Counsel for Plaintiffs

MATTHEW W. CLOSE (S.B. #188570)
DANIELLE N. OAKLEY (S.B. #246295)
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400 South Hope Street
Los Angeles, California 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
mclose@omm.com

Counsel for Defendant
Bank of America, N.A.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

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

[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND FOR CERTIFICATION OF SETTLEMENT CLASS

This case comes before the Court on the motion of Plaintiff, Joanne Farrell, and putative plaintiffs, Ronald Dinkins, Larice Addamo, and Tia Little ("Plaintiffs"), on behalf of themselves and the the Settlement Class they seek to represent, for an order granting Preliminary Approval of the class action Settlement between Plaintiffs and Defendant Bank of America, N.A. ("BANA"). The definitions and capitalized terms in the Settlement Agreement ("Agreement") and Memorandum in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of Settlement Class are hereby incorporated as though fully set forth in this Order, and shall have the same meanings attributed to them in those documents.

Having considered the matter, Plaintiffs' motion, the proposed Agreement and the Joint Declaration of Class Counsel for the proposed Settlement Class and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Parties have agreed to settle this Action upon the terms and conditions set forth in the Agreement, which has been filed with the Court. The Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable, and adequate. Plaintiffs and the Settlement Class, by and through their counsel, have investigated the facts and law relating to the matters alleged in the Complaint, including through dispositive motion practice, legal research as to the sufficiency of the claims, an evaluation of the risks associated with continued litigation, trial, and/or appeal, including risks associated with the currently pending interlocutory appeal, and confirmatory discovery. The Settlement was reached as a result of arm's length negotiations between Class Counsel and counsel for BANA, which occurred as a result of a mediation before the Honorable Layn R. Phillips (Ret.). The Settlement confers substantial benefits upon the Settlement Class, without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal and is fair, adequate, and reasonable.

2. The Court conditionally certifies, for settlement purposes only, the following Settlement Class:

> All holders of BANA consumer checking accounts who, during the Class Period, were assessed at least one Extended Overdrawn Balance Charge that was not refunded.

3. The Settlement Class does not include the Judge, the Judge's family, the Defendant or Defendant's employees.

4. The Court conditionally finds, for settlement purposes only and conditioned upon the entry of this Order and the Final Approval Order, that the prerequisites for a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent for purposes of settlement; (d) Plaintiffs have fairly and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiffs have retained experienced counsel to represent them; (e) for purposes of settlement, the questions of law and fact common to the Settlement Class members predominate over any questions affecting any individual Settlement Class member; and (f) for purposes of settlement, a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. The Court also concludes that, because this Action is being settled rather than litigated, the Court need not consider manageability issues that might be presented by the trial of a nationwide class action involving the issues in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Additionally, for the purposes of settlement only, the Court finds that BANA has acted on grounds that apply generally to the Settlement Class, so that the final injunctive relief to which the Parties have agreed is appropriate respecting the Settlement Class as a whole. In making these findings, the Court has exercised its discretion in conditionally

certifying the Settlement Class on a nationwide basis. *See Hanlon v. Chrysler Corp*., 150 F.3d 1011 (9th Cir. 1998).

5. The Court approves, as to form and content, the Class Notices attached to the Agreement as Exhibits B, C, and D. The Class Notices contain all of the essential elements necessary to satisfy the requirements of federal law, including the Federal Rules of Civil Procedure and federal and state due process provisions, including the class definition, the identities of the Parties and their counsel, a summary of the terms of the proposed settlement, information regarding the manner in which objections may be submitted, information regarding opt-out procedures and deadlines, and the date and location of the Final Approval Hearing.

6. The Court approves the Notice Program, as described in the Agreement. As soon as possible after the entry of this order, but not later than 60 days after the entry of this Order, the Administrator will complete notice to the Settlement Class as provided in the Agreement. The Court finds that the Settlement Class Notice Program is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure. Specifically, the Court finds that the Notice Program complies with Rule 23(e) of the Federal Rules of Civil Procedure as it is a reasonable manner of providing notice to those Settlement Class members who would be bound by the Agreement. The Court also finds that the manner of dissemination of notice complies with Rule 23(c)(2), as it is also the most practicable notice under the circumstances, provides individual notice to all Settlement Class members who can be identified through a reasonable effort, and is reasonably calculated, under all the circumstances, to apprise Settlement Class members of the pendency of this Action, the terms of the Settlement, and their right to object to the Settlement or exclude themselves from the Settlement Class.

7. The Class Notices will identify the opt-out and objection deadline of 120 days after the entry of this Order.

8. The Court hereby sets the following schedule of events:

Event	Calendar Days After Preliminary Approval Order
Notice Complete	**60 Days**
Opt-Out Deadline	**120 Days**
Objection Deadline	**120 Days**
Motion for Final Approval	**150 Days**

9. Any person falling within the definition of the Settlement Class may, upon request, be excluded from the Settlement by submitting to the Administrator at the physical address listed in the Class Notices, a written, signed, and dated statement that he or she is opting-out of the Settlement Class and understands that he or she will receive no money from the Settlement of this Action. To be effective, this opt-out statement (i) must be received by the Administrator by the opt-out deadline, (ii) include the Settlement Class member's name and last four digits of his or her social security number, and (iii) must be personally signed and dated by the Settlement Class member. All persons who timely submit properly completed requests for exclusion shall have no rights under the Agreement and shall not share in the benefits of the Settlement Agreement and shall not be bound by the Settlement Agreement.

10. Any person falling within the definition of the Settlement Class, and who does not opt-out from the Settlement, may object to the terms of the proposed Settlement as reflected in the Agreement, the certification of the Settlement Class, the entry of the Final Approval Order, the amount of attorneys' fees and expenses requested by Class Counsel, and/or the amount of the Service Awards requested by the named Plaintiffs. To be valid and considered by the Court, an objection must (i) be postmarked on or before the Objection Deadline; (ii) state each objection the Class Member is raising and the specific legal and factual bases for each objection; (iii) include proof that the individual is a member of the Settlement Class; (iv) identify, with specificity, each instance in which the Class

Member or his or her counsel has objected to a class action settlement in the past fiveyears, including the caption of each case in which the objector has made such objection, and a copy of any orders or opinions related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case; (v) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application; (vi) any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between objector or objector's counsel and any other person or entity; and (vii) be personally signed by the Settlement Class Member. All evidence and legal support a Settlement Class Member wishes to use to support an objection must be filed with the Court and sent to the Parties by the Objection Deadline.

11. Plaintiffs and BANA may file responses to any objections that are submitted. Any Settlement Class Member who timely files and serves an objection in accordance with this order may appear at the Final Approval Hearing, either in person or through an attorney, if the Settlement Class Member files a notice indicating that he/she wishes to appear at the Final Approval Hearing with the Clerk of Court no later than twenty 20 calendar days before the Final Approval Hearing. A Class Member who wishes to appear at the Final Approval Hearing must also send a copy of the notice indicating that he/she wishes to appear to BANA's counsel and to Class Counsel 20 calendar days before the Final Approval Hearing. Failure to adhere to the requirements of this paragraph will bar a Settlement Class Member from being heard at the Final Approval Hearing, either individually or through an attorney, unless the Court otherwise orders.

12. The Court designates Joanne Farrell, Ronald Dinkins, Larice Addamo, and Tia Little as the Class Representatives of the Settlement Class.

13. The Court designates Epiq Systems as Administrator.

14. The Court appoints Tycko & Zavareei LLP, Kopelowitz Ostrow Ferguson Weiselberg Gilbert, Creed & Gowdy, P.A., and Kelley Uustal PLC, each of which has significant prior experience prosecuting class actions, as Class Counsel.

15. Papers in support of Final Approval of the Agreement, in response to objections to the Agreement, Class Representative Service Awards, and/or Class Counsel's Fee & Expense Award shall be filed with the Court on or before 150 days after the entry the of this Order.

16. The dates of performance contained herein may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class.

17. The Settlement will not become effective unless the Court enters an order finally approving the Settlement in the form set forth as Exhibit E to the Agreement. If the Agreement does not become effective in accordance with the Agreement, or if the Agreement is not finally approved, then the Agreement shall become null and void, and this Order shall be null and void and shall be vacated.

18. The Final Approval Hearing will be conducted in Courtroom 5B, Suite 5145, of the U.S. District Court for the Southern District of California, located at 221 West Broadway, San Diego, CA 92101 on [date], at [time].

19. Class Counsel and counsel for BANA are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notices, and other exhibits that they jointly agree are reasonable or necessary.

IT IS SO ORDERED.

Date: _____

_____
United States District Judge

EXHIBIT B

FROM: [EMAIL ADDRESS]
TO: [EMAIL ADDRESS]
RE: LEGAL NOTICE OF CLASS ACTION SETTLEMENT

IF YOU INCURRED ONE OR MORE $35 EXTENDED OVERDRAWN BALANCE CHARGES IN CONNECTION WITH YOUR BANK OF AMERICA PERSONAL CHECKING ACCOUNT, YOU MAY BE ENTITLED TO BENEFITS FROM A PROPOSED CLASS ACTION SETTLEMENT.

This is a court-authorized notice of a proposed class action settlement. This is not a solicitation from an attorney, and you are not being sued.

PLEASE READ THIS NOTICE CAREFULLY, AS IT EXPLAINS YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM.

For more information, including a more detailed description of your rights and options, please click here or visit www.EOBCsettlement.com.com.

A settlement has been reached in a class action lawsuit alleging that extended overdrawn balance charges ("EOBCs") assessed by Bank of America, N.A. ("BANA") violated the National Bank Act's usury limit. BANA denies the allegations in the case and denies liability. The Court has not decided which side is right.

WHO IS INCLUDED?

BANA's records show you are a member of the Settlement Class. The Settlement Class includes all holders of BANA consumer checking accounts who, between February 25, 2014 and December 30, 2017, were assessed at least one EOBC that was not refunded.

WHAT ARE THE SETTLEMENT TERMS?

BANA has agreed to cease the assessment of EOBCs for 5 years, subject to certain limitations set forth in the settlement agreement, and to pay a Settlement Amount of $66.6 million, which includes: $37.5 million in cash and debt reduction payments of $29.1 million. Once the Court approves the Settlement, you will automatically receive a cash payment, account credit and/or debt reduction based upon EOBCs paid by or assessed to you.

WHAT ARE MY OPTIONS?

If you do not want to be bound by the Settlement, you must exclude yourself by **Month 00, 2018**. If you do not exclude yourself, you will release your claims against BANA. You may object to the Settlement by **Month 00, 2018**. The long form notice available at the Settlement website, listed below, explains how to exclude yourself or object. The Court will hold a hearing on **Month 00, 2018**, to consider whether to approve the Settlement and a request for attorneys' fees of up to 25% of the Settlement Value and service awards of up to $5,000 for each Class Representative. Details regarding the hearing are in the long form Notice, available at the website below. You may appear at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

EXHIBIT C

If You Incurred One or More $35 Extended Overdrawn Balance Charges in Connection with Your Bank of America Personal Checking Account, You May Be Entitled to Benefits from a Proposed Class Action Settlement

A settlement has been reached in a class action lawsuit alleging that extended overdrawn balance charges ("EOBCs") assessed by Bank of America, N.A. ("BANA") violated the National Bank Act's usury limit. BANA denies the allegations in the case and denies liability. The Court has not decided which side is right.

Who's Included? BANA's records show you are a member of the Settlement Class. The Settlement Class includes all holders of BANA consumer checking accounts who, between February 25, 2014 and December 30, 2017, were assessed at least one EOBC that was not refunded.

What Are the Settlement Terms? BANA has agreed to cease the assessment of EOBCs for 5 years, subject to certain limitations set forth in the settlement agreement, and to pay a Settlement Amount of $66.6 million, which includes: $37.5 million in cash and debt reduction payments of $29.1 million. Once the Court approves the Settlement, you will automatically receive a cash payment, account credit and/or debt reduction based upon EOBCs paid by or assessed to you.

Your Other Options. If you do not want to be bound by the Settlement, you must exclude yourself by **Month 00, 2018**. If you do not exclude yourself, you will release your claims against BANA. You may object to the Settlement by **Month 00, 2018**. The long form notice available at the Settlement website, listed below, explains how to exclude yourself or object. The Court will hold a hearing on **Month 00, 2018**, to consider whether to approve the Settlement and a request for attorneys' fees of up to 25% of the Settlement Value and service awards of up to $5,000 for each Class Representative. Details regarding the hearing are in the long form notice, available at the website below. You may appear at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

www.EOBCsettlement.com **1-8XX-XXX-XXXX**

P.O. Box XXXX
Portland, OR 97XXX-XXXX

U.S. POSTAGE
PAID
Portland, OR
PERMIT NO. 2882

Legal Notice about a Class Action Settlement

EXHIBIT D

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

If you Incurred One or More $35 Extended Overdrawn Balance Charges in Connection with your BANK OF AMERICA personal checking account, you may be entitled to benefits from a proposed class action settlement

A federal court authorized this notice. This is not a solicitation from a lawyer.

A settlement has been reached in a class action lawsuit pending in the United States District Court for the Southern District of California (the "Court") entitled *Farrell v. Bank of America, N.A.*, Case No. 3:16-CV-00492-L-WVG (the "Action"). The Action challenges extended overdrawn balance charges ("EOBCs") as allegedly violating the National Bank Act's usury limit. Bank of America, N.A. ("BANA") denies liability. The Court has not decided which side is right. The Court has tentatively approved the proposed settlement agreement to which the parties have agreed ("Settlement").

- Current and former holders of BANA personal checking accounts who incurred EOBCs may be eligible for a cash payment, account credit, or a reduction of outstanding debt owed to BANA. You are receiving this notice because the parties to the Action believe you are a Settlement Class member, as that term is defined below, who is entitled to relief. Read this notice carefully. This notice advises you of the benefits that may be available to you under the proposed Settlement and your rights and options as a Settlement Class member.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Do Nothing - Receive A Cash Payment, Account Credit and/or Debt Reduction	If you are entitled under the Settlement to a cash payment, account credit or debt reduction, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will automatically receive a cash payment, account credit and/or a debt reduction, as determined under the terms of the Settlement, and will give up your right to bring your own lawsuit against BANA about the claims in this case.
Exclude Yourself From The Settlement	Receive no benefit from the Settlement. This is the only option that allows you to retain your right to bring any other lawsuit against BANA about the claims in this case.
Object	Write to the Court if you do not like the Settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments, account credits, and debt reductions will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

Questions? Call 1-_____ or visit www.EOBCsettlement.com

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why is there a Notice?

A court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge M. James Lorenz, of the U.S. District Court for the Southern District of California, is overseeing this case. The case is known as *Joanne Farrell v. Bank of America, N.A.,* Case No. 3:16-cv-00492-L-WVG. The person who sued is called the "Plaintiff." The Defendant is BANA.

2. What is this lawsuit about?

The lawsuit claims that EOBCs assessed in connection with consumer checking accounts violate the National Bank Act's usury limit.

The complaint in this Action is posted on the settlement website, www.EOBCSettlement.com. BANA denies liability. The Court has not decided which side is right.

3. Why is this a class action?

In a class action, one or more people, called Class Representatives (in this case, four BANA customers who were assessed EOBCs), sue on behalf of people who have similar claims.

All of the people who have claims similar to the Class Representatives are members of the Settlement Class, except for those who exclude themselves from the Settlement Class.

4. Why is there a Settlement?

The Court has not decided in favor of either the Plaintiffs or BANA. Instead, both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class members receive the benefits described in this notice. The Class Representatives and their attorneys think the Settlement is best for everyone who is affected.

WHO IS IN THE SETTLEMENT?

If you received notice of the Settlement from a postcard or email addressed to you, then the parties believe you are in the Settlement Class. But even if you did not receive a postcard or email with notice of the Settlement, you may still be in the Settlement Class, as described below. If you did not receive a postcard or email addressed to you but you believe you are in the Settlement Class, as defined below, you may contact the Settlement Administrator.

5. Who is included in the Settlement?

The settlement class ("Settlement Class") includes:

All holders of BANA consumer checking accounts who, between February 25, 2014 and December 30, 2017, were assessed at least one EOBC that was not refunded.

If this did not happen to you, you are not a member of the Settlement Class. You may contact the Settlement Administrator if you have any questions as to whether you are in the Settlement Class.

THE SETTLEMENT'S BENEFITS

6. What does the Settlement provide?

The Settlement provides that BANA will provide sixty-six million six hundred thousand dollars ($66,600,000) to settle the class action (the "Settlement Amount"). Of the Settlement Amount, BANA will pay thirty-seven million five hundred thousand dollars ($37,500,000) in cash, and BANA will provide twenty-nine million one hundred thousand dollars ($29,100,000) in the form of debt reduction payments. After paying certain other costs and court-approved amounts, the cash relief will be distributed among Settlement Class members who paid one or more EOBCs that they incurred in connection with their BANA personal checking accounts between February 25, 2014 and December 30, 2017. Settlement Class members who currently hold BANA checking accounts will have their cash awards deposited directly into their accounts. Settlement Class members who no longer hold BANA checking accounts will receive their cash awards via check. Each Settlement Class member's cash award will depend upon the number of EOBCs the Settlement Class member paid and on the total number of Settlement Class members. The debt relief will be provided to Settlement Class members whose personal checking accounts BANA closed in overdrawn status with an EOBC still pending and whose overdrawn balances remain due and owing to BANA. Debt relief will be provided in the form of debt reduction payments, in an amount up to $35, but in no event exceeding the amount of a Settlement Class member's overdrawn balance remaining due and owing to BANA. Debt relief will not result in any cash payments to Settlement Class members.

7. How do I receive a cash payment, account credit, or debt reduction payment?

If you are in the Settlement Class and entitled to receive a cash payment, account credit, or debt reduction payment, you do not need to do anything to receive the relief to which you are entitled under the Settlement. If the Court approves the Settlement and it becomes final and effective, you will automatically receive a payment, account credit and/or debt reduction.

8. What am I giving up to stay in the Settlement Class?

If the Settlement is finally approved, each Settlement Class member who has not excluded himself or herself from the Settlement Class pursuant to the procedures set forth in the settlement agreement releases, waives, and forever discharges BANA and each of its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting purporting to act for them or on their behalf, including, but not limited to, Bank of America Corporation and all of its subsidiaries and affiliates (collectively, "BANA Releasees") from any and all claims they have or may have against the BANA Releasees with respect to the assessment of EOBCs as well as (i) any claim or issue which was or could have been brought relating to EOBCs against any of the BANA Releasees in the Action and (ii) any claim that any other overdraft charge imposed by BANA during the Class Period, including but not limited to EOBCs and initial overdraft fees, constitutes usurious interest, in all cases including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses ("Released BANA Claims"). Each Settlement Class member

who does not exclude himself or herself from the Settlement Class will also be bound by all of the decisions by the Court. Section _____ of the Settlement describes the precise legal claims that you give up if you remain in the Settlement. The Settlement is available at www.EOBCsettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue BANA on your own about the Released BANA Claims, then you must take steps to get out of the Settlement. This is called excluding yourself – or it is sometimes referred to as "opting-out" of the Settlement Class.

9. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a dated letter that includes the following:

- Your name, address, telephone number, last four digits of your social security number, and your BANA checking account number(s);
- A statement that you want to be excluded from the BANA EOBC Settlement in *Joanne Farrell v. Bank of America, N.A.,* Case No. 3:16-cv-00492-L-WVG and that you understand you will receive not receive any money or debt reduction from the Settlement; and
- Your signature.

You must mail your exclusion request, postmarked no later than _____**, 2018**, to:

EOBC Litigation Exclusions
P.O. Box _____
Portland, OR 97208-4178

10. If I don't exclude myself, can I sue BANA for the same thing later?

No. Unless you exclude yourself, you give up the right to sue BANA for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to try to pursue your own lawsuit.

11. If I exclude myself from the Settlement, can I still receive a payment, account credit, or debt reduction?

No. You will not receive a cash payment, account credit and/or debt reduction if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

The Court has appointed lawyers to represent you and others in the Settlement Class as "Class Counsel," including:

Jeffrey Kaliel **Tycko & Zavareei LLP** 1828 L St. NW Suite 1000 Washington, DC 20036	Jeff Ostrow **Kopelowitz Ostrow P.A.** 1 West Las Olas Blvd. Ste. 500 Fort Lauderdale, FL 33301

Class Counsel will represent you and others in the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

Class Counsel may request up to twenty-five percent (25%) of the Settlement Value for attorneys' fees, plus reimbursement of their expenses incurred in connection with prosecuting this case. The fees and expenses awarded by the Court will be paid out of the Cash Settlement Amount, as that term is defined in the settlement agreement. The Court will determine the amount of fees and expenses to award. Class Counsel may also request awards of up to $5,000.00 for each Class Representative to be paid from the Cash Settlement Amount for their service to the entire Settlement Class.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

14. How do I tell the Court that I don't like the Settlement?

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for attorneys' fees and expenses and/or Class Counsel's request for awards for the Class Representatives. To object, you must submit a letter that includes the following:

- The name of this case, which is *Joanne Farrell v. Bank of America, N.A.,* Case No. 3:16-cv-00492-L-WVG;
- Your full name, address and telephone number;
- An explanation of the basis upon which you claim to be a Settlement Class member;
- Each objection you are raising, along with the specific legal and factual grounds for the objection, accompanied by any legal support for the objection known to you or your counsel;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- The number of times in which you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection and a copy of any orders or opinions related to or ruling upon the prior objections that were issued by the trial and appellate courts in each listed case;
- Any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between you or your counsel and any other person or entity;
- The identity of all counsel representing you who will appear at the hearing that the Court has scheduled to determine whether to grant Final Approval to the Settlement and Class Counsel's request for attorneys' fees and service awards to the Class Representatives (the "Final Approval Hearing");
- The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which counsel or the firm has made such objection and a copy

of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case;

- A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- Your signature (an attorney's signature is not sufficient).

You must submit your objection to the following addresses, so that it is received by all the people listed below no later than _____, **2018**:

Clerk of the Court U.S. District Court for the S. Dist. of California Judge M. James Lorenz Courtroom 5B, Suite 5145 221 West Broadway San Diego, CA 92101	EOBC Litigation P.O. Box _____ Portland, OR 97208-4178
Jeffrey Kaliel **Tycko & Zavareei LLP** 1828 L St. NW Suite 1000 Washington, DC 20036	Matthew C. Close **O'Melveny & Myers LLP** 400 S. Hope Street Los Angeles, CA 90071
Jeff Ostrow **Kopelowitz Ostrow P.A.** 1 W. Las Olas Blvd., Ste. 500 Ft. Lauderdale, FL 33301	Danielle N. Oakley **O'Melveny & Myers LLP** 610 Newport Center Dr. Ste 1700 Newport Beach, CA 92660

15. What's the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold the Final Approval Hearing to decide whether to approve the Settlement and the request for attorneys' fees and Service Awards for Class Representatives. You may attend and you may ask to speak, but you don't have to do so.

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on _____, 2018 at _____., at the United States District Court for Southern District of California, located at Courtroom 5B, Suite 5145, 221 West Broadway, San Diego, California 92101. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.EOBCSettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider any request by Class Counsel for attorneys' fees and expenses and for service awards for Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you may come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper address, and it complies with the requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

18. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing, if you have filed and served a timely objection to the Settlement, according to the procedures set out in Section 14 above. To do so, you must send a letter saying that you intend to appear and wish to be heard. Your notice of intention to appear must include the following:

- Your name, address and telephone number;
- A statement that this is your "Notice of Intention to Appear" at the Final Approval Hearing for BANA EOBC Settlement in *Joanne Farrell v. Bank of America, N.A.,* Case No. 3:16-cv-00492-L-WVG;
- The reasons you want to be heard;
- Copies of any papers, exhibits, or other evidence or information that is to be presented to the Court at the Final Approval Hearing; and
- Your signature.

You must submit your Notice of Intention to Appear, so that it is received no later than _____**, 2018**, to all of the addressees listed under Question 14.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will still receive the benefits to which you are entitled. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit or be part of any other lawsuit against BANA relating to the legal issues in this case or the conduct alleged in the complaint.

GETTING MORE INFORMATION

20. How do I get more information?

This Long Form Notice summarizes the proposed Settlement. More details can be found in the Settlement. You can obtain a copy of the Settlement at www.EOBCSettlement.com. You may also write with questions to EOBC Litigation, P.O. Box _____, Portland, OR 97208-4178, or call the toll-free number, 1-_____. Do not contact BANA or the Court for information.

EXHIBIT E

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Counsel for Defendant
Bank of America, N.A.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

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

[PROPOSED] ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

This case comes before the Court on the motion of Class Representatives Joanne Farrell, Ronald Dinkins, Larice Addamo, and Tia Little ("Plaintiffs"), on behalf of themselves and the Settlement Class they represent, for an order granting Final Approval of the class action Settlement Agreement ("Motion") between Plaintiffs and Defendant, Bank of America, N.A. ("BANA"). The definitions and capitalized terms in the Settlement Agreement ("Agreement") and Memorandum in Support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and for Certification of Settlement Class are hereby incorporated as though fully set forth in this Final Approval Order and Judgment ("Final Approval Order"), and shall have the meanings attributed to them in those documents.

The Court preliminarily approved the Agreement by Preliminary Approval Order dated [DATE [Dkt. No. ___]], conditionally certified for settlement purposes the Settlement Class, and approved the form, content, and method of providing notice proposed by the Parties. The Settlement Class Notices were thereafter distributed to members of the Settlement Class pursuant to the terms of the Preliminary Approval Order. (*See* Joint Declaration of Class Counsel [Name] in Support of Motion for Final Approval of Settlement.)

The Court has read and considered the papers filed in support of the Motion, including the Agreement and the exhibits thereto, memoranda and arguments submitted on behalf of Plaintiffs, the Settlement Class, and BANA, together with supporting declarations. The Court has also considered any objections or other written comments submitted to the Clerk of the Court by members of the Settlement Class, together with the responses of the Parties to the objections.

The Court held a Final Approval Hearing on [DATE], at which time the Parties and all other interested persons were heard in support of and in opposition to the Settlement.

Based on the papers filed with the Court and the presentations made to the Court by the Parties and other interested persons at the Final Approval Hearing, it appears to the Court that the Agreement is fair, reasonable, and adequate. Accordingly,

IT IS HEREBY ORDERED THAT:

1. For purposes of this Settlement only, the Court has jurisdiction over the subject matter of the Complaint and personal jurisdiction over the Parties and the Settlement Class.

2. To effectuate Final Approval of the Settlement, the Court grants the Unopposed Motion to Amend Complaint, to Add Class Representatives, and to Modify Case Style [Dkt. No. 60], adding Ronald Anthony Dinkins, Larice Addamo, and Tia Little as Plaintiffs. The Amended Complaint attached to the Motion to Amend as *Exhibit A* is deemed filed. All material allegations therein are deemed denied by BANA. Pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), and based on findings made in the Preliminary Approval Order, the Court certifies, solely for purposes of effectuating this Settlement, the Settlement Class, defined in paragraph 1.32 of the Agreement.

3. The Court has determined that the Class Notices given to Settlement Class members fully and accurately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

4. The Settlement Class members listed on Exhibit 1 to this Final Approval Order have properly and timely opted-out of the Settlement and are therefore not bound by the Settlement, Releases, Final Approval Order or Final Judgment.

5. The Court finally approves the Settlement of this Action in accordance with the terms of the Agreement and, having considered the matters required under applicable law, finds that the Settlement is in all respects fair, reasonable, adequate and in the best interest of the Settlement Class members, especially in light of the fact that Plaintiffs and the Settlement Class, by and through their counsel, have investigated the facts and law relating to the matters alleged in the Complaint and Amended Complaint, including through dispositive motion practice, legal research as to the sufficiency of the claims, an evaluation of the risks associated with continued litigation, trial, and/or appeal,

including risks associated with the currently pending interlocutory appeal, and confirmatory discovery. The Settlement was reached as a result of arm's length negotiations between Class Counsel and counsel for BANA, which occurred as a result of mediation before the Honorable Layn R. Phillips (Ret.). The Settlement confers substantial benefits upon the Settlement Class, without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal and is fair, adequate, and reasonable. In finding the Settlement fair, reasonable and adequate, the Court has also considered the number of exclusions from the Settlement, objections by Settlement Class Members, and the opinion of competent counsel concerning such matters. The Court has considered duly filed objections to the Settlement, if any, and to the extent such objections have not been withdrawn, superseded, or otherwise resolved, they are overruled and denied in all respects on their merits.

6. The Court orders the Parties to the Agreement to perform their obligations thereunder pursuant to the terms of the Agreement. BANA is ordered to pay the Cash Settlement Amount and Debt Reduction Amount consistent with the terms of the Agreement. Beginning on or before December 31, 2017, BANA shall not implement or assess EOBCs, or any equivalent fee, in connection with BANA consumer checking accounts, for a period of five years, or until December 31, 2022, except to the extent the Agreement expressly provides otherwise.

7. The Court dismisses the Complaint and Amended Complaint and all claims and causes of action asserted therein with prejudice. These dismissals are without costs to any party, except as specifically provided in the Agreement.

8. The Court adjudges that the Plaintiff and all Settlement Class Members shall be bound by this Final Approval Order.

9. Upon the Effective Date, Plaintiff and each Settlement Class member who has not opted-out of the Settlement Class pursuant to the procedures set forth in the Agreement, shall be deemed to have, and by operation of this Final Approval Order, shall have released all BANA Releasees in accordance with the Settlement Agreement.

10. Without affecting the finality of this Final Approval Order in any way, the Court retains jurisdiction over: (a) implementation and enforcement of the Agreement pursuant to further order of the Court until the final judgment contemplated hereby has become effective and each and every act agreed to be performed by the Parties shall have been performed pursuant to the Agreement; (b) any other action necessary to conclude this Settlement and to implement the Agreement; and (c) the construction and interpretation of the Agreement.

11. The Court has considered Class Counsel's request for a Fee & Expense Award in the amount of _____ in attorneys' fees and _____ in expenses and finds the requested Fee & Expense Award and expenses appropriate because:

a. The Settlement provides substantial benefits for Settlement Class Members, including but not limited to, a five-year cessation of the fee at issue in the litigation under specific terms and limitations set forth in the Agreement, the Cash Settlement Fund, Debt Reduction Payments, and the payment of Administration Costs.

b. The requested award of attorneys' fees, a sub-set of the requested Fee & Expense Award, constitutes [X]% of the Settlement Value.

c. The quality of legal services provided by Class Counsel has been outstanding, in light of the Settlement itself, the complexity of the litigation, and the efficient litigation and settlement by attorneys with experience in litigating class actions relating to fees charged by national banks.

d. Class Counsel has taken considerable risks in pursuing this litigation.

e. By receiving payment from the Settlement Amount, Class Counsel's interests were fully aligned, during the settlement negotiation process, with those members of the Settlement Class, such that Class Counsel had appropriate incentives to maximize the size of the Settlement Amount.

f. The expenses incurred by Class Counsel are unreimbursed out-of-pocket expenses and costs that were incurred in prosecution of the claims and in obtaining a settlement, and are therefore reasonable litigation expenses.

g. The Fee & Expense Award shall be paid from the Settlement Fund as provided by the Settlement Agreement. Distribution of the Fee & Expense Award among Class Counsel will be at the sole discretion of Class Counsel.

12. The Court approves the Class Representative Service Awards for each of the Plaintiffs in the amount of $5,000, based on a finding that such amounts represent an appropriate payment for their service to the Settlement Class.

13. This Final Approval Order is not a finding or determination of any wrongdoing by BANA.

14. The Court finds that no just reason exists for delay in entering this Final Approval Order and, accordingly, the Clerk is hereby directed forthwith to enter this Final Approval Order.

IT IS SO ORDERED.

Date: _____ _____
United States District Judge

EXHIBIT F

Personal Schedule of Fees

Effective July 14, 2017

Bank of America

bankofamerica.com

Applies in all states.

91-11-3000B 07/2017
00-14-9299

EQUAL HOUSING LENDER

29912

Table of Contents

Overview

This schedule lists account fees and also explains how you can avoid some account fees. Please review the account description for details about your account. Other account fees that can apply to your account are listed in the account descriptions and in the Other Account Fees and Services section.

Your account and deposit relationship with us are governed by this schedule of fees and the *Deposit Agreement and Disclosures*. Please read both agreements carefully. These agreements are part of the binding contract between you and us for your account and deposit relationship. You can also find these agreements at bankofamerica.com.

When you open a deposit account, it is located at a financial center and generally remains at that location until it is closed. If your address is in a state where we do not have a financial center at the time, we may open the account at a financial center in Virginia. If state taxes apply to an account or service, taxes are in addition to the fee amount listed.

We may change the accounts and services described in this schedule at any time. We may add new terms and conditions. We may delete or amend existing terms and conditions. We may also add new accounts or services and convert or discontinue existing accounts or services at any time.

You can get information about interest rates and fees for services not covered in this schedule by visiting a financial center or calling us at the number on your statement.

Optional Services

The following optional services are generally available with our checking and savings accounts:

- Debit card (Photo Security® feature available) or ATM card
- Online Banking service
- Online and Mobile Bill Pay service
- Email and Text Alerts
- Direct deposits
- Keep the Change® Savings Service
- Affinity Banking
- Preferred Rewards
- Overdraft Protection Service from another linked account
- Automatic transfers from checking to savings

These optional services can help you manage your account. To learn more about them, please review the agreement for that service. You can also review information on bankofamerica.com or speak to a financial center associate.

Personal Checking Accounts

Account	Monthly Maintenance Fee for Checking Account and How to Avoid It	Other Important Account Information
Bank of America Core Checking® • Use direct deposit • Non-interest bearing account • Minimum to open - $25.00	Monthly maintenance fee for Bank of America Core Checking - $12.00 To avoid the monthly maintenance fee, meet **one** of the following requirements during each statement cycle: • Have at least one qualifying direct deposit of $250 or more made to your account each statement cycle. Or • Maintain a minimum daily balance of $1,500 or more in your account. Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 checking accounts).	**Student waiver.** When this account is owned either individually or jointly by a student, upon your request we waive the monthly maintenance fee for each statement cycle during which the student meets **both** of the following requirements: • The student is enrolled in a high school or a college, university or vocational program, **and** • The student is under 24 years old. College, university and vocation students may be required to show proof of enrollment. This student waiver does not apply when the student turns 24, ceases to be an owner of the account, or is no longer enrolled in school. For information about direct deposits, see page 13. The minimum daily balance is the lowest balance that we determine is in the account during a statement cycle. This means you will need to ensure your account does not fall below $1,500 during your statement cycle.

Please also review *Other Account Fees and Services* on pages 8-12, *Frequently Asked Questions About Accounts* on page 13 and the *Deposit Agreement and Disclosures*.

Personal Checking Accounts *(cont.)*

Account	Monthly Maintenance Fee for Checking Account and How to Avoid It	Other Important Account Information
Bank of America Interest Checking® • Interest bearing account • Variable rate • Minimum to open - $100.00	Monthly maintenance fee for Bank of America Interest Checking - $25.00 To avoid the monthly maintenance fee, maintain a **combined balance of $10,000** or more during each statement cycle. For each statement cycle, we add the following balances together to determine your combined balance: • The average daily balance in your Interest Checking account and in each checking, savings and money market savings account that is linked to your Interest Checking account. We determine the average daily balance in a linked account by using the beginning balance in the linked account for each day of the Interest Checking statement cycle. And • The current balance, as of the end of your Interest Checking statement cycle, in each CD and IRA that is linked to your Interest Checking account. And • The current balance, as of two business days before the end of your Interest Checking statement cycle, in each eligible Merrill Edge and Merrill Lynch investment account that is linked to your Interest Checking account. Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 checking accounts).	You can also get the following services with this account: • Three additional Bank of America Interest Checking accounts and four savings accounts with no monthly maintenance fee when you link them to your primary Interest Checking account. • Free standard checks or discounts on certain styles. • No transfer fee for Overdraft Protection transfers from your linked Bank of America savings, line of credit or secondary checking account. (Other line of credit fees may apply.) • No fee for incoming domestic wire transfers, cashier's checks, stop payments, and more. *Additional accounts.* For accounts linked to your Interest Checking account, we waive the monthly maintenance fee on the first three linked Interest Checking accounts and on the first four linked savings accounts of any type (regular and money market savings accounts). The minimum amount you need to open each additional account, and other terms and fees, apply to each linked account. While you can also have us link more accounts, this waiver of the monthly maintenance fee does not apply to them. Transaction limits apply to savings accounts. See "What are the transaction limitations on my savings account?" in the *Frequently Asked Questions About Accounts* section on page 14. *Linking accounts.* You must tell us what accounts you want us to link to your Interest Checking account. You can do so by visiting a financial center or calling us at the number on your statement. We do not automatically link other accounts for pricing. Certain restrictions apply. Please review "What does it mean to link accounts?" on page 13. Employees and Retirees: Bank of America employee and retirees qualify for a waiver of the monthly maintenance fee on up to four Bank of America Interest Checking accounts. When employees or retirees no longer meet the qualifications, standard product terms and pricing apply. See "Which employees and retirees are eligible for a waiver of the Monthly Maintenance Fee?" in the Frequently Asked Questions About Accounts section on page 14.

Please also review *Other Account Fees and Services* on pages 8-12, *Frequently Asked Questions About Accounts* on page 13 and the *Deposit Agreement and Disclosures*.

Personal Savings Accounts

Account	Monthly Maintenance Fee for Savings Account and How to Avoid It	Other Important Account Information
Regular Savings • Basic account to build a savings program • Interest bearing account • Variable interest rate • Minimum amount to open - $25.00	Monthly maintenance fee - $5.00 To avoid the monthly maintenance fee, meet **one** of the following requirements during each statement cycle: • Maintain a minimum daily balance of $300 or more in your account. Or • Link your account to your Bank of America Interest Checking or Advantage account (first 4 savings accounts). Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 savings accounts). To avoid the monthly maintenance fee you may also make combined monthly automatic transfers of $25 or more from your Bank of America checking account to your savings account during the immediately preceding statement cycle. *Effective with statement cycles that start on or after September 7, 2017, you will no longer be able to make automatic transfers in order to avoid the $5 monthly maintenance fee for the subsequent statement cycle.*	• Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee. • If you maintain a minimum daily balance of $20,000 or more in your Regular Savings account or if you are enrolled in the Preferred Rewards program, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is $10.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means. • Limits apply to some types of withdrawals and transfers from a savings account. See "What are the transaction limitations on my savings account?" in the *Frequently Asked Questions About Accounts* section below. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.

Please also review *Other Account Fees and Services* on pages 8-12, *Frequently Asked Questions About Accounts* on page 13 and the *Deposit Agreement and Disclosures*.

Personal Savings Accounts *(cont.)*

Account	Monthly Maintenance Fee for Savings Account and How to Avoid It	Other Important Account Information
Minor Savings Accounts (Under 18) • Under 18 years old, beginning a savings program • Interest bearing account • Variable interest rate • Minimum amount to open - $25.00 (Use Regular Savings or Rewards Money Market Savings for custodial ownership, such as UTMA/UGMA)	No monthly maintenance fee	• After you turn 18, we automatically convert your Minor Savings to a Regular Savings account. • Parents can make automatic transfers from checking. • Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee. • If you maintain a minimum daily balance of $300 or more in your Minor Savings account, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is $1.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means. • Limits apply to some types of withdrawals and transfers from a savings account. See "What are the transaction limitations on my savings account?" in the *Frequently Asked Questions About Accounts* section below. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.
Rewards Money Market Savings • Variable interest rate • Potential for Preferred Rewards interest rate booster feature • Minimum amount to open - $25.00	Monthly maintenance fee - $12.00 To avoid the monthly maintenance fee, meet **one** of the following requirements during each statement cycle: • Maintain a minimum daily balance of $2,500 or more in your account. Or • Link your account to your Bank of America Interest Checking or Advantage account (first 4 savings accounts). Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 savings accounts).	• This account is eligible for the interest rate booster feature of the Preferred Rewards program, which may increase your interest rate based on your Preferred Rewards tier. • Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee. • If you maintain a minimum daily balance of $20,000 or more in your Rewards Money Market Savings account or if you are enrolled in the Preferred Rewards program, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is $10.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means. • Limits apply to some types of withdrawals and transfers from a savings account. See "What are the transaction limitations on my savings account?" in the *Frequently Asked Questions About Accounts* section below. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.

Please also review *Other Account Fees and Services* on pages 8-12, *Frequently Asked Questions About Accounts* on page 13 and the *Deposit Agreement and Disclosures*.

Personal CD/IRA Accounts

Account	Minimum Amount You Need to Open Account	Account Features / Services	Other Important Account Information
Fixed Term CD Terms of 7 Days—27 Days	$15,000	• Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews.	• A penalty is imposed for early withdrawal.
Fixed Term CD Terms of 28 Days—10 Years	$1,000	• Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews.	• A penalty is imposed for early withdrawal. • For CDs with terms of 30 days or more, we send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.
Featured CD/IRA	See deposit rate sheet for minimum opening amount	• Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. • See deposit rate sheet for available terms.	• A penalty is imposed for early withdrawal. • For CDs with terms of 30 days or more, we send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.
Fixed Term IRA/CESA Terms of 6 Months—10 Years	Fixed Term IRA: $1,000; CESA: $500	• Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews.	• A penalty is imposed for early withdrawal. • We send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.

Please also review *Other Account Fees and Services* on pages 8-12 and the *Deposit Agreement and Disclosures*. The *Deposit Agreement and Disclosures* contains information about the early withdrawal penalty and other terms for CDs. Also, see the *Traditional/Roth Individual Retirement Custodial Accounts and Disclosure Statements* and *Coverdell Education Savings Custodial Account and Disclosure Statement* for additional IRA and CESA account information.

Personal CD/IRA Accounts *(cont.)*

Account	Minimum Amount You Need to Open Account	Account Features / Services	Other Important Account Information
Variable Rate IRA/CESA Terms of 18 Months—23 Months	$100	• Variable interest rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate and annual percentage yield on your account at any time. • Additional deposits allowed during term. • Automatically renews. • Make saving easier with automatic transfers.	• A penalty is imposed for early withdrawal. • We send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.
Money Market IRA/ CESA	$100	• Variable interest rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate and annual percentage yield on your account at any time. • Additional deposits allowed at any time. • Make saving easier with automatic transfers.	• This is a savings account. • Pre-authorized transfers and withdrawals are subject to certain limitations. See "What are the transaction limitations on my savings account?" on page 14. Withdrawals by check, draft or debit card are not allowed.

Please also review *Other Account Fees and Services* on pages 8-12 and the *Deposit Agreement and Disclosures*. The *Deposit Agreement and Disclosures* contains information about the early withdrawal penalty and other terms for CDs. Also, see the *Traditional/Roth Individual Retirement Custodial Accounts and Disclosure Statements* and *Coverdell Education Savings Custodial Account and Disclosure Statement* for additional IRA and CESA account information.

Other Account Fees and Services

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Card and Debit Card Fees	Replacement ATM or Debit Card Fee	$5.00 per card	• Fee for each requested replacement of a card or other debit access device. • The replacement fee does not apply when we replace a card upon its expiration. • Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.
	Rush Replacement ATM or Debit Card Fee	$15.00 per card	• Fee for each requested rush delivery of a card or other debit access device. • The Replacement ATM or Debit Card Fee may also apply and would be in addition to the rush delivery fee. • Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee.
	Non-Bank of America Teller Withdrawal Fee	For each transaction, the greater of $5.00 **OR** 3% of the dollar amount of the transaction, up to a maximum of $10.00	• Fee applies when you authorize another financial institution to use your card or card number to conduct a transaction (such as a withdrawal, transfer, or payment) and the other financial institution processes the transaction as a cash disbursement.
	International Transaction Fee	3% of the U.S. dollar amount of the transaction	• Fee applies if you use your card to purchase goods or services in a foreign currency or in U.S. dollars with a foreign merchant (a "Foreign Transaction"). Foreign Transactions include internet transactions made in the U.S. but with a merchant who processes the transaction in a foreign country. • Fee also applies if you use your card to obtain foreign currency from an ATM. Visa® or MasterCard® converts the transaction into a U.S. dollar amount, and the International Transaction Fee applies to that converted U.S. dollar amount. ATM fees may also apply to ATM transactions. See ATM Fees section below. • See disclosure information that accompanied your card for more information about this fee.

Other Account Fees and Services *(cont.)*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Fees ***Bank of America ATM*** *– an ATM that prominently displays the Bank of America name and logo on the ATM* ***Non-Bank of America ATM*** *– an ATM that does not prominently display the Bank of America name and logo on the ATM*	Withdrawals, deposits, transfers, payments and balance inquiries at a Bank of America ATM	No ATM fee	• Deposits and payments may not be available at some ATMs. Transaction fees may apply to some accounts. See account descriptions in this schedule.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in the U.S.	$2.50 each	• When you use a non-Bank of America ATM, you may also be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer. • The non-Bank of America ATM fees do not apply at some ATMs located outside the United States. Call us before you travel internationally for current information about banks participating in the program. • See the disclosure information that accompanied your card for other fees that may apply. • Non-Bank of America ATM fees are in addition to other account fees that may apply to the transaction, such as a Withdrawal Limit Fee for savings. • Preferred Rewards Platinum customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S., and receive a refund of the ATM operator fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S. • Preferred Rewards Platinum Honors customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S., and receive a refund of the ATM operator fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in a foreign country	$5.00 each	
Check Cashing *– Bank of America customer*		*No fee*	*Effective August 15, 2017, a fee may be assessed to a payee presenting a check that you issued if the payee is not a Bank of America relationship customer.* *A Bank of America relationship customer is an account owner of a deposit account (checking, savings, CD), Individual Retirement Account (IRA), loan, credit card, mortgage, safe deposit box or a Merrill Edge or Merrill Lynch Investment account.*
Check Cashing *– Nonrelationship customer*	*Applies to checks drawn on Bank of America personal accounts*	*Effective August 15, 2017 - $8.00 per check for amounts greater than $50.00.*	
Check Image Service	Check Image Service Fee	$3.00 each statement cycle	• Fee to return images of your cancelled checks with your statement. Applies to each statement cycle during which we return one or more images of your checks. • Our Online Banking service allows you to view and print copies of checks that posted to your account within the last 18 months. • Preferred Rewards customers qualify for a waiver of this fee.

Other Account Fees and Services *(cont.)*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Copies	Check Copy Fee	No fee for the first two copies of each request. After two copies, there is a $3.00 fee for each copy up to a maximum of $75.00 per request.	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • This fee does not apply to accounts opened in Massachusetts and New Hampshire. • You can avoid the fee by viewing and printing your available checks in Online Banking, instead of ordering the copy from us. For information about what checks are available in Online Banking, please review the Activity tab.
	Deposit Slips and other Credit Items	No fee for the first two copies of each request. After two copies, there is a $3.00 fee for each copy up to a maximum of $75.00 per request.	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • This fee does not apply to accounts opened in Massachusetts and New Hampshire. • You can avoid the fee by viewing and printing your available Deposit Slips and other Credit Items, instead of ordering the copy from us. For information about what Deposit Slips and other Credit Items are available in Online Banking, please review the Activity tab.
	Statement Copy Fee	$5.00 per copy	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • You can avoid the fee by viewing and printing your available statements in Online Banking, instead of ordering the copy from us. For information about what statements are available in Online Banking, please review the Statements and Documents tab. • This fee does not apply to your monthly statement delivery. It only applies when you request paper copies of your statements.
IRA	IRA and Coverdell ESA Direct Custodian Transfer Processing Fee	$50.00 each plan, each occurrence	• Fee for transferring funds to another institution.
Overdraft Protection Service *This optional service can help you avoid declined transactions as well as overdraft and NSF: returned item fees. To apply for this service, please call the number on your account statement or talk to your local financial center associate.*	Overdraft Protection Transfer Fee - transfer from a linked Bank of America savings or secondary checking account	$12.00 each transfer	• Overdraft Protection transfers are made for the amount required to cover the overdraft and the applicable transfer fee. If your savings or secondary checking account does not have enough available funds to cover the necessary amount, we may decline to make the transfer. • Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • Only 1 transfer fee charged per day that a transfer is made.
	Overdraft Protection Transfer Fee - transfer from a linked Bank of America line of credit	$12.00 each transfer	• Overdraft Protection transfers are advances under the terms of the line of credit agreement and are made in increments of $100. Advances are subject to interest charges or finance charges, as provided in the line of credit agreement. Please see the line of credit agreement. • Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • Only 1 transfer fee charged per day that a transfer is made.
	Overdraft Protection Transfer Fee - transfer from a linked Bank of America credit card	See Credit Card Agreement	• Overdraft Protection transfers are considered cash advances and may be subject to additional Overdraft Protection cash advance fees. See your Credit Card Agreement for applicable rates and fees. • Only 1 transfer fee charged per day that a transfer is made.

Other Account Fees and Services *(cont.)*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Overdraft Items (an overdraft item)	Overdraft Item Fee	$35.00 each item	• When we determine that you do not have enough available funds in your account to cover an item, then we either authorize and pay the item and overdraw your account (an overdraft item), or we decline or return the item unpaid (an NSF: returned item). • Some common examples of items are a check or other transaction made using your checking account number, an everyday non-recurring debit card transaction, a recurring debit card transaction, an ATM withdrawal, an ACH transaction, and an Online or automatic bill payment. Please see the *Deposit Agreement and Disclosures* for more information about items, overdrafts, declined or returned items and for information about how we process and post items. • We do not charge you an Overdraft Item fee on an everyday non-recurring debit card transaction. We also do not charge you an Overdraft Item fee on an ATM transaction unless you agreed to our overdraft practices for that particular ATM transaction. We do charge you an Overdraft Item fee each time we authorize and pay any other type of overdraft transaction. These other types of transactions include checks and other transactions made using your checking account number, recurring debit card transactions, Online and automatic bill payments, and ACH transactions. • We do not charge you an NSF: Returned Item fee when we decline an ATM transaction or debit card transaction. We do charge you an NSF: Returned Item fee each time we decline or return any other type of transaction unpaid. These other types of transactions include checks and other transactions made using your checking account number, Online and automatic bill payments, and ACH transactions. • We charge you Overdraft Item fees and NSF: Returned Item fees for no more than 4 items each day. • For information about our Overdraft Protection plans and overdraft practices and overdraft settings, please see our *Deposit Agreement and Disclosures* and our *What You Need to Know about Overdrafts and Overdraft Fees* notice.
NSF: Returned Items (a returned item)	NSF: Returned Item Fee	$35.00 each item	
Overdrafts – Extended Overdrawn Balance	Extended Overdrawn Balance Charge	$35.00 - charged when we determine your account is overdrawn for 5 or more consecutive business days	• The Extended Overdrawn Balance Charge applies when we determine that your account has been overdrawn for 5 or more consecutive business days. You can avoid this fee by depositing enough available funds in your account to cover your overdraft plus any fees we assessed within the first 5 consecutive business days that your account is overdrawn. • For each time that your account is overdrawn 5 or more consecutive business days, we charge one Extended Overdrawn Balance Charge. We charge the fee after the 5th consecutive business day. The Extended Overdrawn Balance Charge is in addition to applicable Overdraft Item Fees and NSF: Returned Item Fees. • If an everyday non-recurring debit card transaction or an ATM transaction, for which you did not agree to our overdraft practices, is the transaction that causes your account to become overdrawn, we do not start the 5-business day period. We do start the 5-business day period if another type of transaction either causes or increases the overdraft on your account.

Other Account Fees and Services *(cont.)*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Miscellaneous	Check and Deposit Ticket Orders	Fee varies	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers receive free standard checks or discounts on certain designs. • We may change the fees for check and deposit ticket orders at any time. Visit a financial center or call us at the number on your statement for current fees.
	Deposited Item Returned or Cashed Item Returned Fee (Returned Item Chargeback Fee)	$12.00 each domestic item $15.00 each foreign item	• We charge this fee each time a check or other item that we either cashed for you or accepted for deposit to your account is returned to us unpaid.
	Legal Process Fee	$125.00 each occurrence (or such other rate as may be set by law)	• Fee applies to each legal order or process that directs us to freeze, attach or withhold funds or other property, such as an attachment, levy or garnishment.
	Stop Payment Fee	$30.00 each request	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of this fee. • There is no charge to place a stop payment on a recurring debit card transaction.
	Wire Transfers and Drafts, Incoming or Outgoing (U.S. or International)	Fee varies	• Bank of America Interest Checking and Advantage accounts plus Preferred Rewards customers qualify for a waiver of our standard wire fee for an incoming domestic wire transfer. The standard wire fee for incoming international wire transfers is waived for Preferred Rewards (Platinum and Platinum Honors tiers only) customers. • We may change the fees for wire transfers and drafts at any time. Visit a financial center or call us at the number on your statement for current fees. • For an international wire transfer, other financial institutions involved in the wire transfer may also charge fees and deduct their fees from the amount of the wire transfer.

Frequently Asked Questions About Accounts

This section covers some of the features and services that may apply to your account.

What other agreements have terms that apply to my deposit account?

In addition to the terms in this *Schedule of Fees*, the terms in the *Deposit Agreement and Disclosures*, the signature card for your account and the other account opening documents govern your account and are part of the binding contract between you and us for your account. Please read these documents carefully.

What are paperless statements?

With the paperless statement option, you get your account statement electronically through Online Banking and you do not get a paper statement. You can enroll in paperless statements at a financial center or through Online Banking. When you enroll at a financial center, you'll need to log into Online Banking from your computer to confirm your choice.

What is a direct deposit?

A direct deposit is an electronic deposit of funds to a checking or savings account.

For Bank of America Core Checking accounts, qualifying direct deposits are deposits of regular monthly income—such as your salary, pension, Social Security benefits—which are made through the automated clearinghouse (ACH) by your employer or other payer.

Other types of transfers and deposits do not qualify for the waiver of the monthly maintenance fee. Examples of non-qualifying transfers and deposits include: teller deposits, wire transfers, non-periodic direct deposits (such as tax refunds or payments for the sale of goods or services), Online Banking transfers, telephone transfers, and ATM transfers and deposits.

What does variable rate mean?

Funds in an interest bearing checking or savings account earn a variable interest rate. This means that your interest rate and annual percentage yield may change after the account is opened. At our discretion, we may change your interest rate and annual percentage yield at any time.

What does it mean to link accounts?

You can link some of your other accounts with us either to your Bank of America Interest Checking, Regular Checking or to your Advantage checking account for pricing. When you link another account for pricing, you can use the balances in the other account to help you meet the balance required to avoid the monthly maintenance fee on your checking account. You must tell us what other accounts you want us to link to your checking account. An account can only be linked for pricing to one checking account at a time. We do not link your other accounts for pricing unless you tell us to do so. You may not link a SafeBalance Banking® account to any other account for pricing.

Please see the checking account descriptions in this schedule of fees for information about what accounts can be linked and applicable balance requirements. Some restrictions apply to what accounts can be linked. See below and the *Combined Balance Service* section in the *Deposit Agreement and Disclosures* for information.

When a new account is opened to replace an existing account, we do not automatically link the new account to your checking account for pricing, even if the existing account was linked. You must tell us to link the new account. As examples, when you refinance your mortgage loan, the refinanced loan is a new account. Whenever we change the account number of your checking account, we close the current checking account and open a new checking account. In both examples, the replacement account is a new account and, if you want us to link it to your checking account for pricing, you need to tell us to link the new account.

For linked accounts, we may send you a monthly statement that reports account information for all of your linked accounts instead of separate statements for each account.

What Bank of America first mortgage loans can qualify for a waiver of the monthly maintenance fee on a Bank of America Advantage account?

We currently service many mortgage loans we make. If we service your Bank of America first mortgage loan, you can have us link the loan to your Bank of America Advantage checking account. Sometimes we sell mortgage loan servicing to other companies. If we sell the servicing on your mortgage loan, then the loan is no longer eligible to be used for this waiver.

What limits apply to linking accounts?

Some restrictions apply to what accounts can be linked to a checking account, including the following. You can generally link savings, money market savings, Individual Retirement Account (IRA) and CD, and some checking and Merrill Edge or Merrill Lynch investment accounts to your checking account. You may only link an account to one checking account at a time. To link additional accounts to a checking account, at least one of the owners of the linked additional account must also be an owner of the checking account. You may not link personal and business accounts together. You may link a SafeBalance Banking account to another SafeBalance Banking account for some purposes, but not to any other account for pricing.

You may not link custodial accounts, such as UTMA or UGMA accounts, for pricing or other program benefits.

We may in our discretion place other restrictions on what accounts can be linked.

Are the statement cycles for linked accounts the same?

When you link accounts for pricing, the statement cycles are generally different. If you use a combined statement for your checking and savings accounts, the statement cycles for the linked checking and savings accounts are generally the same.

What are combined statements?

A combined statement is one statement that reports activity for your checking account and each deposit account linked to that account, instead of separate statements for each account. In most cases we do not automatically send you a combined statement. You must generally request a combined statement and tell us to link the accounts you want included in the combined statement.

(continued)

When linked accounts are reported on the combined statement, you understand and agree that each owner of any linked account can review information about all other linked accounts. You should not link accounts that you do not want others to see. Please read the information about Combined Statements in the *Deposit Agreement and Disclosures.*

What is the transaction date for the savings Withdrawal Limit Fee?

To determine whether a Withdrawal Limit Fee applies to a withdrawal from your savings account, we count the withdrawal on the date we post it to your account. If you are counting the number of withdrawals you make each monthly statement cycle, please note that the date we count the withdrawal may be different than the date you authorize or make the withdrawal. This means that we may not count the withdrawal until a later statement cycle.

What are the transaction limitations on my savings account?

There is no limit on the number of deposits you may make to your account. You can also make any number of withdrawals and transfers to your account through the financial center, by mail or at an ATM or ATM with Teller Assist (ATA).

However, federal regulations (applied to all U.S. Banks) and the *Deposit Agreement and Disclosures* limit the number of certain types of withdrawals and transfers from a savings account to a total of six each monthly statement cycle (each month for savings accounts with a quarterly statement). This transaction limit applies to the following types of withdrawals or transfers: automatic or pre-authorized transfers, telephone transfers, Online and Mobile Banking transfers or payments, or, if checks or debit cards are allowed on the account, check, draft and point of sale transactions.

If you exceed these limits on more than an occasional basis, we may convert your account to another type of account, like a checking account, and your account may no longer earn interest.

Please note that for savings accounts, we charge a Withdrawal Limit Fee for each withdrawal and transfer of any type in excess of six if the applicable balance requirement is not met. The Withdrawal Limit Fee is separate from the federal regulatory requirements. See the information about this fee in the savings account section on pages 4 and 5.

Which employees and retirees are eligible for a waiver of the Monthly Maintenance Fee?

The fee waiver applies to full-time or part-time employees actively employed by Bank of America and Retirees with at least 10 years of vesting service, and their age plus years of vesting service equal to at least 60 (with no minimum age requirement).

Keep the Change® Savings Service

When you enroll in our Keep the Change savings service, we round up the amount of any Bank of America debit card purchase made by you or a joint owner of your checking account to the next whole dollar amount, and transfer the amount in excess of the purchase price to your savings account.[1]

We aggregate the round-up from purchases that post to your checking account each business day and make a single transfer (the "Keep the Change" transfer) at the end of the business day. If on a business day you do not have sufficient available funds in your checking account, or if any transaction has overdrawn your checking account, we do not round-up purchases posted on that business day and we cancel the Keep the Change transfer for that day.

If your debit card purchase is subsequently cancelled or reversed, the corresponding Keep the Change transfer will remain in the savings account.[1] We may cancel or modify the Keep the Change service at any time.

[1]If your savings account enrolled in Keep the Change is converted to a checking account, Keep the Change transfers will continue to be made into that account. Should you have any questions on the Keep the Change program, please contact your nearest financial center.

Keep the Change® Patent No. US 8,301,530B2.

Preferred Rewards

You are eligible for the Preferred Rewards program when you (i) have an active, eligible personal checking account with Bank of America, and (ii) maintain the balance required for one of the balance tiers in any combination of eligible deposit accounts with Bank of America and/or eligible investment balances with Merrill Edge® or Merrill Lynch. Once you are eligible, you can enroll for program benefits. Enrollment is generally available within three or more business days of eligibility.

The combined balance requirement is calculated based on your average daily balance maintained for a three calendar month period.

Your benefits become effective within one month of your enrollment, or for new accounts within one month of account opening, unless we indicate otherwise. Some benefits are automatically activated upon the effective date of your enrollment and require no action on your part. Some benefits may require you to open a new account or take other action. Some benefits are available based on balances and other requirements without the need to enroll. Read carefully the terms of any offer to understand the action required.

Different benefits are available at different balance tiers. The balance tiers are: Gold, for combined balances at and above $20,000; Platinum, for combined balances at and above $50,000; and Platinum Honors, for combined balances at or above $100,000.

You will qualify for the next higher balance tier when your three-month average combined balances exceed the minimum amount for that balance tier. You will qualify for the benefits of the next higher balance tier starting in the month after the month in which you satisfy the combined balance requirement.

We will perform an annual review of your qualifying balances in the month following the anniversary date of your initial enrollment in the program. The annual review will calculate your three-month average combined balance as of the end of your anniversary month and place you in the balance tier for which you meet the qualification requirements. If the result of the annual review would be to move you to a lower tier, you will have a three-month period after your anniversary month in which to restore your qualifying balance before you are moved to that lower balance tier. If you are moved to a lower balance tier, your benefits may be changed to those of the balance tier for which you qualify without further notice. Please note that while you can be moved to a higher balance tier after any month in which you satisfy the combined balance requirement for that tier, you will only be moved to a lower balance tier as a result of the annual review.

(continued)

At the annual review, we will also confirm that you still have an active, eligible personal checking account with Bank of America. If as a result of the annual review you do not qualify for any balance tier, or you no longer have an eligible checking account, and you do not sufficiently restore your balances or open an eligible checking account in the three months after your anniversary month, your qualification will discontinue. Your benefits may then be discontinued immediately without further notice.

You or we may terminate your enrollment at any time.

Only personal accounts that you own, and that are in good standing, count toward your balance requirements and receive benefits. Accounts on which you are a signer but not an owner, or accounts included in your periodic statement on which you are not an owner, are not eligible. SafeBalance Banking® accounts do not count towards the checking account requirement or balance requirements for Preferred Rewards, and SafeBalance Banking accounts do not receive the fee waivers and other benefits of the Preferred Rewards program.

We may change or terminate program benefits at any time, without prior notice.

See the chart below for examples of accounts that do and do not qualify for the combined balance calculation:

Qualify

• Accounts on which you are an owner or co-owner, including -
  • Bank of America deposit accounts: Checking, Savings, Money Market Savings, CD, and IRA accounts
  • Merrill Edge and Merrill Lynch investment accounts, such as the Cash Management Account (CMA) and IRA accounts (Traditional, Roth, Rollover, SEP, Simple)
  • 529 plans appearing on your Merrill Edge or Merrill Lynch statement (except 529 plans owned in Uniform Transfers to Minors Act (UTMA)/Uniform Gifts to Minors Act (UGMA) form)
  • Revocable grantor trust accounts

Does Not Qualify
• Accounts on which you're not an owner or co-owner. For example, accounts on which your role is Custodian, Administrator, Power of Attorney, Beneficiary, Guardian, or Executor • Uniform Transfers to Minor Act (UTMA) and Uniform Gifts to Minors Act (UGMA) accounts • Business accounts or commercial accounts • SafeBalance Banking accounts • Irrevocable trust accounts • Employee Benefit plans (such as 401(k) plans) • Annuities

Bank of America employees and retirees are eligible for additional Preferred Rewards program benefits. If you no longer meet the requirements for employee status, standard program terms apply.

Merrill Edge® is available through Merrill Lynch, Pierce, Fenner & Smith Incorporated (MLPF&S), and consists of the Merrill Edge Advisory Center™ (investment guidance) and self-directed online investing.

Notice for Maine Deposit Account Customers:

If you have a dispute with us regarding your deposit account, you may contact us and attempt to resolve the problem directly. If you feel we failed to resolve the problem, communicate the problem and the resolution you are seeking to:

Bureau of Financial Institutions
36 State House Station
Augusta, ME 04333-0036

To file a complaint electronically, you may contact the Bureau of Financial Institutions at the following internet address: http://www.state.me.us/pfr/bkg/bkg_consumer.htm

The Bureau of Financial Institutions will acknowledge receipt of your complaint promptly and investigate your claim. You will be informed of the results of the investigation.

When your complaint involves a federally-chartered financial institution, such as Bank of America, the Bureau of Financial Institutions will refer it to the appropriate federal supervisory agency and inform you to whom it has been referred.

Personal Schedule of Fees for SafeBalance Banking®

Effective May 19, 2017

The SafeBalance Banking account is a personal deposit account.

Bank of America

bankofamerica.com

Applies in all states.

95-11-3200B 05/2017
00-14-9317

EQUAL HOUSING LENDER

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The SafeBalance Banking account is an account you can use to make transactions and pay bills. Since it is not a traditional checking account you cannot write checks with this account.

Overview

The SafeBalance Banking® account is an account you can use to make deposits, withdrawals and pay bills. It is a checkless checking account, since you cannot write paper checks with this account. It is not a traditional checking account. You can make payments with your debit card, through our Online and Mobile Banking Bill Pay service, a wire transfer, or an Automated Clearing House transaction (ACH), and you can make withdrawals through an ATM or financial center.

Do not order checks from third parties. If a check is presented for payment, it will not be paid even if you have enough money in your account to cover it. You may incur fees from the merchant or other party you were trying to pay when the check is returned.

Your SafeBalance Banking account does not come with overdraft services, which means we do not authorize or pay a transaction unless we believe that you have enough available funds at the time of the transaction. Please see the "Other Important Account Information" section for more details about overdrafts.

Additional terms and limitations of the SafeBalance Banking account are described in this schedule of fees. Please review the account description for details about your account and account fees. Other account fees that can apply to your account are listed in the "Other Account Fees and Services" section.

When you open a deposit account, it is located at a financial center and generally remains at that location until it is closed. If your address is in a state where we do not have a financial center at the time, we may open the account at a financial center in Virginia. If state taxes apply to an account or service, taxes are in addition to the fee amount listed.

We may change the account and services described in this schedule of fees at any time. We may add new terms and conditions. We may delete or amend existing terms and conditions. We may also add new services and convert or discontinue this account or any services at any time.

You can get information about accounts, services and fees not covered in this schedule of fees by visiting a financial center or calling us at the number on your statement.

Deposit Agreement and Disclosures Amended
Your account and deposit relationship with us are governed by this schedule of fees and the *Deposit Agreement and Disclosures*. Note that since there are no check-writing privileges, references in the *Deposit Agreement and Disclosures* to the ability to write checks and associated rights and obligations do not apply to the SafeBalance Banking account. All other terms and conditions in the *Deposit Agreement and Disclosures* that apply to checking accounts apply to the SafeBalance Banking account except as otherwise amended in this schedule of fees. Please read both agreements carefully. These agreements are part of the binding contract between you and us for your account and deposit relationship. You can also find these agreements at bankofamerica.com. References to the *Personal Schedule of Fees* in the *Deposit Agreement and Disclosures* and in other documents include this schedule of fees.

Other terms and conditions in this schedule of fees amend the *Deposit Agreement and Disclosures*, including information in the "Other Important Account Information" section.

Information About SafeBalance Banking

Account	Monthly Maintenance Fee	Features Available with Your SafeBalance Banking Account	Features Not Available with Your SafeBalance Banking Account
SafeBalance Banking® • Non-interest bearing account • Minimum to open - $25.00	$4.95 We do not waive the monthly fee.	• No Overdraft Item Fees, NSF: Returned Item Fees or Extended Overdrawn Balance Charge • Debit card (Photo Security® feature available) or ATM card • Online and Mobile Banking Service • Online and Mobile Bill Pay Service • Email and Text Alerts • Keep the Change® Savings Service	The SafeBalance Banking account is different from a traditional checking account. It has important limitations that you should review. If you want any of the functions or services listed below, it might not be the right account for you. The following features are **not** available with your SafeBalance Banking account: • Checks. Paper checks written by you or others on the account will not be paid. - Do not buy checks from any source, such as checks you see advertised on the internet or in the newspaper or any other third parties. - Be careful when providing your account and routing numbers to merchants for a payment since they may process the payment as a check which will be rejected. • Overdraft Protection Service to or from a linked account. • Overdraft services. Your account is set to a "Decline All" transactions overdraft setting. This means that if you do not have sufficient available funds in your account to cover an item, the item will be returned unpaid. You may be assessed a fee by a merchant if this happens. Please see the "Other Important Account Information" section for more details. Balances do not count towards Preferred Rewards, Banking Rewards for Wealth Management or other relationship pricing programs, and the SafeBalance Banking account does not receive the fee waivers and other benefits of the Preferred Rewards program. Affinity Banking is not available to be added to your SafeBalance Banking account or debit card.

Other Account Fees and Services

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Card and Debit Card Fees	Replacement ATM or Debit Card Fee	$5.00 per card	• Fee for each requested replacement of a card or other debit access device. • The replacement fee does not apply when we replace a card upon its expiration.
	Rush Replacement ATM or Debit Card Fee	$15.00 per card	• Fee for each requested rush delivery of a card or other debit access device. • The Replacement ATM or Debit Card Fee may also apply and would be in addition to the rush delivery fee.
	Non-Bank of America Teller Withdrawal Fee	For each transaction, the greater of $5.00 **OR** 3% of the dollar amount of the transaction, up to a maximum of $10.00	• Fee applies when you authorize another financial institution to use your card or card number to conduct a transaction (such as a withdrawal, transfer, or payment) and the other financial institution processes the transaction as a cash disbursement.
	International Transaction Fee	3% of the U.S. dollar amount of the transaction	• Fee applies if you use your card to purchase goods or services in a foreign currency or in U.S. dollars with a foreign merchant (a "Foreign Transaction"). Foreign Transactions include internet transactions made in the U.S. but with a merchant who processes the transaction in a foreign country. • Fee also applies if you use your card to obtain foreign currency from an ATM. Visa® or MasterCard® converts the transaction into a U.S. dollar amount, and the International Transaction Fee applies to that converted U.S. dollar amount. ATM fees may also apply to ATM transactions. See ATM Fees section below. • See disclosure information that accompanied your card for more information about this fee.
ATM Fees ***Bank of America ATM*** – *an ATM that prominently displays the Bank of America name and logo on the ATM* ***Non-Bank of America ATM*** – *an ATM that does not prominently display the Bank of America name and logo on the ATM*	Withdrawals, deposits, transfers, payments and balance inquiries at a Bank of America ATM	No ATM fee	• Deposits and payments may not be available at some ATMs. Transaction fees may apply to some accounts. See account descriptions in this schedule.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in the U.S.	$2.50 each	• When you use a non-Bank of America ATM, you may also be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer. • The non-Bank of America ATM fees do not apply at some ATMs located outside the United States. Call us before you travel internationally for current information about banks participating in the program. • See the disclosure information that accompanied your card for other fees that may apply. • Non-Bank of America ATM fees are in addition to other account fees that may apply to the transaction, such as a Withdrawal Limit Fee for savings.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in a foreign country	$5.00 each	

Other Account Fees and Services *continued*

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Check Cashing— *Bank of America customer*		*No fee*	*Effective August 15, 2017, a fee may be assessed to a payee presenting a check that you issued through Online or Mobile Bill Pay if the payee is not a Bank of America relationship customer.* *A Bank of America relationship customer is an account owner of a deposit account (checking, savings, CD), Individual Retirement Account (IRA), loan, credit card, mortgage, safe deposit box or a Merrill Edge or Merrill Lynch Investment account.*
Check Cashing— *Nonrelationship customer*	*Applies to checks issued through Online or Mobile Bill Pay from SafeBalance Banking accounts*	*Effective August 15, 2017 - $8.00 per check for amounts greater than $50.00.*	
Copies	Deposit Slips and other Credit Items	No fee for the first two copies of each request. After two copies, there is a $3.00 fee for each copy up to a maximum of $75.00 per request.	• This fee does not apply to accounts opened in Massachusetts and New Hampshire. • You can avoid the fee by viewing and printing your available Deposit Slips and other Credit Items, instead of ordering the copy from us. For information about what Deposit Slips and other Credit Items are available in Online Banking, please review the Activity tab.
	Statement Copy Fee	$5.00 per copy	• You can avoid the fee by viewing and printing your available statements in Online Banking, instead of ordering the copy from us. For information about what statements are available in Online Banking, please review the Statements and Documents tab. • This fee does not apply to your monthly statement delivery. It only applies when you request paper copies of your statements.
Miscellaneous	Deposit Ticket Orders	Fee varies	• We may change the fees for deposit ticket orders at any time. Visit a financial center or call us at the number on your statement for current fees.
	Deposited Item Returned or Cashed Item Returned Fee (Returned Item Chargeback Fee)	$12.00 each domestic item $15.00 each foreign item	• We charge this fee each time an item that we either cashed for you or accepted for deposit to your account is returned to us unpaid.
	Legal Process Fee	$125.00 each occurrence (or such other rate as may be set by law)	• Fee applies to each legal order or process that directs us to freeze, attach or withhold funds or other property, such as an attachment, levy or garnishment.
	Stop Payment Fee	$30.00 each request	• There is no charge to place a stop payment on a recurring debit card transaction.
	Wire Transfers and Drafts, Incoming or Outgoing (U.S. or International)	Fee varies	• We may change the fees for wire transfers and drafts at any time. Visit a financial center or call us at the number on your statement for current fees. • For an international wire transfer, other financial institutions involved in the wire transfer may also charge fees and deduct their fees from the amount of the wire transfer.

Other Important Account Information for SafeBalance Banking

This section covers some of the features and services that may apply to your account and amends certain sections of the *Deposit Agreement and Disclosures*.

How does the Deposit Agreement and Disclosures apply to my SafeBalance Banking account?

In addition to the terms in this schedule of fees, the terms in the *Deposit Agreement and Disclosures*, the signature card for your account and the other account opening documents govern your account and are part of the binding contract between you and us for your account. Please read these documents carefully. Certain sections of the *Deposit Agreement and Disclosures* that are changed are noted in this section and in the Overview.

NOTE: The following two questions amend the "Insufficient Funds – Overdrafts and Returned Items" section of the *Deposit Agreement and Disclosures.* That section is deleted and replaced with the information in these two questions.

My account is overdrawn. I thought I could not overdraft my SafeBalance Banking account?

While we attempt to limit overdrafts on your SafeBalance Banking account, at times overdrafts still occur. When we determine that you do not have enough available funds in your account to cover an item, then we consider the item to be an insufficient funds item. Without notice to you, we may overdraw your account (an overdraft item) or we decline or return the insufficient funds item without payment (a returned item). We will not charge you an Overdraft or NSF: Returned Item Fee or an Extended Overdrawn Balance Charge if this happens. However, you may be assessed a fee by the merchant. If we overdraw your account, you agree to repay us immediately, without notice or demand from us. We ordinarily use deposits you or others make to your account to pay overdrafts, fees and other amounts you owe us.

Sometimes funds in your account are not available to cover your items. When we determine that funds in your account are subject to a hold, dispute, or legal process, then these funds are not available to cover your items. We usually make this determination once at the end of the day when we process items. Examples of holds include deposit holds, holds related to cash withdrawals, and authorization holds we place on the account for debit card transactions. We may also treat as an insufficient funds item each fee that creates an overdraft and each deposited item returned to us unpaid that creates an overdraft.

Here is an example of how your account might still become overdrawn. You use your debit card to pay for your meal at a restaurant. The restaurant asks us to authorize the transaction for the amount of the meal. We authorize the transaction because we determine you have enough available funds in your account at this time. However, if you decide to use your debit card to leave a tip and add the amount of the tip to the cost of the meal, that will increase the total amount of the transaction. When the transaction is processed that night, you may not have enough funds in your account to cover the increased amount of the transaction and it will overdraw your account. This means, unless you promptly transfer or deposit enough available funds, when we receive the debit card transaction, it will overdraw your account. However, you will not be charged an overdraft fee by the Bank.

What overdraft setting is applied to the SafeBalance Banking account?

We automatically apply our Decline All transactions overdraft setting to your SafeBalance Banking account. With the Decline All transactions overdraft setting, we do not authorize or pay any transaction unless we determine that at the time of the transaction you appear to have enough available funds in your account to cover the transaction. This means that we will decline or return these transactions unpaid. You may be assessed a fee by the merchant if this happens.

What happens if a merchant wants to use my account number and routing number for a payment?

Be careful when you give out your account number and routing number to an originator that you authorize to process debits from your account. At times, an originator may process such a payment as a check and submit it to us instead of an ACH (Automated Clearing House) transaction. Those checks will be rejected and not paid. You may be charged a fee by the originator if this happens. If you give anyone your account number and routing number, make sure it is for an ACH transaction only. You may want to ask if the merchant can use your debit card number instead. Please see the *Deposit Agreement and Disclosures* for more details about ACH transactions.

How do I pay my bills if I don't have checks? What if I need to write a check?

You can pay bills using our Online and Mobile Bill Pay service or transfers, your debit card, cash, or by making electronic payments. If you find that you need to write checks on a regular basis and these alternatives do not work for you, you may need a traditional checking account that offers check-writing capability. Cashier's checks are also available for a fee in our financial centers.

What happens if my employer asks for a voided check for direct deposit?

Since the SafeBalance Banking account does not include checks, you cannot provide a voided check. You can provide the account number and routing number and indicate that it is a checking account so that your employer can set up a direct deposit to your account. Or, you can complete the printable enrollment form in Online Banking. You can also ask us for a direct deposit enrollment form that you can provide to your employer.

How does Online and Mobile Bill Pay work with the SafeBalance Banking account?

SafeBalance Banking accounts have different Bill Pay features than traditional checking accounts. When you use Online and Mobile Bill Pay with your SafeBalance Banking account, payments will be withdrawn from your account before delivery to the payee. The date that payments will be withdrawn from your account and the delivery date of the payments will be shown in Online Bill Pay. If there are not enough funds in your account when we attempt to withdraw the payment amount, the payment will not be sent. Please refer to the *Online Banking Service Agreement* for more details on how Bill Pay works for SafeBalance Banking accounts.

(continued)

Other Important Account Information for SafeBalance Banking *continued*

What happens if I want a different account instead of my SafeBalance Banking account?

To change to a different account type, you must open a new checking account. If you choose to open a new checking account, you will be assigned a new account number. This will impact any situation where you use your account number, such as any direct deposits to or automatic withdrawals from your account. You will need to provide the updated account number to any third parties that you gave the original account number to for payments or direct deposits. You can close your SafeBalance Banking account but keep in mind any payments that may be outstanding; these payments may be rejected. Please look closely at the terms and conditions of your new account since important features such as fees and overdrafts will change.

If you use our Online and Mobile Bill Pay service, payments will be made differently. Please see the *Online Banking Service Agreement* for more details.

What happens if I want a SafeBalance Banking account instead of my current account?

You must open a new SafeBalance Banking account. If you choose to do this you will be assigned a new account number for your new SafeBalance Banking account. This will impact any situation where you use your account number, such as any direct deposits to or automatic withdrawals from your account. You will need to provide the updated account number to any third parties you gave the original account number to for payments or direct deposits. You can close your existing account but keep in mind any checks or other payments that may be outstanding.

Some other important things to know about SafeBalance Banking include:

- You cannot write paper checks with the SafeBalance Banking account. Please see the account description on page 2 for more details and restrictions.
- You cannot use checks from your existing account with your SafeBalance Banking account and any outstanding checks will not be paid once the existing account is closed. This may result in fees assessed by merchants for returned items ("bounced check" fees).
- Overdrafts will typically not be paid on your new SafeBalance Banking account. If you do not have sufficient funds in your account to cover an item, the item will usually be returned unpaid. You may be assessed a fee by a merchant if this happens. There are circumstances when an overdraft will occur. Please see the other questions in this section for more details on how that can happen.
- You will have a separate statement for your SafeBalance Banking account.
- If you use our Online and Mobile Bill Pay service with your new SafeBalance Banking account, payments will be made differently. Please see "How does Online and Mobile Bill Pay work with the SafeBalance Banking account" on page 5.

Please review the product description on page 2 and this schedule of fees for more information about the SafeBalance Banking account.

What happens if I have to choose between "Checking" and "Savings" to start a transaction?

Please choose "Checking" if you are trying to access your SafeBalance Banking account. While the SafeBalance Banking account does not have paper checks, choosing this option will allow you to access the funds in your SafeBalance Banking account if you are at an ATM or need to complete a deposit slip.

Can I combine my SafeBalance Banking account statement with my other deposit account statements?

No, combined statements are not available with the SafeBalance Banking account. The "Combined Statements" section of the *Deposit Agreement and Disclosures* is amended accordingly.

What does it mean to link accounts for pricing?

Some of Bank of America's accounts can be linked for pricing. However, the SafeBalance Banking account cannot be linked to any other account for pricing purposes. If you have another account with Bank of America, like a CD or savings account, you won't be able to link it to the SafeBalance Banking account for pricing purposes. The "Combined Balance Service" and "Limits on Linking Accounts" sections of the *Deposit Agreement and Disclosures* do not apply to the SafeBalance Banking account.

What are paperless statements?

With the paperless statement option, you get your account statement electronically through Online Banking and you do not get a paper statement. You can enroll in paperless statements at a financial center or through Online Banking. When you enroll at a financial center, you'll need to log into Online Banking from your computer to confirm your choice.

Keep the Change® Savings Service

When you enroll in our Keep the Change savings service, we round up the amount of any Bank of America debit card purchase made by you or a joint owner of your SafeBalance Banking account to the next whole dollar amount, and transfer the amount in excess of the purchase price to your savings account.[1]

We aggregate the round-up from purchases that post to your SafeBalance Banking account each business day and make a single transfer (the "Keep the Change" transfer) at the end of the business day. If on a business day you do not have sufficient available funds in your SafeBalance Banking account, or if any transaction has overdrawn your checking account, we do not round-up purchases posted on that business day and we cancel the Keep the Change transfer for that day.

If your debit card purchase is subsequently cancelled or reversed, the corresponding Keep the Change transfer will remain in the savings account.[1] We may cancel or modify the Keep the Change service at any time.

[1]If your savings account enrolled in Keep the Change is converted to a checking account, Keep the Change transfers will continue to be made into that account. Should you have any questions on the Keep the Change program, please contact your nearest financial center.

Keep the Change® Patent No. US 8,301,530B2.

Notice for Maine Deposit Account Customers:

If you have a dispute with us regarding your deposit account, you may contact us and attempt to resolve the problem directly. If you feel we failed to resolve the problem, communicate the problem and the resolution you are seeking to:

Bureau of Financial Institutions
36 State House Station
Augusta, ME 04333-0036

To file a complaint electronically, you may contact the Bureau of Financial Institutions at the following internet address: http://www.state.me.us/pfr/bkg/bkg_consumer.htm

The Bureau of Financial Institutions will acknowledge receipt of your complaint promptly and investigate your claim. You will be informed of the results of the investigation.

When your complaint involves a federally-chartered financial institution, such as Bank of America, the Bureau of Financial Institutions will refer it to the appropriate federal supervisory agency and inform you to whom it has been referred.

EXHIBIT B

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 AND HASSAN ZAVAREEI IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AND FOR APPLICATION OF ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

Class Counsel, Jeff Ostrow and Hassan Zavareei, hereby declare as follows:

1. Pursuant to the Preliminary Approval Order, we are Class Counsel under the Settlement with Bank of America, N.A. ("BANA" or "Bank") being presented to the Court for Final Approval. We submit this declaration in support of the Memorandum of Points and Authorities in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Settlement, Application for Attorneys' Fees and Costs and Service Awards ("Memorandum").[1] 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.

Background and Procedural History

2. This Action seeking relief under the National Bank Act's ("NBA") usury provisions has been litigated for nearly two years. Class Counsel have been involved in other

[1] The definitions and capitalized terms in the Settlement Agreement ("Agreement") and Memorandum are hereby incorporated as though fully set forth in this Order, and shall have the same meanings attributed to them in those documents.

litigation against major U.S. banks for almost a decade.

3. The litigation has been hard-fought. The Parties have engaged in motion practice, briefing pertaining to whether the Ninth Circuit would grant the Bank interlocutory appeal of the Order denying the Motion to Dismiss, extensive mediation briefing, and discovery.

4. Class Counsel is particularly experienced in the litigation, certification, trial, and settlement of nationwide class action cases. In negotiating this Settlement, Class Counsel had the benefit of years of experience litigating against national banks, including many cases involving the assessment of overdraft fees. Class Counsel also litigated and settled another class action against BANA involving a different BANA overdraft fee policy.

5. In litigating and resolving other consumer class actions against national banks involving overdraft fees, Class Counsel has been at the forefront of the NBA usury claims pertaining to continuous (a/k/a sustained) overdraft fees like the Extended Overdrawn Balance Charges ("EOBCs").

6. Before filing suit, Class Counsel spent many hours investigating the usury claims of several potential plaintiffs against the Bank. Class Counsel interviewed a number of customers and potential plaintiffs to gather information about the Bank's conduct and its impact upon consumers. This information was essential to Class Counsel's ability to understand the nature of the Bank's conduct, the language of the Account agreements at issue, and potential remedies. In addition, Class Counsel also expended significant resources researching and developing the legal claims at issue.

7. Class Counsel conducted a thorough investigation and analysis of Plaintiffs' claims and engaged in extensive briefing on the fundamental legal issue of whether the EOBCs are a usurious charge, data analysis with the assistance of Plaintiffs' expert, and confirmatory discovery with the Bank. Class Counsel's review enabled it to gain an understanding of the law and evidence related to central questions in the case, and prepared it for well-informed settlement negotiations. Class Counsel was also well-positioned to

evaluate the strengths and weaknesses of Plaintiffs' claims, and the appropriate basis upon which to settle them, as a result of their litigating similar claims in courts across the country.

8. Class Counsel led the investigation that resulted in this Action. Indeed, Class Counsel persisted to pursue the usury claim even after three other district courts had rejected it in other cases. *See McGee v. Bank of Am., N.A.*, 2015 WL 4594582 (S.D. Fla. July 30, 2015), *aff'd* 674 Fed. Appx. 958 (11th Cir. Jan. 18, 2017); *Shaw v. BOKF, Nat'l Ass'n*, 2015 WL 6142903 (N.D. Okla. Oct. 19, 2015); *In re TD Bank, N.A. Debit Card Overdraft Fee Litig.*, 150 F. Supp. 3d 593, 641-642 (D.S.C. 2015). Since then others lost on the same theory. *See Johnson v. BOKF, N.A. d/b/a Bank of Texas*, No. 3:17-cv-663, Dkt. No. 30 (N.D. Tex. Oct. 24-2017); *Moore v. MB Fin. Bank, N.A.,* No. 17 C 4716, 2017 U.S. Dist. LEXIS 189585 (Nov. 16, 2017); *Dorsey v. T.D. Bank, N.A.*, No. 6:17-cv-01432, Dkt. No. 30 (D.S.C. Feb. 28, 2018), *appeal filed*, Case No. 18-1356 (4th Cir.); *Fawcett v. Citizens Bank, N.A.*, No. 17-11043, Dkt. No. 37 (D. Mass., Apr. 19, 2018). To date, six federal courts have granted seven separate motions to dismiss similar cases holding that the respective banks' charges were not interest and therefore not subject to the NBA's usury limit.

9. In *McGee*, the U.S. Court of Appeals for the Eleventh Circuit affirmed the Florida district court's judgment of dismissal on the same issue. *McGee v. Bank of Am., N.A.*, 2015 WL 4594582 (S.D. Fla. July 30, 2015), *aff'd* 674 F. App'x 958 (11th Cir. Jan. 18, 2017). This Action is the only one of its kind that has survived to date, and the only one in which a defendant bank has agreed to pay cash and cease the very practice at the heart of the complaint. 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. So not only were the claims in this litigation untested and novel, but it took Class Counsel a substantial amount of pre-filing work to research and develop the legal arguments and claims to support the finding that EOBCs were interest. Nonetheless, Class Counsel developed this case and the few others like it, relying on their unique expertise in consumer banking practices and litigation related thereto.

Once the Action was on file, Class Counsel then fought to overcome the Bank's vigorous protestations that the case was wrong-headed; and persisted in driving the hard bargain that resulted in this Settlement. Not one other firm or governmental entity brought or prosecuted these claims. In short, without Class Counsel's hard work, and investment of resources, BANA's alleged misconduct would have gone without recompense.

The Settlement

10. Plaintiffs settled the Action with the benefit of important informal discovery resulting in an expert analysis of key documentation and data regarding the Bank's assessment and collection of EOBCs. The review of this information and data positioned Class Counsel to evaluate with confidence the strengths and weaknesses of Plaintiffs' claims and prospects for success at class certification, summary judgment, and trial. As noted above, confirmatory discovery conducted after the Parties executed the term sheet agreeing to the material terms of settlement further aided Plaintiffs' analysis.

11. The Settlement in this case is the result of intensive, arm's-length negotiations between experienced attorneys who are familiar with class action litigation and with the legal and factual issues of this Action.

12. The Parties engaged in a full day formal mediation before an experienced and respected mediator, Honorable Layn Phillips (Ret.). At the mediation in Newport Beach, California, there were five members of Class Counsel present. The Bank had nearly the same number of people representing its interest. Although the Parties did not settle that day, much progress was made laying the foundation to the eventual resolution of this Action. The Parties continued their settlement discussion for a couple of months with the assistance of Judge Phillips.

13. The parties negotiated and executed a term sheet confirming the material terms of settlement on October 19, 2017.

14. After the Parties executed the term sheet, Class Counsel performed confirmatory discovery at the Bank's headquarters in Charlotte, North Carolina.

15. The Parties then turned to drafting the Agreement. On October 31, 2017, the Parties signed the Agreement.

Terms of the Settlement

16. Under the terms of the Agreement, the Bank has agreed to stop assessing the EOBC charge on consumer checking accounts. For a period of five years, from December 31, 2017, though December 31, 2022, the Bank will not implement and/or assess EOBCs, or an equivalent fee, in connection with accounts.

17. The Bank has agreed to make $29.1 million dollars in Debt Reduction Payments for money it claims is owed for outstanding EOBCs assessed against Settlement Class members whose accounts have been closed. Settlement Class members who incurred an EOBC after February 14, 2014, and had their accounts closed by the Bank and still had an uncollected EOBC outstanding, will have their outstanding balance reduced by an amount of up to $35. If the account balance is less than $35, the Bank will adjust the account to reflect a $0.00 account balance. Further, to the extent BANA has reported the accounts to any credit bureaus, BANA will update the reporting.

18. In addition to the $29.1 million of Debt Reduction, the total Settlement Amount of $66.6 million includes a $37.5 million cash Settlement Fund. The Settlement provides for automatic delivery, without a claims process, to Settlement Class members of the Settlement benefits. Should residual funds remain following a second distribution, or in the event a second distribution is not economically feasible, it is the intent of the Parties that the funds shall be distributed to *cy pres* recipient, Consumers for Responsible Lending (www.responsiblelending.org), a non-profit organization that provides a national voice against abusive financial practices.

19. The cash Settlement Fund will be used to pay: (a) Settlement Class members their respective share of the Net Cash Settlement Amount; (b) Class Counsel for any Court awarded attorneys' fees and litigation costs; (c) any Court awarded Service Awards for the Class Representatives; and (d) any Administrator Hourly Charges. The Bank funded the

cash Settlement Fund on January 10, 2018.

20. Administration Costs shall be paid separately by the Bank, except for any hourly services requested of the Administrator. The Parties currently estimate the Administration Costs to be paid by the Bank at approximately $2 million.

21. Class Counsel is requesting $14.5 Million for attorneys' fees, as well as reimbursement of litigation costs and expenses incurred in connection with the Action totaling $53,119.92. The Parties negotiated and reached agreement regarding attorneys' fees and costs only after agreeing on all material terms of the Settlement.

Risks of Continued Litigation

22. Continued litigation would have required tremendous time and expenses for both sides associated with contested class certification proceedings and possible interlocutory appellate review, completing merits discovery, pretrial motion practice, trial, and final appellate review.

23. Plaintiffs and Class Counsel are confident in their case, but are also pragmatic in their awareness of the Bank's various defenses, and the risks inherent to litigation of this magnitude that challenges engrained banking industry practice.

24. Plaintiffs faced the risk of losing during the pending appeal of the Order denying the Motion to Dismiss, at summary judgment, at trial, or on a subsequent appeal based on various theories and defenses advanced by the Bank.

25. Each of these risks, by itself, could have impeded the successful prosecution of these claims at trial and in an eventual appeal—resulting in zero benefit to the Settlement Class. Under the circumstances, Plaintiffs and Class Counsel appropriately determined that the Settlement reached with the Bank outweighs the gamble of continued litigation.

26. The traditional means for handling claims like those at issue here would tax the court system, require a massive expenditure of public and private resources, and—given the relatively small value of the claims of the individual members of the Settlement Class—could be impracticable.

27. The Settlement provides immediate and substantial benefits to approximately seven million Bank customers. The proposed Settlement is the best vehicle for the Settlement Class to receive the relief to which they are entitled in a prompt and efficient manner.

28. Whether the Action would have been tried as a class action is also relevant in assessing the fairness of the Settlement. As the Court had not yet certified a class at the time the Agreement was executed, it is unclear whether certification would have been granted and if granted, whether it would have withstood appellate scrutiny in the likely event of an appeal by the Bank. This litigation activity would have required the Parties to expend significant resources and risk further uncertainty.

29. Based on the Bank's data, Class Counsel estimates that the Settlement Class' most likely recoverable damages at trial would have been $725,508,808.51. This figure was derived from Class Counsel's confirmatory discovery that resulted in BANA furnishing the Declaration of Riaz Bhamani, a BANA employee, an exhibit to the Memorandum. This figure was calculated by aggregating the total EOBCs assessed multiplied by the amount of each EOBC and then factoring in the total amount of chargeoffs and refunds. That most likely recoverable damages figure is dwarfed by the $1.2 billion that will be saved in EOBCs. BANA has agreed to cease charging during the five-year period commencing December 31, 2017.

30. Even counting *only* the direct financial payments that will be made as a result of the Settlement—$66.6 million in payments and account credits to Settlement Class members and another approximately $2 million in Administration Costs paid by the Bank—Plaintiffs and Settlement Class members are recovering approximately 9% of their most probable damages, without further risks attendant to litigation.

31. The benefits of settlement in this case outweigh the risks and uncertainties of continued litigation, as well as the attendant time and expenses associated with contested class certification proceedings and possible interlocutory appellate review, completing merits

discovery, pretrial motion practice, trial, final appellate review by providing of substantial current and future relief to almost seven million Bank customers without further delay.

Class Treatment is Appropriate

32. As stated previously, Class Counsel has significant experience litigating class claims, including numerous claims against national banks, through their active roles similar class actions throughout the country. *See also* Firm Resumes of Class Counsel [DE #80-4, 80-5, 80-6, 80-7]. In litigating these cases, Class Counsel has been at the forefront of litigating NBA usury claims pertaining to continuous (a/k/a sustained) overdraft fees like the EOBC.

33. Class Counsel possesses extensive knowledge of and experience in prosecuting class actions in courts throughout the United States, and have recovered hundreds of millions of dollars for the classes they represented. In addition, Class Counsel includes firms with appellate expertise, which was used to extensively analyze the chances of success in both in the Ninth Circuit and the U.S. Supreme Court. The experience, resources, and knowledge Class Counsel brings to this Action is extensive and formidable. Class Counsel is qualified to represent the Settlement Class and has, along with the Class Representatives, vigorously protected the interests of the Settlement Class.[2]

34. The Administrator has overseen the Notice Program. The Notice Program is designed to provide the best notice practicable, and is tailored to take advantage of the information the Bank has available about the Settlement Class.

35. The Notice Program constituted sufficient notice to all persons entitled to notice. The Notice Program satisfied all applicable requirements of law, including, but not

[2] Class Representative Joanne Farrell ("Farrell") passed away January 18, 2018. Farrell passed away intestate and is survived solely by her adult children. Farrell vigorously protected the interests of the Settlement Class before her death, and a motion has been filed to substitute her adult children as Plaintiffs and Class Representatives pursuant to Fed. R. Civ. P. 25. [DE #100]. The motion had not yet been ruled as of the time the Motion and Memorandum were filed.

limited to, Federal Rule of Civil Procedure 23 and constitutional due process.

36. The Notice Program was completed pursuant to this Court's instructions in the Preliminary Approval Order, and was comprised of three parts: (1) email notice ("Email Notice") designed to reach those Settlement Class members for which the Bank maintains email addresses; (2) direct mail postcard notice ("Postcard Notice") to all Settlement Class members for whom BANA did not provide an email address and those who were sent an email that was returned undeliverable; and (3) a "Long Form Notice" containing more detail than the two other notices that has been available on the Settlement website (*www.eobcsettlement.com*) and via U.S. mail upon request.

37. Names and direct contact information for members of the Settlement Class were identified by the Bank. Individual Notice was sent to virtually all members of the Settlement Class as name and direct contact information was identified for more than 99.9% of all Accounts included in the Settlement Class.

38. The Notice properly informed and continues to inform members of the Settlement Class of the substantive terms of the Settlement. It advised members of the Settlement Class of their options for opting-out of or objecting to the Settlement, and how to obtain additional information about the Settlement. The Notice Program was designed to reach a high percentage of the Settlement Class and exceeded the requirements of constitutional due process.

39. The Administrator also worked with Class Counsel to communicate with Settlement Class members who had questions the Administrator could answer.

40. Further, the injunctive relief provided for in the Settlement is warranted because until agreeing to cease the practice for the Settlement, BANA's EOBC policy was uniformly applied to all Settlement Class members. BANA has agreed, subject to Final Approval, to change its business practices beginning on or before December 31, 2017, agreeing not to implement or assess EOBCs, or any equivalent fee, in connection with BANA consumer checking accounts, for a period of five years, or until December 31, 2022.

Objectors

41. A total of 13 individuals have lodged objections to the Settlement, 11 of which are timely and two of which are untimely. Timely Objector Khobragade has since notified Class Counsel of his intention to withdraw his objection. The objectors are either (1) represented by "professional objector" counsel, who routinely object to settlements not out of concern for class members but to advance their own financial or ideological interests, or (2) pro se objectors, whose concerns are not grounds to deny approval and, in some cases, are not even true objections.

Professional Objectors	**Represented by**
Rachel Threatt	Ted Frank
Amy Collins	Timothy Hanigan and Chris Bandas
Stephen Kron	Caroline Tucker
Steven Helfand	An attorney appearing *pro se*
Estefania Osorio Sanchez	Michael Luppi and Albert Bacharach
Pro se Objectors	
Shenita Thompson	
Ashwin Khobragade	
George O'Dell	
Bruce Ebneter	
Algerine Romero	
Ochiochioya Eidon	
Untimely Pro se Objectors	
Michael Colley	
Mark Gullickson	

42. Objector Estefania Osorio Sanchez [DE #88] is represented by professional objectors Michael Luppi and Albert Bacharach. Mr. Bacharach did not appear in the paperwork for Ms. Sanchez's objection, but when Class Counsel attempted to schedule a mediation with the objectors, Mr. Bacharach contacted Class Counsel claiming to represent Ms. Sanchez.

43. Although Class Counsel had suspicions regarding the professional objectors'

motives, Class Counsel reached out to all objectors in an effort to mediate the objections and address their concerns prior to final approval with the hope of avoiding an appeal that would delay recovery by the class.

44. On May 15, 2018, counsel for all of the professional objectors—except for Ted Frank, who refused to attend the mediation or even discuss his objection with Class Counsel—participated in a telephonic mediation with JAMS mediator Linda Singer. The participants included Chris Bandas, Caroline Tucker, Albert Bacharach, and Steven Helfand, along with *pro se* objector Thompson. Class Counsel made repeated efforts to persuade Mr. Frank to participate in the mediation, which he refused.

45. Class Counsel does not now know whether objector mediation participants will formally withdraw their objections, but each, except for Helfand, confirmed to Class Counsel and the mediator that a reduced $14.5 million request was acceptable to them and reasonable.

CAFA Notice

46. The required CAFA Notice was delivered to the Attorney Generals of the United States for all 50 states, the District of Columbia, and the United States Territories; the United States Department of Justice; and perhaps most important to the Office of the Comptroller of the Currency ("OCC"), which the Court is fully aware is the chief regulator of BANA, pursuant to the NBA. The purpose of CAFA notice is to protect class members from being involved in a settlement that may be deemed unfair or inconsistent with regulatory policies, and to protect consumers from class action abuse, particularly settlements that generate large attorney's fees which consume most of the economic value of the settlement. Notably, none of those authorities have objected to the Settlement, including Class Counsel's application for attorneys' fees.

Attorneys' Fees

47. In the time since filing Plaintiffs' Attorneys' Fee and Cost Application, Class Counsel has spent significant additional time on this matter. Tycko & Zavareei ("TZ") has

already exceeded all of the estimated future hours listed in the Application, and has spent an additional 164.30 hours on top of that communicating with Settlement Class members and objectors, preparing for and attending mediation with objectors, and working on the Motion for Final Approval and Plaintiffs' Response to Objections. This amounts to a lodestar increase of approximately $73,515.90 over their estimate in the Application.

48. Kopelowitz Ostrow Ferguson Weiselberg Gilbert ("KO") has likewise exceeded all of the estimated future hours listed in the Application, and has spent an additional 144.25 hours on top of that communicating with Settlement Class members and objectors, preparing for and attending mediation with objectors, and working on the Motion for Final Approval and Plaintiffs' Response to Objections. This amounts to a lodestar increase of approximately $104,581.25 over KO's estimate in the Fee Application.

49. Creed & Gowdy ("CG") has likewise exceeded all of the estimated future hours listed in the Application, and has spent an additional 37 hours on top of that communicating with Settlement Class members and objectors, preparing for mediation with objectors, and working on the Motion for Final Approval and Plaintiffs' Response to Objections. This amounts to a lodestar increase of approximately $25,900.00 over CG's estimate in the Fee Application.

50. Kelly/Uustal, PLC ("KU") has likewise exceeded all of the estimated future hours listed in the Fee Application, and has spent an additional 18.2 hours on top of that communicating with Settlement Class members and objectors, preparing for and attending mediation with objectors, and working on the Motion for Final Approval and Plaintiffs' Response to Objections. This amounts to a lodestar increase of approximately $10,525.50 over KU's estimate in the Fee Application.

51. In total, after subtracting for "future time" already accounted for in the Attorneys' Fee and Cost Application, Class Counsel's total lodestar has increased by approximately $214,522.65 to a total of approximately $1,642,570.15 in the time since filing the Fee Application.

52. This revised lodestar does not include any additional future time for appearing at the Final Approval hearing or defending the Settlement on appeal. From TZ's recent experience defending final approval of a class action settlement that was attacked on appeal by Frank, TZ has spent an additional 104.4 hours *after* the final approval briefing, and the appeal has yet to be argued in that matter. Additionally, TZ has co-counsel in that matter which has spent even more time in the appellate proceedings, so it is conservative to estimate that Class Counsel will spend at least another 200 hours on this matter after filing the Final Approval brief, if Frank attacks final approval on appeal.

We declare under penalty of perjury that the foregoing is true and correct. Signed on May 30, 2018.

/s/Jeff Ostrow
JEFF OSTROW
KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT
Fort Lauderdale, Florida

/s/ Hassan Zavareei
HASSAN ZAVAREEI
TYCKO & ZAVAREEI LLP
Washington, D.C.

EXHIBIT C

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 RIAZ BHAMANI

I, Riaz Bhamani, hereby swear and testify as follows:

1. I am an employee of Defendant Bank of America ("BANA") with the title of Fee Management Executive. I am above 18 years of age, and, if called as a witness, I could and would competently testify to the matters set forth herein.

2. The total amount of Extended Overdrawn Balance Charges ("EOBCs") that BANA assessed to consumer checking accounts, minus those EOBCs that, as of June 20, 2017 had been refunded or charged off, for the period of February 25, 2014 through May 31, 2017, was $725,508,808.51.

3. I oversaw the calculation of the figure in Paragraph 2. Data for the calculation was pulled from BANA's business records.

4. I, along with other BANA employees, verified the accuracy of the figure in Paragraph 2 by conducting approximately 100 spot checks of the data.

5. Some accounts to which BANA assessed EOBCs were closed without the customers having cured the overdrafts, such that an EOBC could remain due on the account at the time of charge off. Between February 25, 2014 and February 3, 2016 (as of which date BANA eliminated outstanding fees from account balances once the accounts were charged off), approximately 837,558 such accounts were closed in overdrawn status, excluding accounts in connection with which overdrawn balances were discharged in bankruptcy and accounts whose holders are deceased. This left as much as approximately $29.1 million in outstanding EOBCs uncollected from accountholders, as of September 20, 2017.

6. I oversaw the calculation of the figure in Paragraph 5. Data for the calculation was pulled from BANA's business records.

7. I, along with other BANA employees, verified the accuracy of the figure in Paragraph 5 by comparing and reconciling the data across two separate sources.

8. As a result of the cessation of the EOBC as a result of the Settlement, BANA projects to earn approximately $20,000,000 less in fee revenue each month than it would have earned had BANA continued to assess the EOBC.

On this 17 day of APRIL, 2018, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Respectfully submitted,

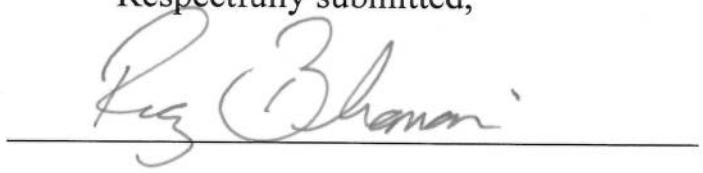

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL, Plaintiff, v. BANK OF AMERICA, NA., Defendant.	Case No.: 3:16-cv-00492-L-WVG

DECLARATION OF CAMERON R. AZARI, ESQ., ON IMPLEMENTATION AND ADEQUACY OF SETTLEMENT NOTICE PROGRAM

I, CAMERON R. AZARI, ESQ., hereby declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Director of Legal Notice for Hilsoft Notifications ("Hilsoft); a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. Hilsoft is a business unit of Epiq Class Action & Claims Solutions Inc. ("Epiq").

3. Hilsoft has been involved with some of the most complex and significant notices and notice programs in recent history. We have been recognized by courts for our testimony as to which method of notification is appropriate for a given case, and we have provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances.

4. In the case resolved by this settlement, *Joanne Farrell v. Bank of America, N.A.*, Case No. 3:16-cv-00492-L-WVG, my colleagues and I were asked to design a Notice Program (or "Notice Plan") to inform Settlement Class members about their rights under the proposed class action

settlement. In the "*Declaration of Cameron R. Azari*," executed on December 12, 2017, I detailed my review of the proposed email notice and responded to the Court's order that the email notice be formatted "in a manner designed to escape email inbox spam filters."

5. Hilsoft has served as notice expert and has been recognized and appointed by courts to design and provide notice in many large and complex cases, including: *In re: Takata Airbag Products Liability Litigation (Settlements with – BMW, Mazda, Subaru, Toyota, Honda and Nissan)*, MDL No. 2599 (S.D. Fla.) ($1.2 billion in settlements regarding Takata airbags. The monumental Notice Plans included individual mailed notice to more than 51.5 million potential Class Members and extensive nationwide media via consumer publications, U.S. Territory newspapers, radio spots, internet banners, mobile banners, and specialized behaviorally targeted digital media. Combined, the Notice Plan reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle an average of 4.0 times each); *In Re: Checking Account Overdraft Litigation*, MDL 2036 (S.D. Fla.) (Multiple bank settlements between 2010-2018 involving direct mail and email to millions of class members and publication in relevant local newspapers. Representative banks include, Fifth Third Bank, National City Bank, Bank of Oklahoma, Webster Bank, Harris Bank, M & I Bank, Community Bank, PNC Bank, Compass Bank, Commerce Bank, Citizens Bank, Great Western Bank, TD Bank, Bancorp, Whitney Bank, Associated Bank, and Susquehanna Bank); *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, MDL 2179* (E.D. La.) (Dual landmark settlement notice programs to separate "Economic and Property Damages" and "Medical Benefits" settlement classes. Notice effort included over 7,900 television spots, over 5,200 radio spots, and over 5,400 print insertions and reached over 95% of Gulf Coast residents); *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability*

Litigation (Bosch Settlement), MDL No. 2672 (N.D. Cal.) (Comprehensive notice program within the Volkswagen Emissions Litigation that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 via email. A targeted internet campaign further enhanced the notice effort); and *Rose v. Bank of Am. Corp.*, Case No. 11-cv-02390-EJD (N.D. Cal.) (TCPA settlement with email and postcard notice to over 6.9 million Class Members and publication notice in *Parade Magazine* and other consumer publications).

6. We have been recognized by courts for our testimony as to which method of notification is appropriate for a given case, and have provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances. For example:

a) *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (Bosch Settlement), MDL No. 2672 (N.D. Cal.), Judge Charles R. Breyer on May 17, 2017:

> *The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.)*

b) In *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.*, No. 14-23120 (S.D. Fla.) Judge Marcia G. Cooke stated on April 11, 2016:

> *Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for*

> *notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.*

c) In *Steen v. Capital One, N.A.,* No. 2:10-cv-01505-JCZ-KWR (E.D. La.) and No. 1:10-cv-22058-JLK (S.D. Fla.) as part of *In Re: Checking Account Overdraft Litigation,* MDL 2036 (S.D. Fla.): Judge James Lawrence King stated on May 22, 2015:

> *The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15). This Settlement with Capital One was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so. Azari Decl. ¶¶ 30-39.*

d) *Rose v. Bank of America Corporation, and FIA Card Services, N.A.,* No. 5:11-CV-02390-EJD; 5:12-CV-04009-EJD (N.D. Cal.), Judge Edward J. Davila on August 29, 2014: d

> *The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.*

e) In *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* (Economic and Property Damages Settlement), MDL No. 2179 (E.D. La.): Judge Carl J. Barbier stated on December 21, 2012:

> *The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.*
>
> *The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.*

f) In *In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation*, MDL 09-2046 (S.D. Tex.), Judge Lee Rosenthal stated on March 2, 2012:

> *The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement… Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197 (internal quotation marks omitted).*

7. Numerous other court opinions and comments as to our testimony, and opinions on the adequacy of our notice efforts, are included in Hilsoft's curriculum vitae included as **Attachment 1**.

8. On December 11, 2017, the Court appointed Epiq as the Administrator. The Court also approved the Notice Program and the proposed forms of Notice in the *Order Conditionally*

Granting Preliminary Approval of Class Action Settlement. With the Court's approval, and according to the *Order Granting Plaintiffs' Unopposed Motion for Approval of Amended Class Notice Forms and Granting Motion to Substitute Class Counsel*, which the Court entered on December 21, 2017, Hilsoft began to implement each element of the Notice Plan.

9. This declaration will detail the successful implementation of the Notice Program and document the completion of all of the notice activities and will also discuss the administration activity to date. The facts in this declaration are based on information provided to me by colleagues from Hilsoft and Epiq.

SUMMARY OF CONCLUSIONS

10. The Notice Program we designed and implemented achieves each of the planned objectives:

A. Names and direct contact information for members of the Settlement Class were identified for Bank of America's accounts. Individual Notice was sent to virtually all[1] members of the Settlement Class.

B. Each person reached had an opportunity to view a Notice, with an adequate amount of time prior to the Final Approval Hearing to make appropriate decisions such as whether to object or opt-out.

C. The Notices were designed to be noticeable, clear, simple, substantive, and informative. No significant or required information was missing.

D. The program was consistent with other notice programs we have designed and implemented for similar settlements that have received final approval.

[1] Name and direct contact information was identified for more than 99.9% of all Accounts included in the Settlement Class.

E. The Notice Plan was developed with the active participation of counsel.

11. In my view, the Notice Plan provides reasonable notice of the settlement of the class action in this case in such a manner as the Court directed, and satisfied due process, including its "desire to actually inform" requirement.[2]

12. This declaration will detail the notice activities undertaken and explain how and why the settlement Notice Plan was comprehensive, well suited to the Settlement Class and was the best notice practicable under the circumstances of this case, and satisfied due process obligations.

NOTICE PLAN IMPLEMENTATION

13. The Order defines the "Settlement Class" as consisting of, "All holders of BANA consumer checking accounts who, during the period between February 25, 2014 and December 30, 2017, were assessed at least one Extended Overdrawn Balance Charge that was not refunded." I have reviewed the Orders and Settlement Agreement and I fully understand the defined term used in the definition of the Settlement Class "EOBC" or, plural, "EOBCs," means "the Extended Overdrawn Balance Charge that BANA applies to a consumer checking account when that account is overdrawn by the accountholder and the account remains overdrawn for five (5) or more consecutive business days, as described in the Personal Schedule of Fees."

Individual Notice – Postcard Notice

14. Bank of America provided Epiq with names and direct contact information for virtually all of the Settlement Class. On December 29, 2017, Epiq received data for approximately

[2] "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . ." *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950).

7,122,408 records for Bank of America's accounts relating to Settlement Class members' Accounts. Epiq identified all account holders with multiple Accounts.

15. Prior to the initial mailing of the Summary Postcard Notice; postal mailing addresses were checked against the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS"), which contains records of all reported permanent moves for the past four years. Any addresses that were returned by the NCOA database as invalid were updated through a third-party address search service prior to mailing. In addition, the addresses were certified via the Coding Accuracy Support System ("CASS") to ensure the quality of the zip code, and verified through Delivery Point Validation ("DPV") to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

16. Beginning on February 9, 2018 and continuing through February 12, 2018, Epiq sent 758,293 Summary Postcard Notices by USPS First Class Mail to potential Settlement Class members. Each notice was a two image 4.25" x 5.5" Summary Postcard Notice. A copy of the Summary Postcard Notice is included as **Attachment 2**.

17. Additionally, a Long Form Notice was mailed to all persons who requested one via the toll-free phone number. As of May 24, 2018, 15,441 Long Form Notices have been mailed as a result of such requests.

18. The return address on the Summary Postcard Notice is a post office box maintained by Epiq. As of May 24, 2018, Epiq has re-mailed 96,887 Summary Postcard Notices for addresses that were corrected through the USPS and via an extra search for different addresses using a third-party lookup service ("ALLFIND", maintained by LexisNexis). Address updating and re-mailing for

undeliverable Summary Postcard Notices is ongoing and will continue through the June 18, 2018 Final Approval Hearing.

Individual Notice – Emailed Notice

19. Beginning on February 6, 2018 and continuing through February 18, 2018, Epiq sent a Summary Email Notice to the 7,065,538 email addresses provided by Bank of America. The Summary Email Notice included substantially the same content as the Summary Postcard Notice. The Summary Email Notice was created using an embedded html text format. This format provided easy to read text without graphics, tables, images and other elements to decrease the likelihood that the message would be blocked by Internet Service Providers (ISPs) and/or SPAM filters. Each Summary Email Notice was transmitted with a unique message identifier. If the receiving e-mail server could not deliver the message, a "bounce code" was returned along with the unique message identifier. For any Summary Email Notice for which a bounce code was received indicating that the message was undeliverable, at least two additional attempts were made to deliver the Notice by email. To optimize this electronic form, the Summary Email Notice included embedded links to the Case Website where the Detailed Notice could be viewed and/or downloaded. A copy of the Summary Email Notice is included as **Attachment 3**.

20. After completion of the initial Email Notice effort, Epiq received back 1,559,366 undeliverable emails. If a physical mailing address existed, a Summary Postcard Notice was mailed. On March 30, 2018, Epiq sent a Summary Postcard Notice via USPS First Class Mail to 1,191,323 Settlement Class members whose Summary Email Notice was undeliverable after several attempts.

21. As of May 24, 2018, Epiq has mailed and/or emailed Notices to 7,078,199 unique Settlement Class members, with Notice to 6,612,767 unique, likely Settlement Class members

currently known to be deliverable. In my experience, this approximate 93% deliverable rate to Settlement Class members exceeds the expected range and is indicative of the extensive address research, updating and re-mailing protocols used.

Case Website

22. On February 5, 2018, an informational, neutral case website was established by Epiq and went live (www.EOBCsettlement.com). The website address was displayed prominently in all notice documents. By visiting this website, members of the Settlement Class can view additional information about the settlement, including: the Preliminary Approval Order, Settlement Agreement, Long Form Notice and Frequently Asked Questions and Answers.

23. Settlement Class members may download a copy of the Long Form Notice at the Case Website or request one via the toll-free number. A copy of the Long Form Notice is included as **Attachment 4**.

24. As of May 24, 2018, there have been 178,181 website visitor sessions, with 266,310 page views.

Toll Free Number

25. On February 5, 2018, the toll free number (1-888-396-9598), set up and hosted by Epiq, became operational. By calling this number, members of the Settlement Class can listen to answers to frequently asked questions and request a copy of the Long Form Notice be mailed to them. This automated system is available 24 hours per day, 7 days per week. As of May 24, 2018, the toll free number has handled 69,329 calls representing 211,347 minutes of use.

Exclusions and Objections

26. The deadline to request exclusion from the settlement or to object to the settlement passed on April 20, 2018. Epiq received 100 timely requests for exclusion from the Settlement Class. An Exclusion Report listing all timely requests for exclusion is included as **Attachment 5**.

27. I am aware of thirteen objections to the Settlement, two of which were not timely submitted. I have reviewed all thirteen objections and some purport to include objections to the adequacy of notice (not the method or timeliness of the notice, but the content). These objections generally surround Class Counsel's request for attorney fees and the potential for *Cy Pres* if there are any unclaimed funds after all Settlement Class members receive their automatic distribution. All notices (mailed or emailed) directed Settlement Class members to the www.EOBCsettlement.com website for detailed information. The *Settlement and Release Agreement* and all exhibits, and Class Counsel's *Notice of Motion and Plaintiffs' Unopposed Application for Award of Attorneys' Fees and Costs and Service Awards* were both posted to and are still available at the Case Website. These documents made available in PDF format for print or download (along with all the other information and documents provided) include all of the Settlement's terms. The notice process did not deprive any Settlement Class member of any information about the Settlement, the lawsuit, or Class Counsel's request for fees. An Objection Report listing all objections received is included as **Attachment 6**.

PERFORMANCE AND DESIGN OF NOTICE PROGRAM

28. ***Objectives were met.*** The primary objective of this settlement notice effort is to effectively reach the greatest practicable number of Settlement Class members with a "noticeable" Notice of the settlement, and provide them with every reasonable opportunity to understand that

their legal rights were affected, including the right to be heard, to object or to exclude themselves, if they so choose.

29. ***Plenty of time and opportunity to react to Notices.*** The initial mailing of notices was completed on February 18, 2018, which allows an adequate amount of time for members of the Settlement Class to see the Notice and respond accordingly before the April 20, 2018 exclusion and objection deadlines. With approximately 61 days from the completion of the initial Notice mailing until the exclusion and objection deadlines, members of the Settlement Class are allotted adequate time to act on their rights.

30. ***Notices were designed to increase noticeability and comprehension.*** Because mailing recipients are accustomed to receiving junk mail, which they may be inclined to discard unread, the program called for steps to bring the Notice to the attention of the Settlement Class. Once people "noticed" the Notices, it was critical that they could understand them. As such, the Notices, as produced, were clearly worded with simple, plain language text to encourage readership and comprehension. The design of the Notices followed the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov.

31. The Summary Postcard Notice featured a prominent headline ("**If You Incurred One or More $35 Extended Overdrawn Balance Charges in Connection with Your Bank of America Personal Checking Account, You May be Entitled to Benefits from a Proposed Class Action Settlement.**") in bold text. The headline alerts recipients that the Notice is an important document authorized by a court and that the content may affect them, thereby supplying reasons to read the Notice.

32. The Long Form Notice began with a summary page providing a concise overview of the important information and Settlement Class members' key options. It contained a prominent focus on the options that Settlement Class members have, using a straightforward table design, and included details about the Settlement, such as who is affected, and their rights. A table of contents, categorized into logical sections, helped to organize the information, while a question and answer format made it easy to find answers to common questions by breaking the information into simple headings and brief paragraphs.

Cost of Notice Implementation and Administration

33. Administration Costs have been and will continue to be paid separately by the Bank, with the exception of any hourly services requested by Epiq in accordance with the Settlement Agreement. Epiq's hourly services for the months of January, February and March, 2018 totaled $62,242.00 and were paid from the Settlement Fund. Epiq oversees the Notice Program and settlement administration. It is currently estimated that administration costs to be paid by the Bank shall be approximately $2 million.

CONCLUSIONS

34. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be designed to reach the greatest practicable number of potential class members and, in a settlement class action notice situation such as this, that the notice or notice program itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to class members in any way. All of these requirements were met in this case.

35. Many courts have accepted and understood that a 75 or 80 percent reach is more than adequate. In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%[3].

36. As reported above, the extensive individual notice efforts of the Notice Plan to virtually all Settlement Class members reached approximately 93% of the Settlement Class.

37. In my expert opinion, the Notice Program comported with Federal Rule of Civil Procedure 23, and also the guidance for effective notice articulated in the FJC's *Manual for Complex Litigation*, 4th.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on May 29, 2018.

Cameron R. Azari, Esq.

[3] FED. JUDICIAL CTR, JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at http://www.fjc.gov/public/pdf.nsf/lookup/NotCheck.pdf/$file/NotCheck.pdf.

Attachment 1

HILSOFT NOTIFICATIONS

Hilsoft Notifications is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert, notice plan development – designing notice programs that satisfy due process requirements and withstand judicial scrutiny. For more than 23 years, Hilsoft Notifications' notice plans have been approved and upheld by courts. Hilsoft Notifications has been retained by defendants and/or plaintiffs on more than 300 cases, including more than 30 MDL cases, with notices appearing in more than 53 languages and in almost every country, territory and dependency in the world. Case examples include:

- Hilsoft designed and implemented a monumental notice campaign to notify current or former owners or lessees of certain BMW, Mazda, Subaru and Toyota vehicles as part of a $553 million settlement regarding Takata airbags. The Notice Plan included individual mailed notice to more than 19.7 million potential Class Members and notices via consumer publications, U.S. Territory newspapers, radio spots, internet banners, mobile banners, and specialized behaviorally targeted digital media. Combined, the Notice Plan reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle with a frequency of 4.0 times. ***In re: Takata Airbag Products Liability Litigation (OEMS – BMW, Mazda, Subaru and Toyota)***, MDL No. 2599 (S.D. Fla.).

- A comprehensive notice program within the *Volkswagen Emissions Litigation* that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 via email. A targeted internet campaign further enhanced the notice effort. ***In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)***, MDL No. 2672 (N.D. Cal.).

- Hilsoft designed and implemented an extensive settlement Notice Plan for a class period spanning more than 40 years for smokers of light cigarettes. The Notice Plan delivered a measured reach of approximately 87.8% of Arkansas Adults 25+ with a frequency of 8.9 times and approximately 91.1% of Arkansas Adults 55+ with a frequency of 10.8 times. Hispanic newspaper notice, an informational release, radio PSAs, sponsored search listings and a case website further enhanced reach. ***Miner v. Philip Morris USA, Inc.***, No. 60CV03-4661 (Ark. Cir.).

- One of the largest claim deadline notice campaigns ever implemented, for BP's $7.8 billion settlement claim deadline relating to the Deepwater Horizon oil spill. Hilsoft Notifications designed and implemented the claim deadline notice program, which resulted in a combined measurable paid print, television, radio and Internet effort that reached in excess of 90% of adults aged 18+ in the 26 identified DMAs covering the Gulf Coast Areas an average of 5.5 times each. ***In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).

- Large asbestos bar date notice effort, which included individual notice, national consumer publications, hundreds of local and national newspapers, Spanish newspapers, union labor publications, and digital media to reach the target audience. ***In re: Energy Future Holdings Corp., et al. (Asbestos Claims Bar Date Notice)***, 14-10979(CSS) (Bankr. D. Del.).

- Landmark $6.05 billion settlement reached by Visa and MasterCard. The intensive notice program involved over 19.8 million direct mail notices to class members together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade & specialty publications, and language & ethnic targeted publications. Hilsoft also implemented an extensive online notice campaign with banner notices, which generated more than 770 million adult impressions, a case website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. ***In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation***, MDL No. 1720 (E.D.N.Y.).

- BP's $7.8 billion settlement of claims related to the Deepwater Horizon oil spill emerged from possibly the most complex class action in U.S. history. Hilsoft Notifications drafted and opined on all forms of notice. The 2012 notice program designed by Hilsoft reached at least 95% Gulf Coast region adults via television, radio, newspapers, consumer publications, trade journals, digital media and individual notice. ***In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).

- Momentous injunctive settlement reached by American Express regarding merchant payment card processing. The notice program provided extensive individual notice to more than 3.8 million merchants as well as coverage in national and local business publications, retail trade publications and placement in the largest circulation newspapers in each of the U.S. territories and possessions. ***In re American Express Anti-Steering Rules Antitrust Litigation (II)***, MDL No. 2221 (E.D.N.Y.) ("Italian Colors").

- Overdraft fee class actions have been brought against nearly every major U.S. commercial bank. For related settlements, Hilsoft Notifications has developed programs that integrate individual notice and paid media efforts. PNC, Citizens, TD Bank, Fifth Third, Harris Bank M&I, Comerica Bank, Susquehanna Bank, Capital One, M&T Bank and Synovus are among the more than 20 banks that have retained Hilsoft. ***In re Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.).

- Possibly the largest data breach in U.S. history with approximately 130 million credit and debit card numbers stolen. ***In re Heartland Data Security Breach Litigation***, MDL No. 2046 (S.D. Tex.)

- Largest and most complex class action in Canadian history. Designed and implemented groundbreaking notice to disparate, remote aboriginal people in the multi-billion dollar settlement. ***In re Residential Schools Class Action Litigation***, 00-CV-192059 CPA (Ont. Super. Ct.).

- Extensive point of sale notice program of a settlement providing payments up to $100,000 related to Chinese drywall – 100 million notices distributed to Lowe's purchasers during a six-week period. ***Vereen v. Lowe's Home Centers***, SU10-CV-2267B (Ga. Super. Ct.).

- Largest discretionary class action notice campaign involving virtually every adult in the U.S. for the settlement. ***In re Trans Union Corp. Privacy Litigation***, MDL No. 1350 (N.D. Ill.).

- Most complex national data theft class action settlement involving millions of class members. ***Lockwood v. Certegy Check Services, Inc.***, 8:07-cv-1434-T-23TGW (M.D. Fla.).

- Largest combined U.S. and Canadian retail consumer security breach notice program. ***In re TJX Companies, Inc., Customer Data Security Breach Litigation***, MDL No. 1838 (D. Mass.).

- Most comprehensive notice ever in a securities class action for the $1.1 billion settlement of ***In re Royal Ahold Securities and ERISA Litigation***, MDL No. 1539 (D. Md.).

- Most complex worldwide notice program in history. Designed and implemented all U.S. and international media notice with 500+ publications in 40 countries and 27 languages for $1.25 billion settlement. ***In re Holocaust Victims Assets,* "Swiss Banks**", No. CV-96-4849 (E.D.N.Y.).

- Largest U.S. claim program to date. Designed and implemented a notice campaign for the $10 billion program. ***Tobacco Farmer Transition Program***, (U.S. Dept. of Ag.).

- Multi-national claims bar date notice to asbestos personal injury claimants. Opposing notice expert's reach methodology challenge rejected by court. ***In re Babcock & Wilcox Co***, No. 00-10992 (E.D. La.).

LEGAL NOTICING EXPERTS

Cameron Azari, Esq., Director of Legal Notice

Cameron Azari, Esq. has more than 17 years of experience in the design and implementation of legal notification and claims administration programs. He is a nationally recognized expert in the creation of class action notification campaigns in compliance with Fed R. Civ. P. 23(c)(2) (d)(2) and (e) and similar state class action statutes. Cameron has been responsible for hundreds of legal notice and advertising programs. During his career, he has been involved in an array of high profile class action matters, including *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MasterCard & Visa), In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, Heartland Payment Systems, In re: Checking Account Overdraft Litigation, Lowe's Home Centers, Department of Veterans Affairs (VA),* and *In re Residential Schools Class Action Litigation*. He is an active author and speaker on a broad range of legal notice and class action topics ranging from amendments to FRCP Rule 23 to email noticing, response rates and optimizing settlement effectiveness. Cameron is an active member of the Oregon State Bar. He received his B.S. from Willamette University and his J.D. from Northwestern School of Law at Lewis and Clark College. Cameron can be reached at caza@legalnotice.com.

Lauran Schultz, Executive Director

Lauran Schultz consults extensively with clients on notice adequacy and innovative legal notice programs. Lauran has more than 20 years of experience as a professional in the marketing and advertising field, specializing in legal notice and class action administration for the past seven years. High profile actions he has been involved in include companies such as BP, Bank of America, Fifth Third Bank, Symantec Corporation, Lowe's Home Centers, First Health, Apple, TJX, CNA and Carrier Corporation. Prior to joining Epiq Systems in 2005, Lauran was a Senior Vice President of Marketing at National City Bank in Cleveland, Ohio. Lauran's education includes advanced study in political science at the University of Wisconsin-Madison along with a Ford Foundation fellowship from the Social Science Research Council and American Council of Learned Societies. Lauran can be reached at lschultz@hilsoft.com.

ARTICLES AND PRESENTATIONS

- **Cameron Azari** Co-Author, "A Practical Guide to Chapter 11 Bankruptcy Publication Notice." E-book, published, May 2017.
- **Cameron Azari** Featured Speaker, "Proposed Changes to Rule 23 Notice and Scrutiny of Claim Filing Rates," DC Consumer Class Action Lawyers Luncheon, December 6, 2016.
- **Cameron Azari** Speaker, "2016 Cybersecurity & Privacy Summit. Moving From 'Issue Spotting' To Implementing a Mature Risk Management Model." King & Spalding, Atlanta, GA, April 25, 2016.
- **Cameron Azari** Speaker, "Live Cyber Incident Simulation Exercise." Advisen's Cyber Risk Insights Conference, London, UK, February 10, 2015.
- **Cameron Azari** Speaker, "Pitfalls of Class Action Notice and Claims Administration." PLI's Class Action Litigation 2014 Conference, New York, NY, July 9, 2014.
- **Cameron Azari** Co-Author, "What You Need to Know About Frequency Capping In Online Class Action Notice Programs." *Class Action Litigation Report*, June 2014.
- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, New York, NY, April 7-8, 2014 and Chicago, IL, April 28-29, 2014.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements - Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 29-30, 2014.
- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, October 25, 2013.

- **Cameron Azari** Co-Author, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, April 2013.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 31-February 1, 2013.
- **Cameron Azari** Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8th Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.
- **Cameron Azari** Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 26-27, 2012.
- **Lauran Schultz** Speaker, "Legal Notice Best Practices: Building a Workable Settlement Structure." CLE International's 7th Annual Class Action Conference, San Francisco, CA, May 2011.
- **Cameron Azari** Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 2011.
- **Cameron Azari** Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5th Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.
- **Lauran Schultz** Speaker, "Efficiency and Adequacy Considerations in Class Action Media Notice Programs." Chicago Bar Association, Chicago, IL, 2009.
- **Cameron Azari** Author, "Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices." *Thomson Reuters Class Action Litigation Reporter*, June 2008.
- **Cameron Azari** Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.
- **Cameron Azari** Speaker, "Noticing and Response Rates in Class Action Settlements" – Class Action Bar Gathering, Vancouver, British Columbia, 2007.
- **Cameron Azari** Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stoel Rives litigation group, Portland, OR / Seattle, WA / Boise, ID / Salt Lake City, UT, 2005.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stroock & Stroock & Lavan litigation group, Los Angeles, CA, 2005.
- **Cameron Azari** Author, "Twice the Notice or No Settlement." Current Developments – Issue II, August 2003.
- **Cameron Azari** Speaker, "A Scientific Approach to Legal Notice Communication" – Weil Gotshal litigation group, New York, NY, 2003.

JUDICIAL COMMENTS

Judge Charles R. Breyer, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (May 17, 2017) MDL No. 2672 (N.D. Cal.):

> *The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.)*

Judge Joseph F. Bataillon, *Klug v. Watts Regulator Company* (April 13, 2017) No. 8:15-cv-00061-JFB-FG3 (D. Neb.):

> *The court finds that the notice to the Settlement Class of the pendency of the Class Action and of this settlement, as provided by the Settlement Agreement and by the Preliminary Approval Order dated December 7, 2017, constituted the best notice practicable under the circumstances to all persons and entities within the definition of the Settlement Class, and fully complied with the requirements of Federal Rules of Civil Procedure Rule 23 and due process. Due and sufficient proof of the execution of the Notice Plan as outlined in the Preliminary Approval Order has been filed.*

Judge Yvonne Gonzales Rogers, *Bias v. Wells Fargo & Company, et al.* (April 13, 2017) No. 4:12-cv-00664-YGR (N.D. Cal.):

> *The form, content, and method of dissemination of Notice of Settlement given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including both individual notice to all Settlement Class Members who could be identified through reasonable effort and publication notice.*
>
> *Notice of Settlement, as given, complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.*
>
> *Notice of the Settlement was provided to the appropriate regulators pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(c)(1).*

Judge Carlos Murguia, *Whitton v. Deffenbaugh Industries, Inc., et al* (December 14, 2016) No. 2:12-cv-02247 (D. Kan.) and ***Gary, LLC v. Deffenbaugh Industries, Inc., et al*** (December 14, 2016) No. 2:13-cv-2634 (D. Kan.):

> *The Court determines that the Notice Plan as implemented was reasonably calculated to provide the best notice practicable under the circumstances and contained all required information for members of the proposed Settlement Class to act to protect their interests. The Court also finds that Class Members were provided an adequate period of time to receive Notice and respond accordingly.*

Judge Yvette Kane, *In re: Shop-Vac Marketing and Sales Practices Litigation* (December 9, 2016) MDL No. 2380 (M.D. Pa.):

> *The Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws.*

Judge Timothy D. Fox, *Miner v. Philip Morris USA, Inc.* (November 21, 2016) No. 60CV03-4661 (Ark. Cir.):

> *The Court finds that the Settlement Notice provided to potential members of the Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.*

Judge Eileen Bransten, ***In re: HSBC Bank USA, N.A., Checking Account Overdraft Litigation*** (October 13, 2016) No. 650562/2011 (Sup. Ct. N.Y.):

> *This Court finds that the Notice Program and the Notice provided to Settlement Class members fully satisfied the requirements of constitutional due process, the N.Y. C.P.L.R., and any other applicable laws, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto.*

Judge Jerome B. Simandle, ***In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation*** (September 20, 2016) MDL No. 2540 (D. N.J.):

> *The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.*

Judge Marcia G. Cooke, ***Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.*** (April 11, 2016) No. 14-23120 (S.D. Fla.):

> *Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.*

Judge Christopher S. Sontchi, ***In re: Energy Future Holdings Corp, et al.,*** (July 30, 2015) 14-10979(CSS) (Bankr. D. Del.):

> *Notice of the Asbestos Bar Date as set forth in this Asbestos Bar Date Order and in the manner set forth herein constitutes adequate and sufficient notice of the Asbestos Bar Date and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.*

Judge David C. Norton, ***In re: MI Windows and Doors Inc. Products Liability Litigation*** (July 22, 2015) MDL No. 2333, No. 2:12-mn-00001 (D. S.C.):

> The court finds that the Notice Plan, as described in the Settlement and related declarations, has been faithfully carried out and constituted the best practicable notice to Class Members under the circumstances of this Action, and was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to be provided with Notice.
>
> The court also finds that the Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of: (1) the pendency of this class action; (2) their right to exclude themselves from the Settlement Class and the proposed Settlement; (3) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the Settlement Class's representation by Named Plaintiffs or Class Counsel, or the award of attorney's and representative fees); (4) their right to appear at the fairness hearing (either on their own or through counsel hired at their own expense); and (5) the binding and preclusive effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all Persons who do not request exclusion from the Settlement Class. As such, the court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the rules of this court, and any other applicable law, and provided sufficient notice to bind all Class Members, regardless of whether a particular Class Member received actual notice.

Judge Robert W. Gettleman, *Adkins v. Nestle Purina PetCare Company, et al.,* (June 23, 2015) No. 12-cv-2871 (N.D. Ill.):

> *Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.*

Judge James Lawrence King, *Steen v. Capital One, N.A.* (May 22, 2015) No. 2:10-cv-01505-JCZ-KWR (E.D. La.) and No. 1:10-cv-22058-JLK (S.D. Fla.) as part of ***In Re: Checking Account Overdraft Litigation***, MDL 2036 (S.D. Fla.)

> The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15). This Settlement with Capital One was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so. Azari Decl. ¶¶ 30-39.

Judge Rya W. Zobel, *Gulbankian et al. v. MW Manufacturers, Inc.,* (December 29, 2014) No. 1:10-cv-10392-RWZ (D. Mass.):

> *This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.*

Judge Edward J. Davila, *Rose v. Bank of America Corporation, and FIA Card Services, N.A.,* (August 29, 2014) No. 5:11-CV-02390-EJD; 5:12-CV-04009-EJD (N.D. Cal.):

> *The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.*

Judge James A. Robertson, II, *Wong et al. v. Alacer Corp.* (June 27, 2014) No. CGC-12-519221 (Cal. Super. Ct.):

> *Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.*

Judge John Gleeson, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, (December 13, 2013) No. 1:05-cv-03800 (E.D. NY.):

> *The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards… The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.*

Judge Lance M. Africk, *Evans, et al. v. TIN, Inc., et al,* (July 7, 2013) No. 2:11-cv-02067 (E.D. La.):

> *The Court finds that the dissemination of the Class Notice… as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances…; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Judge Edward M. Chen, *Marolda v. Symantec Corporation,* (April 5, 2013) No. 08-cv-05701 (N.D. Cal.):

> *Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.*

Judge Ann D. Montgomery, *In re Zurn Pex Plumbing Products Liability Litigation*, (February 27, 2013) No. 0:08cv01958 (D. Minn.):

> *The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center.*
>
> *The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

Magistrate Judge Stewart, *Gessele et al. v. Jack in the Box, Inc.*, (January 28, 2013) No. 3:10-cv-960 (D. Or.):

> *Moreover, plaintiffs have submitted [a] declaration from Cameron Azari (docket #129), a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.*

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Medical Benefits Settlement)*, (January 11, 2013) MDL No. 2179 (E.D. La.):

> *Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)*
>
> *The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.*

Judge Carl J. Barbier, *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Economic and Property Damages Settlement)*, (December 21, 2012) MDL No. 2179 (E.D. La.):

> *The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation. The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.*
>
> *The Notice Program, as duly implemented, surpasses other notice programs that Hilsoft Notifications has designed and executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.*
>
> *The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.*

Judge Alonzo Harris, Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc., (August 17, 2012) No. 12-C-1599 (27th Jud. D. Ct. La.):

> *Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.*

Judge James Lawrence King, In re Checking Account Overdraft Litigation (IBERIABANK), (April 26, 2012) MDL No. 2036 (S.D. Fla):

> *The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims . . . [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment." In re Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.*

Judge Bobby Peters, *Vereen v. Lowe's Home Centers,* (April 13, 2012) SU10-CV-2267B (Ga. Super. Ct.):

> *The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.*
>
> *The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4th.*

Judge Lee Rosenthal, *In re Heartland Payment Systems, Inc. Customer Data Security Breach Litigation,* (March 2, 2012) MDL No. 2046 (S.D. Tex.):

> *The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement… Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197.*

Judge John D. Bates, *Trombley v. National City Bank,* (December 1, 2011) 1:10-CV-00232 (D.D.C.)

> *The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.*

Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank*, (July 29, 2011) No. 1:09-cv-6655 (N.D. Ill.):

> *The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.*

Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc.*, (June 30, 2011) No. 11-C-3187-B (27th Jud. D. Ct. La.):

> *Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others more fully described in this Court's order of 30th day of March 2011 were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.*

Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.*, (March 24, 2011) No. 3:10-cv-1448 (D. Conn.):

> *The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.*

Judge Ted Stewart, *Miller v. Basic Research, LLC*, (September 2, 2010) No. 2:07-cv-871 (D. Utah):

> *Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans. Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.*

Judge Sara Loi, *Pavlov v. Continental Casualty Co.*, (October 7, 2009) No. 5:07cv2580 (N.D. Ohio):

> *As previously set forth in this Memorandum Opinion, the elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).*

Judge James Robertson, *In re Department of Veterans Affairs (VA) Data Theft Litigation*, (September 23, 2009) MDL No. 1796 (D.D.C.):

> *The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.*

Judge Lisa F. Chrystal, *Little v. Kia Motors America, Inc.*, (August 27, 2009) No. UNN-L-0800-01 (N.J. Super. Ct.):

> *The Court finds that the manner and content of the notices for direct mailing and for publication notice, as specified in the Notice Plan (Exhibit 2 to the Affidavit of Lauran R. Schultz), provides the best practicable notice of judgment to members of the Plaintiff Class.*

Judge Barbara Crowder, *Dolen v. ABN AMRO Bank N.V.,* (March 23, 2009) No. 01-L-454, 01-L-493 (3rd Jud. Cir. Ill.):

> *The Court finds that the Notice Plan is the best notice practicable under the circumstances and provides the Eligible Members of the Settlement Class sufficient information to make informed and meaningful decisions regarding their options in this Litigation and the effect of the Settlement on their rights. The Notice Plan further satisfies the requirements of due process and 735 ILCS 5/2-803. That Notice Plan is approved and accepted. This Court further finds that the Notice of Settlement and Claim Form comply with 735 ILCS 5/2-803 and are appropriate as part of the Notice Plan and the Settlement, and thus they are hereby approved and adopted. This Court further finds that no other notice other than that identified in the Notice Plan is reasonably necessary in this Litigation.*

Judge Robert W. Gettleman, *In re Trans Union Corp.*, (September 17, 2008) MDL No. 1350 (N.D. Ill.):

> *The Court finds that the dissemination of the Class Notice under the terms and in the format provided for in its Preliminary Approval Order constitutes the best notice practicable under the circumstances, is due and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Federal Rules of Civil Procedure, the requirements of due process under the Constitution of the United States, and any other applicable law… Accordingly, all objections are hereby OVERRULED.*

Judge Steven D. Merryday, *Lockwood v. Certegy Check Services, Inc*., (September 3, 2008) No. 8:07-cv-1434-T-23TGW (M.D. Fla.):

> *The form, content, and method of dissemination of the notice given to the Settlement Class were adequate and reasonable and constituted the best notice practicable in the circumstances. The notice as given provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions of the Settlement Agreement, and these proceedings to all persons entitled to such notice, and the notice satisfied the requirements of Rule 23, Federal Rules of Civil Procedure, and due process.*

Judge William G. Young, *In re TJX Companies*, (September 2, 2008) MDL No. 1838 (D. Mass.):

> *The form, content, and method of dissemination of notice provided to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all Persons entitled to such notice, and said Notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.*

Judge Philip S. Gutierrez, *Shaffer v. Continental Casualty Co.,* (June 11, 2008) SACV-06-2235-PSG (PJWx) (C.D. Cal.):

> *…was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and met all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clauses), the Rules of the Court, and any other applicable law.*

Judge Robert L. Wyatt, *Gunderson v. AIG Claim Services, Inc.,* (May 29, 2008) No. 2004-002417 (14th Jud. D. Ct. La.):

> *Notices given to Settlement Class members…were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination…Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.*

Judge Mary Anne Mason, *Palace v. DaimlerChrysler Corp.,* (May 29, 2008) No. 01-CH-13168 (Ill. Cir. Ct.):

> *The form, content, and method of dissemination of the notice given to the Illinois class and to the Illinois Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The notice, as given, provided valid, due, and sufficient notice of the proposed Settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings, to all Persons entitled to such notice, and said notice fully satisfied the requirements of due process and complied with 735 ILCS §§5/2-803 and 5/2-806.*

Judge David De Alba, *Ford Explorer Cases,* (May 29, 2008) JCCP Nos. 4226 & 4270 (Cal. Super. Ct.):

> *[T]he Court is satisfied that the notice plan, design, implementation, costs, reach, were all reasonable, and has no reservations about the notice to those in this state and those in other states as well, including Texas, Connecticut, and Illinois; that the plan that was approved—submitted and approved, comports with the fundamentals of due process as described in the case law that was offered by counsel.*

Judge Kirk D. Johnson, ***Webb v. Liberty Mutual Ins. Co.,*** (March 3, 2008) No. CV-2007-418-3 (Ark. Cir. Ct.):

> *The Court finds that there was minimal opposition to the settlement. After undertaking an extensive notice campaign to Class members of approximately 10,707 persons, mailed notice reached 92.5% of potential Class members.*

Judge Carol Crafton Anthony, *Johnson v. Progressive Casualty Ins. Co.*, (December 6, 2007) No. CV-2003-513 (Ark. Cir. Ct.):

> *Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated…Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice reached a large majority of the Class members. The Court finds that such notice constitutes the best notice practicable…The forms of Notice and Notice Plan satisfy all of the requirements of Arkansas law and due process.*

Judge Kirk D. Johnson, *Sweeten v. American Empire Insurance Co*., (August 20, 2007) No. CV-2007-154-3 (Ark. Cir. Ct.):

> *The Court does find that all notices required by the Court to be given to class members was done within the time allowed and the manner best calculated to give notice and apprise all the interested parties of the litigation. It was done through individual notice, first class mail, through internet website and the toll-free telephone call center…The Court does find that these methods were the best possible methods to advise the class members of the pendency of the action and opportunity to present their objections and finds that these notices do comply with all the provisions of Rule 23 and the Arkansas and United States Constitutions.*

Judge Robert Wyatt, ***Gunderson v. F.A. Richard & Associates, Inc.,*** (July 19, 2007) No. 2004-2417-D (14th Jud. D. Ct. La.):

> *This is the final Order and Judgment regarding the fairness, reasonableness and adequacy. And I am satisfied in all respects regarding the presentation that's been made to the Court this morning in the Class memberships, the representation, the notice, and all other aspects and I'm signing that Order at this time.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation*, (July 19, 2007) MDL No. 1653-LAK (S.D.N.Y.):

> *The Court finds that the distribution of the Notice, the publication of the Publication Notice, and the notice methodology…met all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution, (including the Due Process clause), the Private Securities Litigation Reform Act of 1995 (15 U.S.C. 78u-4, et seq.) (the "PSLRA"), the Rules of the Court, and any other applicable law.*

Judge Joe Griffin, *Beasley v. The Reliable Life Insurance Co.,* (March 29, 2007) No. CV-2005-58-1 (Ark. Cir. Ct.):

> *[T]he Court has, pursuant to the testimony regarding the notification requirements, that were specified and adopted by this Court, has been satisfied and that they meet the requirements of due process. They are fair, reasonable, and adequate. I think the method of notification certainly meets the requirements of due process…So the Court finds that the notification that was used for making the potential class members aware of this litigation and the method of filing their claims, if they chose to do so, all those are clear and concise and meet the plain language requirements and those are completely satisfied as far as this Court is concerned in this matter.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litigation,* (March 1, 2007) MDL No. 1653-LAK (S.D.N.Y.):

> *The court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and the form set forth in Paragraph 6 of this Order…meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as emended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.*

Judge Anna J. Brown, *Reynolds v. The Hartford Financial Services Group, Inc.,* (February 27, 2007) No. CV-01-1529-BR (D. Or):

> *[T]he court finds that the Notice Program fairly, fully, accurately, and adequately advised members of the Settlement Class and each Settlement Subclass of all relevant and material information concerning the proposed settlement of this action, their rights under Rule 23 of the Federal Rules of Civil Procedure, and related matters, and afforded the Settlement Class with adequate time and an opportunity to file objections to the Settlement or request exclusion from the Settlement Class. The court finds that the Notice Program constituted the best notice practicable under the circumstances and fully satisfied the requirements of Rule 23 and due process.*

Judge Kirk D. Johnson, ***Zarebski v. Hartford Insurance Company of the Midwest,*** (February 13, 2007) No. CV-2006-409-3 (Ark. Cir. Ct.):

> *Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, was the best notice practicable under the circumstances to all members of the Settlement Class. Accordingly, the Class Notice and Claim Form as disseminated are*

finally approved as fair, reasonable, and adequate notice under the circumstances. The Court finds and concludes that due and adequate notice of the pendency of this Action, the Stipulation, and the Final Settlement Hearing has been provided to members of the Settlement Class, and the Court further finds and concludes that the notice campaign described in the Preliminary Approval Order and completed by the parties complied fully with the requirements of Arkansas Rule of Civil Procedure 23 and the requirements of due process under the Arkansas and United States Constitutions.

Judge Richard J. Holwell, *In re Vivendi Universal, S.A. Securities Litigation,* 2007 WL 1490466, at *34 (S.D.N.Y.):

In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit outlining the effectiveness of its proposed method of providing notice in foreign countries. According to this…the Court is satisfied that plaintiffs intend to provide individual notice to those class members whose names and addresses are ascertainable, and that plaintiffs' proposed form of publication notice, while complex, will prove both manageable and the best means practicable of providing notice.

Judge Samuel Conti, *Ciabattari v. Toyota Motor Sales, U.S.A., Inc.,* (November 17, 2006) No. C-05-04289-SC (N.D. Cal.):

After reviewing the evidence and arguments presented by the parties…the Court finds as follows…The class members were given the best notice practicable under the circumstances, and that such notice meets the requirements of the Due Process Clause of the U.S. Constitution, and all applicable statutes and rules of court.

Judge Ivan L.R. Lemelle, ***In re High Sulfur Content Gasoline Prods. Liability Litigation,*** (November 8, 2006) MDL No. 1632 (E.D. La.):

This Court approved a carefully-worded Notice Plan, which was developed with the assistance of a nationally-recognized notice expert, Hilsoft Notifications…The Notice Plan for this Class Settlement was consistent with the best practices developed for modern-style "plain English" class notices; the Court and Settling Parties invested substantial effort to ensure notice to persons displaced by the Hurricanes of 2005; and as this Court has already determined, the Notice Plan met the requirements of Rule 23 and constitutional due process.

Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation,* (November 2, 2006) MDL No. 1539 (D. Md.):

The global aspect of the case raised additional practical and legal complexities, as did the parallel criminal proceedings in another district. The settlement obtained is among the largest cash settlements ever in a securities class action case and represents an estimated 40% recovery of possible provable damages. The notice process appears to have been very successful not only in reaching but also in eliciting claims from a substantial percentage of those eligible for recovery.

Judge Elaine E. Bucklo, *Carnegie v. Household International,* (August 28, 2006) No. 98 C 2178 (N.D. Ill.):

[T]he Notice was disseminated pursuant to a plan consisting of first class mail and publication developed by Plaintiff's notice consultant, Hilsoft Notification[s]…who the Court recognized as experts in the design of notice plans in class actions. The Notice by first-class mail and publication was provided in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies all requirements of Rule 23(e) and due process.

Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest,* (June 13, 2006) No. CV-2005-58-1 (Ark. Cir. Ct.):

Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and the Publication Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminarily Approval Order, was the best notice practicable under the circumstances…and the requirements of due process under the Arkansas and United States Constitutions.

Judge Norma L. Shapiro, *First State Orthopedics et al. v. Concentra, Inc., et al.,* (May 1, 2006) No. 2:05-CV-04951-NS (E.D. Pa.):

> *The Court finds that dissemination of the Mailed Notice, Published Notice and Full Notice in the manner set forth here and in the Settlement Agreement meets the requirements of due process and Pennsylvania law. The Court further finds that the notice is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, is the best practicable notice; and is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Lawsuit and of their right to object or to exclude themselves from the proposed settlement.*

Judge Thomas M. Hart, *Froeber v. Liberty Mutual Fire Ins. Co.,* (April 19, 2006) No. 00C15234 (Or. Cir. Ct.):

> *The court has found and now reaffirms that dissemination and publication of the Class Notice in accordance with the terms of the Third Amended Order constitutes the best notice practicable under the circumstances.*

Judge Catherine C. Blake, *In re Royal Ahold Securities and "ERISA" Litigation,* (January 6, 2006) MDL No. 1539 (D. Md.):

> *I think it's remarkable, as I indicated briefly before, given the breadth and scope of the proposed Class, the global nature of the Class, frankly, that again, at least on a preliminary basis, and I will be getting a final report on this, that the Notice Plan that has been proposed seems very well, very well suited, both in terms of its plain language and in terms of its international reach, to do what I hope will be a very thorough and broad-ranging job of reaching as many of the shareholders, whether individual or institutional, as possibly can be done to participate in what I also preliminarily believe to be a fair, adequate and reasonable settlement.*

Judge Catherine C. Blake, *In re Royal Ahold Securities & "ERISA" Litigation,* 437 F.Supp.2d 467, 472 (D. Md. 2006):

> *The court hereby finds that the Notice and Notice Plan described herein and in the Order dated January 9, 2006 provided Class Members with the best notice practicable under the circumstances. The Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons entitled to such notice, and the Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.*

Judge Robert H. Wyatt, Jr., *Gray v. New Hampshire Indemnity Co., Inc*., (December 19, 2005) No. CV-2002-952-2-3 (Ark. Cir. Ct.):

> *Notice of the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The Notice contained the essential elements necessary to satisfy due process, including the Settlement Class definition, the identities of the Parties and of their counsel, a summary of the terms of the proposed settlement, Class Counsel's intent to apply for fees, information regarding the manner in which objections could be submitted, and requests for exclusions could be filed. The Notice properly informed Class members of the formula for the distribution of benefits under the settlement…Notice was direct mailed to all Class members whose current whereabouts could be identified by reasonable effort. Notice was also effected by publication in many newspapers and magazines throughout the nation, reaching a large majority of the Class members multiple times. The Court finds that such notice constitutes the best notice practicable.*

Judge Michael J. O'Malley, *Defrates v. Hollywood Entm't Corp.*, (June 24, 2005) No. 02 L 707 (Ill. Cir. Ct.):

> *[T]his Court hereby finds that the notice program described in the Preliminary Approval Order and completed by HEC complied fully with the requirements of due process, the Federal Rules of Civil Procedure and all other applicable laws.*

Judge Wilford D. Carter, *Thibodeaux v. Conoco Phillips Co.,* (May 26, 2005) No. 2003-481 F (14th J.D. Ct. La.):

> *Notice given to Class Members…were reasonably calculated under all the circumstances and have been sufficient, both as to the form and content…Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due process and sufficient notice to all potential members of the Class as Defined.*

Judge Michael Canaday, *Morrow v. Conoco Inc*., (May 25, 2005) No. 2002-3860 G (14th J.D. Ct. La.):

> *The objections, if any, made to due process, constitutionality, procedures, and compliance with law, including, but not limited to, the adequacy of notice and the fairness of the proposed Settlement Agreement, lack merit and are hereby overruled.*

Judge John R. Padova, *Nichols v. SmithKline Beecham Corp*., (April 22, 2005) No. 00-6222 (E.D. Pa.):

> *Pursuant to the Order dated October 18, 2004, End-Payor Plaintiffs employed Hilsoft Notifications to design and oversee Notice to the End-Payor Class. Hilsoft Notifications has extensive experience in class action notice situations relating to prescription drugs and cases in which unknown class members need to receive notice…After reviewing the individual mailed Notice, the publication Notices, the PSAs and the informational release, the Court concludes that the substance of the Notice provided to members of the End-Payor Class in this case was adequate to satisfy the concerns of due process and the Federal Rules.*

Judge Douglas Combs, *Morris v. Liberty Mutual Fire Ins. Co.,* (February 22, 2005) No. CJ-03-714 (D. Okla.):

> *I am very impressed that the notice was able to reach – be delivered to 97 ½ percent members of the class. That, to me, is admirable. And I'm also – at the time that this was initially entered, I was concerned about the ability of notice to be understood by a common, nonlawyer person, when we talk about legalese in a court setting. In this particular notice, not only the summary notice but even the long form of the notice were easily understandable, for somebody who could read the English language, to tell them whether or not they had the opportunity to file a claim.*

Judge Joseph R. Goodwin, *In re Serzone Products Liability Litigation,* 231 F.R.D. 221, 231 (S.D. W. Va. 2005):

> *The Notice Plan was drafted by Hilsoft Notifications, a Pennsylvania firm specializing in designing, developing, analyzing and implementing large-scale, unbiased legal notification plans. Hilsoft has disseminated class action notices in more than 150 cases, and it designed the model notices currently displayed on the Federal Judicial Center's website as a template for others to follow…To enhance consumer exposure, Hilsoft studied the demographics and readership of publications among adults who used a prescription drug for depression in the last twelve months. Consequently, Hilsoft chose to utilize media particularly targeting women due to their greater incidence of depression and heavy usage of the medication.*

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litigation*, (November 24, 2004) MDL No. 1430 (D. Mass.):

> *After review of the proposed Notice Plan designed by Hilsoft Notifications…is hereby found to be the best practicable notice under the circumstances and, when completed, shall constitute due and sufficient notice of the Settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Rule 23 the Federal Rules of Civil Procedure and due process.*

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litigation*, (November 23, 2004) MDL No. 1430 (D. Mass.):

> *I actually find the [notice] plan as proposed to be comprehensive and extremely sophisticated and very likely be as comprehensive as any plan of its kind could be in reaching those most directly affected.*

Judge James S. Moody, Jr., *Mantzouris v. Scarritt Motor Group Inc.,* (August 10, 2004) No. 8:03 CV- 0015-T-30 MSS (M.D. Fla.):

> *Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the members of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement, it is hereby determined that all members of the Class, except for Ms. Gwendolyn Thompson, who was the sole person opting out of the Settlement Agreement, are bound by this Order and Final Judgment entered herein.*

Judge Robert E. Payne, *Fisher v. Virginia Electric & Power Co*., (July 1, 2004) No. 3:02CV431 (E.D. Va.)**:**

> *The record here shows that the class members have been fully and fairly notified of the existence of the class action, of the issues in it, of the approaches taken by each side in it in such a way as to inform meaningfully those whose rights are affected and to thereby enable them to exercise their rights intelligently…The success rate in notifying the class is, I believe, at least in my experience, I share Ms. Kauffman's experience, it is as great as I have ever seen in practicing or serving in this job…So I don't believe we could have had any more effective notice.*

Judge John Kraetzer, *Baiz v. Mountain View Cemetery*, (April 14, 2004) No. 809869-2 (Cal. Super. Ct.):

> *The notice program was timely completed, complied with California Government Code section 6064, and provided the best practicable notice to all members of the Settlement Class under the circumstances. The Court finds that the notice program provided class members with adequate instructions and a variety of means to obtain information pertaining to their rights and obligations under the settlement so that a full opportunity has been afforded to class members and all other persons wishing to be heard…The Court has determined that the Notice given to potential members of the Settlement Class fully and accurately informed potential Members of the Settlement Class of all material elements of the proposed settlement and constituted valid, due, and sufficient notice to all potential members of the Settlement Class, and that it constituted the best practicable notice under the circumstances.*

Hospitality Mgmt. Assoc., Inc. v. Shell Oil Co., 356 S.C. 644, 663, 591 S.E.2d 611, 621 (Sup. Ct. S.C. 2004):

> *Clearly, the Cox court designed and utilized various procedural safeguards to guarantee sufficient notice under the circumstances. Pursuant to a limited scope of review, we need go no further in deciding the Cox court's findings that notice met due process are entitled to deference.*

Judge Joseph R. Goodwin, *In re Serzone Prods. Liability Litigation,* 2004 U.S. Dist. LEXIS 28297, at *10 (S.D. W. Va.):

> *The Court has considered the Notice Plan and proposed forms of Notice and Summary Notice submitted with the Memorandum for Preliminary Approval and finds that the forms and manner of notice proposed by Plaintiffs and approved herein meet the requirements of due process and Fed.R.Civ.P. 23(c) and (e), are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the Constitutional requirements of notice.*

Judge James D. Arnold, *Cotten v. Ferman Mgmt. Servs. Corp.,* (November 26, 2003) No. 02-08115 (Fla. Cir. Ct.):

> *Due and adequate notice of the proceedings having been given and a full opportunity having been offered to the member of the Class to participate in the Settlement Hearing, or object to the certification of the Class and the Agreement…*

Judge Judith K. Fitzgerald, *In re Pittsburgh Corning Corp.,* (November 26, 2003) No. 00-22876-JKF (Bankr. W.D. Pa.):

> *The procedures and form of notice for notifying the holders of Asbestos PI Trust Claims, as described in the Motion, adequately protect the interests of the holders of Asbestos PI Trust Claims in a manner consistent with the principles of due process, and satisfy the applicable requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.*

Judge Carter Holly, *Richison v. American Cemwood Corp.,* (November 18, 2003) No. 005532 (Cal. Super. Ct.):

> *As to the forms of Notice, the Court finds and concludes that they fully apprised the Class members of the pendency of the litigation, the terms of the Phase 2 Settlement, and Class members' rights and options…Not a single Class member—out of an estimated 30,000—objected to the terms of the Phase 2 Settlement Agreement, notwithstanding a comprehensive national Notice campaign, via direct mail and publication Notice…The notice was reasonable and the best notice practicable under the circumstances, was due, adequate, and sufficient notice to all Class members, and complied fully with the laws of the State of California, the Code of Civil Procedure, due process, and California Rules of Court 1859 and 1860.*

Judge Thomas A. Higgins, *In re Columbia/HCA Healthcare Corp.,* (June 13, 2003) MDL No. 1227 (M.D. Tenn.):

> *Notice of the settlement has been given in an adequate and sufficient manner. The notice provided by mailing the settlement notice to certain class members and publishing notice in the manner described in the settlement was the best practicable notice, complying in all respects with the requirements of due process.*

Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.,* 216 F.R.D. 55, 68 (S.D.N.Y. 2003):

> *In view of the extensive notice campaign waged by the defendant, the extremely small number of class members objecting or requesting exclusion from the settlement is a clear sign of strong support for the settlement…The notice provides, in language easily understandable to a lay person, the essential terms of the settlement, including the claims asserted…who would be covered by the settlement…[T]he notice campaign that defendant agreed to undertake was extensive…I am satisfied, having reviewed the contents of the notice package, and the extensive steps taken to disseminate notice of the settlement, that the class notice complies with the requirements of Rule 23 (c)(2) and 23(e). In summary, I have reviewed all of the objections, and none persuade me to conclude that the proposed settlement is unfair, inadequate or unreasonable.*

Judge Edgar E. Bayley, *Dimitrios v. CVS, Inc.,* (November 27, 2002) No. 99-6209; ***Walker v. Rite Aid Corp.,*** No. 99-6210; and ***Myers v. Rite Aid Corp.*,** No. 01-2771 (Pa. Ct. C.P.):

> *The Court specifically finds that: fair and adequate notice has been given to the class, which comports with due process of law.*

Judge Dewey C. Whitenton, *Ervin v. Movie Gallery, Inc.,* (November 22, 2002) No. 13007 (Tenn. Ch.):

> *The content of the class notice also satisfied all due process standards and state law requirements…The content of the notice was more than adequate to enable class members to make an informed and intelligent choice about remaining in the class or opting out of the class.*

Judge James R. Williamson, *Kline v. The Progressive Corp*., (November 14, 2002) No. 01-L-6 (Ill. Cir. Ct.):

> *Notice to the Settlement Class was constitutionally adequate, both in terms of its substance and the manner in which it was disseminated. The notice contained the essential elements necessary to satisfy due process…*

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (September 13, 2002) No. L-008830.00 (N.J. Super. Ct.):

> *Here, the comprehensive bilingual, English and Spanish, court-approved Notice Plan provided by the terms of the settlement meets due process requirements. The Notice Plan used a variety of methods to reach potential class members. For example, short form notices for print media were placed…throughout the United States and in major national consumer publications which include the most widely read publications among Cooper Tire owner demographic groups.*

Judge Harold Baer, Jr., *Thompson v. Metropolitan Life Ins. Co.,* (September 3, 2002) No. 00 Civ. 5071-HB (S.D.N.Y.):

> *The Court further finds that the Class Notice and Publication Notice provided in the Settlement Agreement are written in plain English and are readily understandable by Class Members. In sum, the Court finds that the proposed notice texts and methodology are reasonable, that they constitute due, adequate and sufficient notice to all persons entitled to be provided with notice, and that they meet the requirements of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 23(c)(2) and (e)), the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law.*

Judge Milton Gunn Shuffield, *Scott v. Blockbuster Inc.,* (January 22, 2002) No. D 162-535 (Tex. Jud. Dist. Ct.) ultimately withstood challenge to Court of Appeals of Texas. *Peters v. Blockbuster* 65 S.W.3d 295, 307 (Tex. App.-Beaumont, 2001):

> *In order to maximize the efficiency of the notice, a professional concern, Hilsoft Notifications, was retained. This Court concludes that the notice campaign was the best practicable, reasonably calculated, under all*

the circumstances, to apprise interested parties of the settlement and afford them an opportunity to present their objections…The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 30, 2001) No. MID-L-8839-00-MT (N.J. Super. Ct.):

The parties have crafted a notice program which satisfies due process requirements without reliance on an unreasonably burdensome direct notification process…The form of the notice is reasonably calculated to apprise class members of their rights. The notice program is specifically designed to reach a substantial percentage of the putative settlement class members.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (October 29, 2001) No. L-8830-00-MT (N.J. Super. Ct.):

I saw the various bar graphs for the different publications and the different media dissemination, and I think that was actually the clearest bar graph I've ever seen in my life…it was very clear of the time periods that you were doing as to each publication and which media you were doing over what market time, so I think that was very clear.

Judge Stuart R. Pollak, *Microsoft I-V Cases,* (April 1, 2001) J.C.C.P. No. CJC-00-004106 (Cal. Super. Ct.):

[C]oncerning dissemination of class notice; and I have reviewed the materials that have been submitted on that subject and basically I'm satisfied. I think it's amazing if you're really getting 80 percent coverage. That's very reassuring. And the papers that you submitted responded to a couple things that had been mentioned before and I am satisfied with all that.

Judge Stuart R. Pollak, *Microsoft I-V Cases,* (March 30, 2001) J.C.C.P. No. 4106 (Cal. Super. Ct.):

Plaintiffs and Defendant Microsoft Corporation have submitted a joint statement in support of their request that the Court approve the plan for dissemination of class action notice and proposed forms of notice, and amend the class definition. The Court finds that the forms of notice to Class members attached hereto as Exhibits A and B fairly and adequately inform the Class members of their rights concerning this litigation. The Court further finds that the methods for dissemination of notice are the fairest and best practicable under the circumstances, and comport with due process requirements.

LEGAL NOTICE CASES

Hilsoft Notifications has served as a notice expert for planning, implementation and/or analysis in the following partial listing of cases:

Andrews v. MCI (900 Number Litigation)	S.D. Ga., CV 191-175
Harper v. MCI (900 Number Litigation)	S.D. Ga., CV 192-134
In re Bausch & Lomb Contact Lens Litigation	N.D. Ala., 94-C-1144-WW
In re Ford Motor Co. Vehicle Paint Litigation	E.D. La., MDL No. 1063
Castano v. Am. Tobacco	E.D. La., CV 94-1044
Cox v. Shell Oil (Polybutylene Pipe Litigation)	Tenn. Ch., 18,844
In re Amino Acid Lysine Antitrust Litigation	N.D. Ill., MDL No. 1083
In re Dow Corning Corp. (Breast Implant Bankruptcy)	E.D. Mich., 95-20512-11-AJS

Kunhel v. CNA Ins. Companies	N.J. Super. Ct., ATL-C-0184-94
In re Factor Concentrate Blood Prods. Litigation (Hemophiliac HIV)	N.D. Ill., MDL No. 986
In re Ford Ignition Switch Prods. Liability Litigation	D. N.J., 96-CV-3125
Jordan v. A.A. Friedman (Non-Filing Ins. Litigation)	M.D. Ga., 95-52-COL
Kalhammer v. First USA (Credit Card Litigation)	Cal. Cir. Ct., C96-45632010-CAL
Navarro-Rice v. First USA (Credit Card Litigation)	Or. Cir. Ct., 9709-06901
Spitzfaden v. Dow Corning (Breast Implant Litigation)	La. D. Ct., 92-2589
Robinson v. Marine Midland (Finance Charge Litigation)	N.D. Ill., 95 C 5635
McCurdy v. Norwest Fin. Alabama	Ala. Cir. Ct., CV-95-2601
Johnson v. Norwest Fin. Alabama	Ala. Cir. Ct., CV-93-PT-962-S
In re Residential Doors Antitrust Litigation	E.D. Pa., MDL No. 1039
Barnes v. Am. Tobacco Co. Inc.	E.D. Pa., 96-5903
Small v. Lorillard Tobacco Co. Inc.	N.Y. Super. Ct., 110949/96
Naef v. Masonite Corp (Hardboard Siding Litigation)	Ala. Cir. Ct., CV-94-4033
In re Synthroid Mktg. Litigation	N.D. Ill., MDL No. 1182
Raysick v. Quaker State Slick 50 Inc.	D. Tex., 96-12610
Castillo v. Mike Tyson (Tyson v. Holyfield Bout)	N.Y. Super. Ct., 114044/97
Avery v. State Farm Auto. Ins. (Non-OEM Auto Parts)	Ill. Cir. Ct., 97-L-114
Walls v. The Am. Tobacco Co. Inc.	N.D. Okla., 97-CV-218-H
Tempest v. Rainforest Café (Securities Litigation)	D. Minn., 98-CV-608
Stewart v. Avon Prods. (Securities Litigation)	E.D. Pa., 98-CV-4135
Goldenberg v. Marriott PLC Corp (Securities Litigation)	D. Md., PJM 95-3461
Delay v. Hurd Millwork (Building Products Litigation)	Wash. Super. Ct., 97-2-07371-0
Gutterman v. Am. Airlines (Frequent Flyer Litigation)	Ill. Cir. Ct., 95CH982
Hoeffner v. The Estate of Alan Kenneth Vieira (Un-scattered Cremated Remains Litigation)	Cal. Super. Ct., 97-AS 02993
In re Graphite Electrodes Antitrust Litigation	E.D. Pa., MDL No. 1244
In re Silicone Gel Breast Implant Prods. Liability Litigation, Altrichter v. INAMED	N.D. Ala., MDL No. 926
St. John v. Am. Home Prods. Corp. (Fen/Phen Litigation)	Wash. Super. Ct., 97-2-06368

Crane v. Hackett Assocs. (Securities Litigation)	E.D. Pa., 98-5504
In re Holocaust Victims Assets Litigation (Swiss Banks)	E.D.N.Y., CV-96-4849
McCall v. John Hancock (Settlement Death Benefits)	N.M. Cir. Ct., CV-2000-2818
Williams v. Weyerhaeuser Co. (Hardboard Siding Litigation)	Cal. Super. Ct., CV-995787
Kapustin v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., 98-CV-6599
Leff v. YBM Magnex Int'l Inc. (Securities Litigation)	E.D. Pa., 95-CV-89
In re PRK/LASIK Consumer Litigation	Cal. Super. Ct., CV-772894
Hill v. Galaxy Cablevision	N.D. Miss., 1:98CV51-D-D
Scott v. Am. Tobacco Co. Inc.	La. D. Ct., 96-8461
Jacobs v. Winthrop Financial Associates (Securities Litigation)	D. Mass., 99-CV-11363
Int'l Comm'n on Holocaust Era Ins. Claims – Worldwide Outreach Program	Former Secretary of State Lawrence Eagleburger Commission
Bownes v. First USA Bank (Credit Card Litigation)	Ala. Cir. Ct., CV-99-2479-PR
Whetman v. IKON (ERISA Litigation)	E.D. Pa., 00-87
Mangone v. First USA Bank (Credit Card Litigation)	Ill. Cir. Ct., 99AR672a
In re Babcock and Wilcox Co. (Asbestos Related Bankruptcy)	E.D. La., 00-10992
Barbanti v. W.R. Grace and Co. (Zonolite / Asbestos Litigation)	Wash. Super. Ct., 00201756-6
Brown v. Am. Tobacco	Cal. Super. Ct., J.C.C.P. 4042, 711400
Wilson v. Servier Canada Inc. (Canadian Fen/Phen Litigation)	Ont. Super. Ct., 98-CV-158832
In re Texaco Inc. (Bankruptcy)	S.D.N.Y. 87 B 20142, 87 B 20143, 87 B 20144
Olinde v. Texaco (Bankruptcy, Oil Lease Litigation)	M.D. La., 96-390
Gustafson v. Bridgestone/Firestone, Inc. (Recall Related Litigation)	S.D. Ill., 00-612-DRH
In re Bridgestone/Firestone Tires Prods. Liability Litigation	S.D. Ind., MDL No. 1373
Gaynoe v. First Union Corp. (Credit Card Litigation)	N.C. Super. Ct., 97-CVS-16536
Carson v. Daimler Chrysler Corp. (Fuel O-Rings Litigation)	W.D. Tenn., 99-2896 TU A
Providian Credit Card Cases	Cal. Super. Ct., J.C.C.P. 4085
Fields v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)	Cal. Super. Ct., 302774

Sanders v. Great Spring Waters of Am., Inc. (Bottled Water Litigation)	Cal. Super. Ct., 303549
Sims v. Allstate Ins. Co. (Diminished Auto Value Litigation)	Ill. Cir. Ct., 99-L-393A
Peterson v. State Farm Mutual Auto. Ins. Co. (Diminished Auto Value Litigation)	Ill. Cir. Ct., 99-L-394A
Microsoft I-V Cases (Antitrust Litigation Mirroring Justice Dept.)	Cal. Super. Ct., J.C.C.P. 4106
Westman v. Rogers Family Funeral Home, Inc. (Remains Handling Litigation)	Cal. Super. Ct., C-98-03165
Rogers v. Clark Equipment Co.	Ill. Cir. Ct., 97-L-20
Garrett v. Hurley State Bank (Credit Card Litigation)	Miss. Cir. Ct., 99-0337
Ragoonanan v. Imperial Tobacco Ltd. (Firesafe Cigarette Litigation)	Ont. Super. Ct., 00-CV-183165 CP
Dietschi v. Am. Home Prods. Corp. (PPA Litigation)	W.D. Wash., C01-0306L
Dimitrios v. CVS, Inc. (PA Act 6 Litigation)	Pa. C.P., 99-6209
Jones v. Hewlett-Packard Co. (Inkjet Cartridge Litigation)	Cal. Super. Ct., 302887
In re Tobacco Cases II (California Tobacco Litigation)	Cal. Super. Ct., J.C.C.P. 4042
Scott v. Blockbuster, Inc. (Extended Viewing Fees Litigation)	136th Tex. Jud. Dist., D 162-535
Anesthesia Care Assocs. v. Blue Cross of Cal.	Cal. Super. Ct., 986677
Ting v. AT&T (Mandatory Arbitration Litigation)	N.D. Cal., C-01-2969-BZ
In re W.R. Grace & Co. (Asbestos Related Bankruptcy)	Bankr. D. Del., 01-01139-JJF
Talalai v. Cooper Tire & Rubber Co. (Tire Layer Adhesion Litigation)	N.J. Super. Ct.,, MID-L-8839-00 MT
Kent v. Daimler Chrysler Corp. (Jeep Grand Cherokee Park-to-Reverse Litigation)	N.D. Cal., C01-3293-JCS
Int'l Org. of Migration – German Forced Labour Compensation Programme	Geneva, Switzerland
Madsen v. Prudential Federal Savings & Loan (Homeowner's Loan Account Litigation)	3rd Jud. Dist. Ct. Utah, C79-8404
Bryant v. Wyndham Int'l., Inc. (Energy Surcharge Litigation)	Cal. Super. Ct., GIC 765441, GIC 777547
In re USG Corp. (Asbestos Related Bankruptcy)	Bankr. D. Del., 01-02094-RJN
Thompson v. Metropolitan Life Ins. Co. (Race Related Sales Practices Litigation)	S.D.N.Y., 00-CIV-5071 HB
Ervin v. Movie Gallery Inc. (Extended Viewing Fees)	Tenn. Ch., CV-13007
Peters v. First Union Direct Bank (Credit Card Litigation)	M.D. Fla., 8:01-CV-958-T-26 TBM
National Socialist Era Compensation Fund	Republic of Austria

In re Baycol Litigation	D. Minn., MDL No. 1431
Claims Conference–Jewish Slave Labour Outreach Program	German Government Initiative
Wells v. Chevy Chase Bank (Credit Card Litigation)	Md. Cir. Ct., C-99-000202
Walker v. Rite Aid of PA, Inc. (PA Act 6 Litigation)	C.P. Pa., 99-6210
Myers v. Rite Aid of PA, Inc. (PA Act 6 Litigation)	C.P. Pa., 01-2771
In re PA Diet Drugs Litigation	C.P. Pa., 9709-3162
Harp v. Qwest Communications (Mandatory Arbitration Lit.)	Or. Circ. Ct., 0110-10986
Tuck v. Whirlpool Corp. & Sears, Roebuck & Co. (Microwave Recall Litigation)	Ind. Cir. Ct., 49C01-0111-CP-002701
Allison v. AT&T Corp. (Mandatory Arbitration Litigation)	1st Jud. D.C. N.M., D-0101-CV-20020041
Kline v. The Progressive Corp.	Ill. Cir. Ct., 01-L-6
Baker v. Jewel Food Stores, Inc. & Dominick's Finer Foods, Inc. (Milk Price Fixing)	Ill. Cir. Ct., 00-L-9664
In re Columbia/HCA Healthcare Corp. (Billing Practices Litigation)	M.D. Tenn., MDL No. 1227
Foultz v. Erie Ins. Exchange (Auto Parts Litigation)	C.P. Pa., 000203053
Soders v. General Motors Corp. (Marketing Initiative Litigation)	C.P. Pa., CI-00-04255
Nature Guard Cement Roofing Shingles Cases	Cal. Super. Ct., J.C.C.P. 4215
Curtis v. Hollywood Entm't Corp. (Additional Rental Charges)	Wash. Super. Ct., 01-2-36007-8 SEA
Defrates v. Hollywood Entm't Corp.	Ill. Cir. Ct., 02L707
Pease v. Jasper Wyman & Son, Merrill Blueberry Farms Inc., Allen's Blueberry Freezer Inc. & Cherryfield Foods Inc.	Me. Super. Ct., CV-00-015
West v. G&H Seed Co. (Crawfish Farmers Litigation)	27th Jud. D. Ct. La., 99-C-4984-A
Linn v. Roto-Rooter Inc. (Miscellaneous Supplies Charge)	C.P. Ohio, CV-467403
McManus v. Fleetwood Enter., Inc. (RV Brake Litigation)	D. Ct. Tex., SA-99-CA-464-FB
Baiz v. Mountain View Cemetery (Burial Practices)	Cal. Super. Ct., 809869-2
Stetser v. TAP Pharm. Prods, Inc. & Abbott Laboratories (Lupron Price Litigation)	N.C. Super. Ct., 01-CVS-5268
Richison v. Am. Cemwood Corp. (Roofing Durability Settlement)	Cal. Super. Ct., 005532
Cotten v. Ferman Mgmt. Servs. Corp.	13th Jud. Cir. Fla., 02-08115
In re Pittsburgh Corning Corp. (Asbestos Related Bankruptcy)	Bankr. W.D. Pa., 00-22876-JKF

Mostajo v. Coast Nat'l Ins. Co.	Cal. Super. Ct., 00 CC 15165
Friedman v. Microsoft Corp. (Antitrust Litigation)	Ariz. Super. Ct., CV 2000-000722
Multinational Outreach - East Germany Property Claims	Claims Conference
Davis v. Am. Home Prods. Corp. (Norplant Contraceptive Litigation)	D. La., 94-11684
Walker v. Tap Pharmaceutical Prods., Inc. (Lupron Price Litigation)	N.J. Super. Ct., CV CPM-L-682-01
Munsey v. Cox Communications (Late Fee Litigation)	Civ. D. La., Sec. 9, 97 19571
Gordon v. Microsoft Corp. (Antitrust Litigation)	4th Jud. D. Ct. Minn., 00-5994
Clark v. Tap Pharmaceutical Prods., Inc.	5th Dist. App. Ct. Ill., 5-02-0316
Fisher v. Virginia Electric & Power Co.	E.D. Va., 3:02-CV-431
Mantzouris v. Scarritt Motor Group, Inc.	M.D. Fla., 8:03-CV-0015-T-30-MSS
Johnson v. Ethicon, Inc. (Product Liability Litigation)	W. Va. Cir. Ct., 01-C-1530, 1531, 1533, 01-C-2491 to 2500
Schlink v. Edina Realty Title	4th Jud. D. Ct. Minn., 02-018380
Tawney v. Columbia Natural Res. (Oil & Gas Lease Litigation)	W. Va. Cir. Ct., 03-C-10E
White v. Washington Mutual, Inc. (Pre-Payment Penalty Litigation)	4th Jud. D. Ct. Minn., CT 03-1282
Acacia Media Techs. Corp. v. Cybernet Ventures Inc., (Patent Infringement Litigation)	C.D. Cal., SACV03-1803 GLT (Anx)
Bardessono v. Ford Motor Co. (15 Passenger Vans)	Wash. Super. Ct., 32494
Gardner v. Stimson Lumber Co. (Forestex Siding Litigation)	Wash. Super. Ct., 00-2-17633-3SEA
Poor v. Sprint Corp. (Fiber Optic Cable Litigation)	Ill. Cir. Ct., 99-L-421
Thibodeau v. Comcast Corp.	E.D. Pa., 04-CV-1777
Cazenave v. Sheriff Charles C. Foti (Strip Search Litigation)	E.D. La., 00-CV-1246
National Assoc. of Police Orgs., Inc. v. Second Chance Body Armor, Inc. (Bullet Proof Vest Litigation)	Mich. Cir. Ct., 04-8018-NP
Nichols v. SmithKline Beecham Corp. (Paxil)	E.D. Pa., 00-6222
Yacout v. Federal Pacific Electric Co. (Circuit Breaker)	N.J. Super. Ct., MID-L-2904-97
Lewis v. Bayer AG (Baycol)	1st Jud. Dist. Ct. Pa., 002353
In re Educ. Testing Serv. PLT 7-12 Test Scoring Litigation	E.D. La., MDL No. 1643
Stefanyshyn v. Consol. Indus. Corp. (Heat Exchanger)	Ind. Super. Ct., 79 D 01-9712-CT-59
Barnett v. Wal-Mart Stores, Inc.	Wash. Super. Ct., 01-2-24553-8 SEA

In re Serzone Prods. Liability Litigation	S.D. W. Va., MDL No. 1477
Ford Explorer Cases	Cal. Super. Ct., J.C.C.P. 4226 & 4270
In re Solutia Inc. (Bankruptcy)	S.D.N.Y., 03-17949-PCB
In re Lupron Marketing & Sales Practices Litigation	D. Mass., MDL No. 1430
Morris v. Liberty Mutual Fire Ins. Co.	D. Okla., CJ-03-714
Bowling, et al. v. Pfizer Inc. (Bjork-Shiley Convexo-Concave Heart Valve)	S.D. Ohio, C-1-91-256
Thibodeaux v. Conoco Philips Co.	D. La., 2003-481
Morrow v. Conoco Inc.	D. La., 2002-3860
Tobacco Farmer Transition Program	U.S. Dept. of Agric.
Perry v. Mastercard Int'l Inc.	Ariz. Super. Ct., CV2003-007154
Brown v. Credit Suisse First Boston Corp.	C.D. La., 02-13738
In re Unum Provident Corp.	D. Tenn., 1:03-CV-1000
In re Ephedra Prods. Liability Litigation	D.N.Y., MDL No. 1598
Chesnut v. Progressive Casualty Ins. Co.	Ohio C.P., 460971
Froeber v. Liberty Mutual Fire Ins. Co.	Or. Cir. Ct., 00C15234
Luikart v. Wyeth Am. Home Prods. (Hormone Replacement)	W. Va. Cir. Ct., 04-C-127
Salkin v. MasterCard Int'l Inc. (Pennsylvania)	Pa. C.P., 2648
Rolnik v. AT&T Wireless Servs., Inc.	N.J. Super. Ct., L-180-04
Singleton v. Hornell Brewing Co. Inc. (Arizona Ice Tea)	Cal. Super. Ct., BC 288 754
Becherer v. Qwest Commc'ns Int'l, Inc.	Ill. Cir. Ct., 02-L140
Clearview Imaging v. Progressive Consumers Ins. Co.	Fla. Cir. Ct., 03-4174
Mehl v. Canadian Pacific Railway, Ltd	D.N.D., A4-02-009
Murray v. IndyMac Bank. F.S.B	N.D. Ill., 04 C 7669
Gray v. New Hampshire Indemnity Co., Inc.	Ark. Cir. Ct., CV-2002-952-2-3
George v. Ford Motor Co.	M.D. Tenn., 3:04-0783
Allen v. Monsanto Co.	W. Va. Cir. Ct., 041465
Carter v. Monsanto Co.	W. Va. Cir. Ct., 00-C-300
Carnegie v. Household Int'l, Inc.	N. D. Ill., 98-C-2178

Daniel v. AON Corp.	Ill. Cir. Ct., 99 CH 11893
In re Royal Ahold Securities and "ERISA" Litigation	D. Md., MDL No. 1539
In re Pharmaceutical Industry Average Wholesale Price Litigation	D. Mass., MDL No. 1456
Meckstroth v. Toyota Motor Sales, U.S.A., Inc.	24th Jud. D. Ct. La., 583-318
Walton v. Ford Motor Co.	Cal. Super. Ct., SCVSS 126737
Hill v. State Farm Mutual Auto Ins. Co.	Cal. Super. Ct., BC 194491
First State Orthopaedics et al. v. Concentra, Inc., et al.	E.D. Pa. 2:05-CV-04951-AB
Sauro v. Murphy Oil USA, Inc.	E.D. La., 05-4427
In re High Sulfur Content Gasoline Prods. Liability Litigation	E.D. La., MDL No. 1632
Homeless Shelter Compensation Program	City of New York
Rosenberg v. Academy Collection Service, Inc.	E.D. Pa., 04-CV-5585
Chapman v. Butler & Hosch, P.A.	2nd Jud. Cir. Fla., 2000-2879
In re Vivendi Universal, S.A. Securities Litigation	S.D.N.Y., 02-CIV-5571 RJH
Desportes v. American General Assurance Co.	Ga. Super. Ct., SU-04-CV-3637
In re: Propulsid Products Liability Litigation	E.D. La., MDL No. 1355
Baxter v. The Attorney General of Canada (In re Residential Schools Class Action Litigation)	Ont. Super. Ct., 00-CV-192059 CPA
McNall v. Mastercard Int'l, Inc. (Currency Conversion Fees)	13th Tenn. Jud. Dist. Ct., CT-002506-03
Lee v. Allstate	Ill. Cir. Ct., 03 LK 127
Turner v. Murphy Oil USA, Inc.	E.D. La., 2:05-CV-04206-EEF-JCW
Carter v. North Central Life Ins. Co.	Ga. Super. Ct., SU-2006-CV-3764-6
Harper v. Equifax	E.D. Pa., 2:04-CV-03584-TON
Beasley v. Hartford Insurance Co. of the Midwest	Ark. Cir. Ct., CV-2005-58-1
Springer v. Biomedical Tissue Services, LTD (Human Tissue Litigation)	Ind. Cir. Ct., 1:06-CV-00332-SEB-VSS
Spence v. Microsoft Corp. (Antitrust Litigation)	Wis. Cir. Ct., 00-CV-003042
Pennington v. The Coca Cola Co. (Diet Coke)	Mo. Cir. Ct., 04-CV-208580
Sunderman v. Regeneration Technologies, Inc. (Human Tissue Litigation)	S.D. Ohio, 1:06-CV-075-MHW
Splater v. Thermal Ease Hydronic Systems, Inc.	Wash. Super. Ct., 03-2-33553-3-SEA

Peyroux v. The United States of America (New Orleans Levee Breech)	E.D. La., 06-2317
Chambers v. DaimlerChrysler Corp. (Neon Head Gaskets)	N.C. Super. Ct., 01:CVS-1555
Ciabattari v. Toyota Motor Sales, U.S.A., Inc. (Sienna Run Flat Tires)	N.D. Cal., C-05-04289-BZ
In re Bridgestone Securities Litigation	M.D. Tenn., 3:01-CV-0017
In re Mutual Funds Investment Litigation (Market Timing)	D. Md., MDL No. 1586
Accounting Outsourcing v. Verizon Wireless	M.D. La., 03-CV-161
Hensley v. Computer Sciences Corp.	Ark. Cir. Ct., CV-2005-59-3
Peek v. Microsoft Corporation	Ark. Cir. Ct., CV-2006-2612
Reynolds v. The Hartford Financial Services Group, Inc.	D. Or., CV-01-1529 BR
Schwab v. Philip Morris USA, Inc.	E.D.N.Y., CV-04-1945
Zarebski v. Hartford Insurance Co. of the Midwest	Ark. Cir. Ct., CV-2006-409-3
In re Parmalat Securities Litigation	S.D.N.Y., MDL No. 1653 (LAK)
Beasley v. The Reliable Life Insurance Co.	Ark. Cir. Ct., CV-2005-58-1
Sweeten v. American Empire Insurance Company	Ark. Cir. Ct., 2007-154-3
Govt. Employees Hospital Assoc. v. Serono Int., S.A.	D. Mass., 06-CA-10613-PBS
Gunderson v. Focus Healthcare Management, Inc.	14th Jud. D. Ct. La., 2004-2417-D
Gunderson v. F.A. Richard & Associates, Inc., et al.	14th Jud. D. Ct. La., 2004-2417-D
Perez v. Manor Care of Carrollwood	13th Jud. Cir. Fla., 06-00574-E
Pope v. Manor Care of Carrollwood	13th Jud. Cir. Fla., 06-01451-B
West v. Carfax, Inc.	Ohio C.P., 04-CV-1898 (ADL)
Hunsucker v. American Standard Ins. Co. of Wisconsin	Ark. Cir. Ct., CV-2007-155-3
In re Conagra Peanut Butter Products Liability Litigation	N.D. Ga., MDL No. 1845 (TWT)
The People of the State of CA v. Universal Life Resources (Cal DOI v. CIGNA)	Cal. Super. Ct., GIC838913
Burgess v. Farmers Insurance Co., Inc.	D. Okla., CJ-2001-292
Grays Harbor v. Carrier Corporation	W.D. Wash., 05-05437-RBL
Perrine v. E.I. Du Pont De Nemours & Co.	W. Va. Cir. Ct., 04-C-296-2
In re Alstom SA Securities Litigation	S.D.N.Y., 03-CV-6595 VM
Brookshire Bros. v. Chiquita (Antitrust)	S.D. Fla., 05-CIV-21962

Hoorman v. SmithKline Beecham	Ill. Cir. Ct., 04-L-715
Santos v. Government of Guam (Earned Income Tax Credit)	D. Guam, 04-00049
Johnson v. Progressive	Ark. Cir. Ct., CV-2003-513
Bond v. American Family Insurance Co.	D. Ariz., CV06-01249-PXH-DGC
In re SCOR Holding (Switzerland) AG Litigation (Securities)	S.D.N.Y., 04-cv-7897
Shoukry v. Fisher-Price, Inc. (Toy Safety)	S.D.N.Y., 07-cv-7182
In re: Guidant Corp. Plantable Defibrillators Prod's Liab. Litigation	D. Minn., MDL No. 1708
Clark v. Pfizer, Inc (Neurontin)	C.P. Pa., 9709-3162
Angel v. U.S. Tire Recovery (Tire Fire)	W. Va. Cir. Ct., 06-C-855
In re TJX Companies Retail Security Breach Litigation	D. Mass., MDL No. 1838
Webb v. Liberty Mutual Insurance Co.	Ark. Cir. Ct., CV-2007-418-3
Shaffer v. Continental Casualty Co. (Long Term Care Ins.)	C.D. Cal., SACV06-2235-PSG
Palace v. DaimlerChrysler (Defective Neon Head Gaskets)	Ill. Cir. Ct., 01-CH-13168
Lockwood v. Certegy Check Services, Inc. (Stolen Financial Data)	M.D. Fla., 8:07-cv-1434-T-23TGW
Sherrill v. Progressive Northwestern Ins. Co.	18th D. Ct. Mont., DV-03-220
Gunderson v. F.A. Richard & Assocs., Inc. (AIG)	14th Jud. D. Ct. La., 2004-2417-D
Jones v. Dominion Resources Services, Inc.	S.D. W. Va., 2:06-cv-00671
Gunderson v. F.A. Richard & Assocs., Inc. (Wal-Mart)	14th Jud. D. Ct. La., 2004-2417-D
In re Trans Union Corp. Privacy Litigation	N.D. Ill., MDL No. 1350
Gudo v. The Administrator of the Tulane Ed. Fund	La. D. Ct., 2007-C-1959
Guidry v. American Public Life Insurance Co.	14th Jud. D. Ct. La., 2008-3465
McGee v. Continental Tire North America	D.N.J., 2:06-CV-06234 (GEB)
Sims v. Rosedale Cemetery Co.	W. Va. Cir. Ct., 03-C-506
Gunderson v. F.A. Richard & Assocs., Inc. (Amerisafe)	14th Jud. D. Ct. La., 2004-002417
In re Katrina Canal Breaches Consolidated Litigation	E.D. La., 05-4182
In re Department of Veterans Affairs (VA) Data Theft Litigation	D.D.C., MDL No. 1796
Dolen v. ABN AMRO Bank N.V. (Callable CD's)	Ill. Cir. Ct., 01-L-454 and 01-L-493

Pavlov v. CNA (Long Term Care Insurance)	N.D. Ohio, 5:07cv2580
Steele v. Pergo(Flooring Products)	D. Or., 07-CV-01493-BR
Opelousas Trust Authority v. Summit Consulting	27th Jud. D. Ct. La., 07-C-3737-B
Little v. Kia Motors America, Inc. (Braking Systems)	N.J. Super. Ct., UNN-L-0800-01
Boone v. City of Philadelphia (Prisoner Strip Search)	E.D. Pa., 05-CV-1851
In re Countrywide Customer Data Breach Litigation	W.D. Ky., MDL No.1998
Miller v. Basic Research (Weight-loss Supplement)	D. Utah, 2:07-cv-00871-TS
Gunderson v. F.A. Richard & Assocs., Inc. (Cambridge)	14th Jud. D. Ct. La., 2004-002417
Weiner v. Snapple Beverage Corporation	S.D.N.Y., 07-CV-08742
Holk v. Snapple Beverage Corporation	D.N.J., 3:07-CV-03018-MJC-JJH
Coyle v. Hornell Brewing Co. (Arizona Iced Tea)	D.N.J., 08-CV-2797-JBS-JS
In re Heartland Data Security Breach Litigation	S.D. Tex., MDL No. 2046
Satterfield v. Simon & Schuster, Inc. (Text Messaging)	N.D. Cal., 06-CV-2893 CW
Schulte v. Fifth Third Bank (Overdraft Fees)	N.D. Ill., 1:09-CV-06655
Trombley v. National City Bank (Overdraft Fees)	D.D.C., 1:10-CV-00232
Vereen v. Lowe's Home Centers (Defective Drywall)	Ga. Super. Ct., SU10-CV-2267B
Mathena v. Webster Bank, N.A. (Overdraft Fees)	D. Conn, 3:10-cv-01448
Delandro v. County of Allegheny (Prisoner Strip Search)	W.D. Pa., 2:06-cv-00927
Gunderson v. F.A. Richard & Assocs., Inc. (First Health)	14th Jud. D. Ct. La., 2004-002417
Williams v. Hammerman & Gainer, Inc. (Hammerman)	27th Jud. D. Ct. La., 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. (Risk Management)	27th Jud. D. Ct. La., 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. (SIF Consultants)	27th Jud. D. Ct. La., 11-C-3187-B
Gwiazdowski v. County of Chester (Prisoner Strip Search)	E.D. Pa., 2:08cv4463
Williams v. S.I.F. Consultants (CorVel Corporation)	27th Jud. D. Ct. La., 09-C-5244-C
Sachar v. Iberiabank Corporation (Overdraft Fees)	S.D. Fla., MDL No. 2036
LaCour v. Whitney Bank (Overdraft Fees)	M.D. Fla., 8:11cv1896
Lawson v. BancorpSouth (Overdraft Fees)	W.D. Ark., 1:12cv1016
McKinley v. Great Western Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036

Wolfgeher v. Commerce Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Harris v. Associated Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Case v. Bank of Oklahoma (Overdraft Fees)	S.D. Fla., MDL No. 2036
Nelson v. Rabobank, N.A. (Overdraft Fees)	Cal. Super. Ct., RIC 1101391
Fontaine v. Attorney General of Canada (Stirland Lake and Cristal Lake Residential Schools)	Ont. Super. Ct., 00-CV-192059 CP
Opelousas General Hospital Authority v. FairPay Solutions	27th Jud. D. Ct. La., 12-C-1599-C
Marolda v. Symantec Corporation (Software Upgrades)	N.D. Cal., 3:08-cv-05701
In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Economic and Property Damages Settlement	E.D. La., MDL No. 2179
In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Medical Benefits Settlement	E.D. La., MDL No. 2179
Vodanovich v. Boh Brothers Construction (Hurricane Katrina Levee Breaches)	E.D. La., 05-cv-4191
Gessele et al. v. Jack in the Box, Inc.	D. Or., No. 3:10-cv-960
RBS v. Citizens Financial Group, Inc. (Overdraft Fees)	S.D. Fla., MDL No. 2036
Mosser v. TD Bank, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (Mastercard & Visa)	E.D.N.Y., MDL No. 1720
Saltzman v. Pella Corporation (Building Products)	N.D. Ill., 06-cv-4481
In re Zurn Pex Plumbing, Products Liability Litigation	D. Minn., MDL No. 1958
Blahut v. Harris, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
Eno v. M & I Marshall & Ilsley Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Casayuran v. PNC Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Anderson v. Compass Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Evans, et al. v. TIN, Inc. (Environmental)	E.D. La., 2:11-cv-02067
Opelousas General Hospital Authority v. Qmedtrix Systems, Inc.	27th Jud. D. Ct. La., 12-C-1599-C
Williams v. SIF Consultants of Louisiana, Inc. et al.	27th Jud. D. Ct. La., 09-C-5244-C
Miner v. Philip Morris Companies, Inc. et al.	Ark. Cir. Ct., 60CV03-4661
Fontaine v. Attorney General of Canada (Mistassini Hostels Residential Schools)	Qué. Super. Ct., 500-06-000293-056 & No. 550-06-000021-056 (Hull)
Glube et al. v. Pella Corporation et al. (Building Products)	Ont. Super. Ct., CV-11-4322294-00CP

Yarger v. ING Bank	D. Del., 11-154-LPS
Price v. BP Products North America	N.D. Ill, 12-cv-06799
National Trucking Financial Reclamation Services, LLC et al. v. Pilot Corporation et al.	E.D. Ark., 4:13-cv-00250-JMM
Johnson v. Community Bank, N.A. et al. (Overdraft Fees)	M.D. Pa., 3:12-cv-01405-RDM
Rose v. Bank of America Corporation, et al. (TCPA)	N.D. Cal., 11-cv-02390-EJD
McGann, et al., v. Schnuck Markets, Inc. (Data Breach)	Mo. Cir. Ct., 1322-CC00800
Simmons v. Comerica Bank, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC, et al. v. Bestcomp, Inc., et al.	27th Jud. D. Ct. La., 09-C-5242-B
Simpson v. Citizens Bank **(Overdraft Fees)**	E.D. Mich, 2:12-cv-10267
In re Plasma-Derivative Protein Therapies Antitrust Litigation	N.D. Ill, 09-CV-7666
In re Dow Corning Corporation (Breast Implants)	E.D. Mich., 00-X-0005
Mello et al v. Susquehanna Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
Wong et al. v. Alacer Corp. (Emergen-C)	Cal. Super. Ct., CGC-12-519221
In re American Express Anti-Steering Rules Antitrust Litigation (II) **(Italian Colors Restaurant)**	E.D.N.Y., 11-MD-2221, MDL No. 2221
Costello v. NBT Bank (Overdraft Fees)	Sup. Ct. Del Cnty., N.Y., 2011-1037
Gulbankian et al. v. MW Manufacturers, Inc.	D. Mass., No. 10-CV-10392
Hawthorne v. Umpqua Bank (Overdraft Fees)	N.D. Cal., 11-cv-06700-JST
Smith v. City of New Orleans	Civil D. Ct., Parish of Orleans, La., 2005-05453
Adkins et al. v. Nestlé Purina PetCare Company et al.	N.D. Ill., 1:12-cv-02871
Given v. Manufacturers and Traders Trust Company a/k/a M&T Bank (Overdraft Fees)	S.D. Fla., MDL No. 2036
In re MI Windows and Doors Products Liability Litigation (Building Products)	D. S.C., MDL No. 2333
Childs et al. v. Synovus Bank, et al. (Overdraft Fees)	S.D. Fla., MDL No. 2036
Steen v. Capital One, N.A. (Overdraft Fees)	S.D. Fla., MDL No. 2036
Kota of Sarasota, Inc. v. Waste Management Inc. of Florida	12th Jud. Cir. Ct., Sarasota Cnty, Fla., 2011-CA-008020NC
In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010—Economic and Property Damages Settlement (Claim Deadline Notice)	E.D. La., MDL No. 2179

Dorothy Williams d/b/a Dot's Restaurant v. Waste Away Group, Inc.	Cir. Ct., Lawrence Cnty, Ala., 42-cv-2012-900001.00
In re: Energy Future Holdings Corp., et al. (Asbestos Claims Bar Notice)	Bankr. D. Del., 14-10979(CSS)
Gattinella v. Michael Kors (USA), Inc., et al.	S.D.N.Y., 14-civ-5731 (WHP)
Kerry T. Thibodeaux, M.D. (A Professional Medical Corporation) v. American Lifecare, Inc.	27th Jud. D. Ct. La., 13-C-3212
Ono v. Head Racquet Sports USA	C.D.C.A., 2:13-cv-04222-FMO(AGRx)
Opelousas General Hospital Authority v. PPO Plus, L.L.C., et al.	27th Jud. D. Ct. La., 13-C-5380
In re: Shop-Vac Marketing and Sales Practices Litigation	M.D. Pa., MDL No. 2380
In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation	D. N.J., MDL No. 2540
In Re: Citrus Canker Litigation	11th Jud. Cir., Flo., No. 03-8255 CA 13
Whitton v. Deffenbaugh Industries, Inc., et al. ***Gary, LLC v. Deffenbaugh Industries, Inc., et al.***	D. Kan., 2:12-cv-02247 D. Kan., 2:13-cv-2634
Swift v. BancorpSouth Bank (Overdraft Fees)	N.D. Fla., No. 1:10-cv-00090
Forgione v. Webster Bank N.A. (Overdraft Fees)	Sup. Ct.Conn., X10-UWY-CV-12-6015956-S
Small v. BOKF, N.A.	D. Col., 13-cv-01125
Anamaria Chimeno-Buzzi & Lakedrick Reed v. Hollister Co. & Abercrombie & Fitch Co.	S.D. Fla., 14-cv-23120-MGC
In re: HSBC Bank USA, N.A., Checking Account Overdraft Litigation	Sup. Ct. N.Y., No. 650562/11
In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch)	N.D. Cal., MDL No. 2672
Hawkins v. First Tennessee Bank, N.A., et al. (Overdraft Fees)	13th Jud. Cir. Tenn., No. CT-004085-11
Greater Chautauqua Federal Credit Union v. Kmart Corp., et al. (Data Breach)	N.D. Ill., No. 1:15-cv-02228
Bias v. Wells Fargo & Company, et al. (Broker's Price Opinions)	N.D. Cal., No 4:12-cv-00664-YGR
Klug v. Watts Regulator Company (Product Liability)	D. Neb., No. 8:15-cv-00061-JFB-FG3
Ratzlaff v. BOKF, NA d/b/a Bank of Oklahoma, et al. (Overdraft Fees)	Dist. Ct. Okla., No. CJ-2015-00859
Morton v. Greenbank (Overdraft Fees)	20th Jud. Dist. Tenn., No. 11-135-IV
Jacobs, et al. v. Huntington Bancshares Inc., et al. (FirstMerit Overdraft Fees)	Ohio C.P., No. 11CV000090

Farnham v. Caribou Coffee Company, Inc. (TCPA)	W.D. Wis., No. 16-cv-00295-WMC
Gottlieb v. Citgo Petroleum Corporation (TCPA)	S.D. Fla., No. 9:16-cv-81911
McKnight v. Uber Technologies, Inc.	N.D. Cal., No 3:14-cv-05615-JST
Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.)	N.C. Gen. Ct of Justice, Sup. Ct. Div., No. 05 CVS 188, No. 05 CVS 1938
T.A.N. v. PNI Digital Media, Inc.	S.D. GA., No. 2:16-cv-132-LGW-RSB.
In re: Syngenta Litigation	4th Jud. Dist. Minn., No. 27-CV-15-3785
The Financial Oversight and Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy)	D. Puerto Rico, No. 17-04780(LTS)
Callaway v. Mercedes-Benz USA, LLC (Seat Heaters)	C.D. Cal., No 14-cv-02011 JVS
In re: Takata Airbag Products Liability Litigation (OEMs – BMW, Mazda, Subaru and Toyota)	S.D. Fla, MDL No. 2599

Hilsoft-cv-140

Attachment 2

Settlement Administrator
P.O. Box 3170
Portland, OR 97208-3170

PRESORTED
FIRST-CLASS MAIL
AUTO
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 2882

Legal Notice about a Class Action Settlement

[redacted]

[redacted]

[redacted]

If You Incurred One or More $35 Extended Overdrawn Balance Charges in Connection with Your Bank of America Personal Checking Account, You May Be Entitled to Benefits from a Proposed Class Action Settlement

A settlement has been reached in a class action lawsuit alleging that extended overdrawn balance charges ("EOBCs") assessed by Bank of America, N.A. ("BANA") violated the National Bank Act's usury limit. BANA denies the allegations in the case and denies liability. The Court has not decided which side is right.

Who's Included? BANA's records show you are a member of the Settlement Class. The Settlement Class includes all holders of BANA consumer checking accounts who, between February 25, 2014 and December 30, 2017, were assessed at least one EOBC that was not refunded.

What Are the Settlement Terms? BANA has agreed to cease the assessment of EOBCs for 5 years, subject to certain limitations set forth in the settlement agreement, and to pay a Settlement Amount of $66.6 million, which includes: $37.5 million in cash and debt reduction payments of $29.1 million. Once the Court approves the Settlement, you will automatically receive a cash payment, account credit and/or debt reduction based upon EOBCs paid by or assessed to you.

Your Other Options. If you do not want to be bound by the Settlement, you must exclude yourself by **April 20, 2018**. If you do not exclude yourself, you will release your claims against BANA. You may object to the Settlement by **April 20, 2018**. The Long Form Notice available at the Settlement website, listed below, explains how to exclude yourself or object. You may also request a paper copy of the Long Form Notice be mailed to you by contacting the Settlement Administrator at the website or phone number below. The Court will hold a hearing on **June 18, 2018**, to consider whether to approve the Settlement and a request for attorneys' fees of up to 25% of the Settlement Value and service awards of up to $5,000 for each Class Representative. Details regarding the hearing are in the Long Form Notice, available at the website below. You may appear and speak at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

T7361 v.03

www.EOBCsettlement.com **1-888-396-9598**

Attachment 3

From: mail@msgbsvc.com on behalf of noreply_eobcsettlement
Sent: Wednesday, January 31, 2018 12:56 PM
To: [redacted]
Subject: HTML Sample -- Legal Notice of Class Action Settlement

IF YOU INCURRED ONE OR MORE $35 EXTENDED OVERDRAWN BALANCE CHARGES IN CONNECTION WITH YOUR BANK OF AMERICA PERSONAL CHECKING ACCOUNT, YOU MAY BE ENTITLED TO BENEFITS FROM A PROPOSED CLASS ACTION SETTLEMENT.

This is a Court-authorized notice of a proposed class action Settlement. This is not a solicitation from an attorney, and you are not being sued.

PLEASE READ THIS NOTICE CAREFULLY, AS IT EXPLAINS YOUR RIGHTS AND OPTIONS AND THE DEADLINES TO EXERCISE THEM.

For more information, including a more detailed description of your rights and options, please visit www.EOBCSettlement.com.

A Settlement has been reached in a class action lawsuit alleging that extended overdrawn balance charges ("EOBCs") assessed by Bank of America, N.A. ("BANA") violated the National Bank Act's usury limit. BANA denies the allegations in the case and denies liability. The Court has not decided which side is right.

Who Is Included? BANA's records show you are a member of the Settlement Class. The Settlement Class includes all holders of BANA consumer checking accounts who, between February 25, 2014, and December 30, 2017, were assessed at least one EOBC that was not refunded.

What Are The Settlement Terms? BANA has agreed to cease the assessment of EOBCs for 5 years, subject to certain limitations set forth in the Settlement agreement, and to pay a Settlement Amount of $66.6 million, which includes: $37.5 million in cash and debt reduction payments of $29.1 million. Once the Court approves the Settlement, you will automatically receive a cash payment, account credit, and/or debt reduction based upon EOBCs paid by or assessed to you.

What Are My Options? If you do not want to be bound by the Settlement, you must exclude yourself by April 20, 2018. If you do not exclude yourself, you will release your claims against BANA. You may object to the Settlement by April 20, 2018. The Long Form Notice, available at the Settlement website listed below, explains how to exclude yourself or object. You may also request a paper copy of the Long Form Notice be mailed to you by contacting the Settlement Administrator at the website or phone number below. The Court will hold a hearing on June 18, 2018, to consider whether to approve the Settlement and a request for attorneys' fees of up to 25% of the Settlement Value and service awards of up to $5,000 for each Class Representative. Details regarding the hearing are in the Long Form Notice, available at the website below. You may appear and speak at the hearing, but you are not required to do so. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

For more information, visit www.EOBCSettlement.com or call 1-888-396-9598.

Attachment 4

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

If you Incurred One or More $35 Extended Overdrawn Balance Charges in Connection with your BANK OF AMERICA personal checking account, you may be entitled to benefits from a proposed class action settlement

A federal court authorized this notice. This is not a solicitation from a lawyer.

A settlement has been reached in a class action lawsuit pending in the United States District Court for the Southern District of California (the "Court") entitled *Farrell v. Bank of America, N.A.*, Case No. 3:16-CV-00492-L-WVG (the "Action"). The Action challenges extended overdrawn balance charges ("EOBCs") as allegedly violating the National Bank Act's usury limit. Bank of America, N.A. ("BANA") denies liability. The Court has not decided which side is right. The Court has tentatively approved the proposed settlement agreement to which the parties have agreed ("Settlement").

- Current and former holders of BANA personal checking accounts who incurred EOBCs may be eligible for a cash payment, account credit, or a reduction of outstanding debt owed to BANA. You are receiving this notice because the parties to the Action believe you are a Settlement Class member, as that term is defined below, who is entitled to relief. Read this notice carefully. This notice advises you of the benefits that may be available to you under the proposed Settlement and your rights and options as a Settlement Class member.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Do Nothing - Receive A Cash Payment, Account Credit and/or Debt Reduction	If you are entitled under the Settlement to a cash payment, account credit or debt reduction, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will automatically receive a cash payment, account credit and/or a debt reduction, as determined under the terms of the Settlement, and will give up your right to bring your own lawsuit against BANA about the claims in this case.
Exclude Yourself From The Settlement	Receive no benefit from the Settlement. This is the only option that allows you to retain your right to bring any other lawsuit against BANA about the claims in this case.
Object	Write to the Court if you do not like the Settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments, account credits, and debt reductions will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

Questions? Call 1-888-396-9598 or visit www.EOBCsettlement.com

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why is there a Notice?

A court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Judge M. James Lorenz, of the U.S. District Court for the Southern District of California, is overseeing this case. The case is known as *Joanne Farrell v. Bank of America, N.A.,* Case No. 3:16-cv-00492-L-WVG. The person who sued is called the "Plaintiff." The Defendant is BANA.

2. What is this lawsuit about?

The lawsuit claims that EOBCs assessed in connection with consumer checking accounts violate the National Bank Act's usury limit.

The complaint in this Action is posted on the settlement website, www.EOBCSettlement.com. BANA denies liability. The Court has not decided which side is right.

3. Why is this a class action?

In a class action, one or more people, called Class Representatives (in this case, four BANA customers who were assessed EOBCs), sue on behalf of people who have similar claims.

All of the people who have claims similar to the Class Representatives are members of the Settlement Class, except for those who exclude themselves from the Settlement Class.

4. Why is there a Settlement?

The Court has not decided in favor of either the Plaintiffs or BANA. Instead, both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class members receive the benefits described in this notice. The Class Representatives and their attorneys think the Settlement is best for everyone who is affected.

WHO IS IN THE SETTLEMENT?

If you received notice of the Settlement from a postcard or email addressed to you, then the parties believe you are in the Settlement Class. But even if you did not receive a postcard or email with notice of the Settlement, you may still be in the Settlement Class, as described below. If you did not receive a postcard or email addressed to you but you believe you are in the Settlement Class, as defined below, you may contact the Settlement Administrator.

5. Who is included in the Settlement?

The settlement class ("Settlement Class") is estimated to be approximately 5.9 million people in size and includes:

All holders of BANA consumer checking accounts who, between February 25, 2014 and December 30, 2017, were assessed at least one EOBC that was not refunded.

If this did not happen to you, you are not a member of the Settlement Class. You may contact the Settlement Administrator if you have any questions as to whether you are in the Settlement Class.

THE SETTLEMENT'S BENEFITS

6. What does the Settlement provide?

The Settlement provides that BANA will provide sixty-six million six hundred thousand dollars ($66,600,000) to settle the class action (the "Settlement Amount"). Of the Settlement Amount, BANA will pay thirty-seven million five hundred thousand dollars ($37,500,000) in cash, and BANA will provide twenty-nine million one hundred thousand dollars ($29,100,000) in the form of debt reduction payments. After paying certain other costs and court-approved amounts, the cash relief will be distributed among Settlement Class members who paid one or more EOBCs that they incurred in connection with their BANA personal checking accounts between February 25, 2014 and December 30, 2017. Settlement Class members who currently hold BANA checking accounts will have their cash awards deposited directly into their accounts. Settlement Class members who no longer hold BANA checking accounts will receive their cash awards via check. Each Settlement Class member's cash award will depend upon the number of EOBCs the Settlement Class member paid and on the total number of Settlement Class members. The debt relief will be provided to Settlement Class members whose personal checking accounts BANA closed in overdrawn status with an EOBC still pending and whose overdrawn balances remain due and owing to BANA. Debt relief will be provided in the form of debt reduction payments, in an amount up to $35, but in no event exceeding the amount of a Settlement Class member's overdrawn balance remaining due and owing to BANA. Debt relief will not result in any cash payments to Settlement Class members.

7. How do I receive a cash payment, account credit, or debt reduction payment?

If you are in the Settlement Class and entitled to receive a cash payment, account credit, or debt reduction payment, you do not need to do anything to receive the relief to which you are entitled under the Settlement. If the Court approves the Settlement and it becomes final and effective, you will automatically receive a payment, account credit and/or debt reduction.

8. What am I giving up to stay in the Settlement Class?

If the Settlement is finally approved, each Settlement Class member who has not excluded himself or herself from the Settlement Class pursuant to the procedures set forth in the settlement agreement releases, waives, and forever discharges BANA and each of its present, former, and future parents, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting or purporting to act for them or on their behalf, including, but not limited to, Bank of America Corporation and all of its subsidiaries and affiliates (collectively, "BANA Releasees") from any and all claims they have or may have against the BANA Releasees with respect to the assessment of EOBCs as well as (i) any claim or issue which was or could have been brought relating to EOBCs against any of the BANA Releasees in the Action and (ii) any claim that any other overdraft charge imposed by BANA during the Class Period, including but not limited to EOBCs and initial overdraft fees, constitutes

usurious interest, in all cases including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses ("Released BANA Claims"). Each Settlement Class member who does not exclude himself or herself from the Settlement Class will also be bound by all of the decisions by the Court. Section 2.3 of the Settlement describes the precise legal claims that you give up if you remain in the Settlement. The Settlement is available at www.EOBCsettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue BANA on your own about the Released BANA Claims, then you must take steps to get out of the Settlement. This is called excluding yourself – or it is sometimes referred to as "opting-out" of the Settlement Class.

9. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a dated letter that includes the following:

- Your name, address, telephone number, and your BANA checking account number(s);
- A statement that you want to be excluded from the BANA EOBC Settlement in *Joanne Farrell v. Bank of America, N.A.,* Case No. 3:16-cv-00492-L-WVG and that you understand you will not receive any money or debt reduction from the Settlement; and
- Your signature.

You must mail your exclusion request, postmarked no later than **April 20, 2018**, to:

EOBC Litigation Exclusions
P.O. Box 3170
Portland, OR 97208-3170

10. If I don't exclude myself, can I sue BANA for the same thing later?

No. Unless you exclude yourself, you give up the right to sue BANA for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to try to pursue your own lawsuit.

11. If I exclude myself from the Settlement, can I still receive a payment, account credit, or debt reduction?

No. You will not receive a cash payment, account credit and/or debt reduction if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

The Court has appointed lawyers to represent you and others in the Settlement Class as "Class Counsel," including:

Hassan Zavareei **Tycko & Zavareei LLP** 1828 L St. NW Suite 1000 Washington, DC 20036	Jeff Ostrow **Kopelowitz Ostrow P.A.** 1 West Las Olas Blvd. Ste. 500 Fort Lauderdale, FL 33301

Class Counsel will represent you and others in the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

13. How will the lawyers be paid?

Class Counsel may request up to twenty-five percent (25%) of the Settlement Value for attorneys' fees, plus reimbursement of their expenses incurred in connection with prosecuting this case. The fees and expenses awarded by the Court will be paid out of the Cash Settlement Amount, as that term is defined in the settlement agreement. The Court will determine the amount of fees and expenses to award. Class Counsel may also request awards of up to $5,000.00 for each Class Representative to be paid from the Cash Settlement Amount for their service to the entire Settlement Class.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

14. How do I tell the Court that I don't like the Settlement?

If you are a member of the Settlement Class, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel's requests for attorneys' fees and expenses and/or Class Counsel's request for awards for the Class Representatives. To object, you must submit a letter that includes the following:

- The case name and number, which is *Joanne Farrell v. Bank of America, N.A.,* Case No. 3:16-cv-00492-L-WVG;
- Your name, address, telephone number, and signature;
- An explanation of the nature of your objection and citation to any relevant legal authority;
- The number of times you have objected to a class action settlement in the past five years and the caption for any such case(s);
- The identity of any counsel representing you; and
- Whether you (on your own or through an attorney hired by you) intend to testify at the final approval hearing.

You must submit your objection by first class mail **postmarked no later than April 20, 2018** to the following addresses:

Clerk of the Court U.S. District Court for the S. Dist. of California Judge M. James Lorenz Courtroom 5B, Suite 5145 221 West Broadway San Diego, CA 92101	Jeff Ostrow **Kopelowitz Ostrow P.A.** 1 W. Las Olas Blvd., Ste. 500 Ft. Lauderdale, FL 33301	Matthew C. Close **O'Melveny & Myers LLP** 400 S. Hope Street Los Angeles, CA 90071

15. What's the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold the Final Approval Hearing to decide whether to approve the Settlement and the request for attorneys' fees and Service Awards for Class Representatives. You may attend and you may ask to speak, but you don't have to do so.

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on June 18, 2018 at 11:00 a.m., at the United States District Court for Southern District of California, located at Courtroom 5B, Suite 5145, 221 West Broadway, San Diego, California 92101. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.EOBCSettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider any request by Class Counsel for attorneys' fees and expenses and for service awards for Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you may come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper address, and it complies with the requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

18. May I speak at the hearing?

You may speak at the Final Approval Hearing if you have filed and served a timely objection to the Settlement according to the procedures set out in Section 14 above.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will still receive the benefits to which you are entitled. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit or be part of any other lawsuit against BANA relating to the legal issues in this case or the conduct alleged in the complaint.

GETTING MORE INFORMATION

20. How do I get more information?

This Long Form Notice summarizes the proposed Settlement. More details can be found in the Settlement. You can obtain a copy of the Settlement at www.EOBCSettlement.com. You may also write with questions to EOBC Litigation, P.O. Box 3170, Portland, OR 97208-3170, or call the toll-free number, 1-888-396-9598. Do not contact BANA or the Court for information.

Attachment 5

Farrell v. Bank of America, N.A.

Case No. 3:16-CV-00492-L-WVG (S.D. Cal.)

Requests for Exclusions

#	Name
1	BIRK ELLIS
2	DENNIS DOUGLAS
3	BENJAMIN BAILEY
4	WILLIAM SHEEHAN
5	ADA BROWN
6	ROSA EVANS
7	FRANCES STOKROCKI
9	JOAN TOPALIAN
10	MARGARET MILLIGAN
11	JIM SCHERMERHORN
12	OCTAVIO YON
13	FELIX NILLAS
14	JORDAN STATE
15	JESSIE CALVERT
16	NATASHA TAYLOR
17	THE ESTATE OF EDWARD G LISEFSKI
18	SYLVIA MILLER
19	DEREK WILLIAMS
20	KYOKO TAMAKI
21	CHARLES PINKSTON
22	MICHAEL SMITH
23	EDNA MORTON
24	POSHANA GRANT
25	ROSA MONTESINOS
26	CHARLES RUSH
27	RHIZA TINGAL
28	HERBERT LIGHTSEY
29	DUCE SOLAGES
30	KARLA OLVERSON
31	JOHN MARKS
32	LINDA CHEN
33	SADIE EVANS
34	KENNETH BORHAUG
35	PATSY DUFFEY
36	BETTY LOOMIS
37	KIMBERLY MCCANN

38	JOSE AQUINO
39	ANDREY TOVAR SERRATO
40	JOHN SIMONIK
41	MICHAEL QUARTERMAN
42	BRANDY RAMSEY
43	ANA RODRIGUEZ
44	SEYDOU DIATTA
45	MARGIT HEIM
46	ANNE GARBARINI
47	PATRICIA DEAN
48	JEFFREY JACOBY
49	MARTHA MENA
50	GAROLD CUMMINS
51	DENNIS REED
52	JAE MYRICK
53	LUANN ANDREWS
54	MICHAEL SINISCALCHI
55	DONNA OSTERKAMP
56	COURTENAY WILLIAMS
57	IBRAHIM ALSAAB
58	NAOMI THOMPSON
59	PAUL HALES
60	ADRIANA SEGURA CASADOS
61	PAULINE WAMBUA
62	EZZE MONAH
63	MICHAEL WILSON
64	WAYNE PERRY
65	EUNA HEO
66	CAROLANN CYRAN
67	DAVID PHOMSOUVANH
68	LAQUAYSIA BOLDEN
69	WENDY NAVARRO-SOTO
70	MARIA SANTELLANO BALDOVINO
71	UTSAV THAPA
72	ROSALIND CHASE
73	HURI LEE
74	ELISABETTA MAZZI
75	HELENA HARRYSSON
76	ALBERTHA HARRIS
77	SYLVESTER WILSON
78	LAURA GRAY

79	ASHWIN KHOBRAGADE
80	AURELIA SERA
81	CHASITY STEWART
82	CLAUDIA MORGA
83	MARIANA MORALES
84	EDITH LARSON
85	NATALIE MOORE
86	ROSEMARIE SCHEREMETA
87	BELINDA CARSON
88	BRIAN MURPHY
89	HISHAM SENAN
90	ESTHER MC GIMSEY
91	ALEXA BASSETT
92	ATSUPI AKATO
93	MIGUEL OCAMPO
94	JENNIFER HALL
95	KATHERINE BRUNO
96	LORI LEONELLI
97	JESSE DELGADILLO
98	CESAR HERNANDEZ
99	GREATHEL LEWIS
100	RAHIEM HARDY

Attachment 6

Farrell v Bank of America Settlement

Case No. 3:16-CV-00492-L-WVG (S.D. Cal.)

Requests for Objections

	DocID	Name
1	600000001	STEVEN HELFAND
2	600000002	BRUCE EBNETER
3	600000003	ASHWIN KHOBRAGADE
4	600000006	SHENITA THOMPSON
5	600000007	OHIOCHIOYA EIDON
6	600000008	AMY COLLINS
7	600000009	RACHEL THREATT
8	600000010	ESTAFANIA OSORIO SANCHEZ
9	600000011	STEPHEN KRON
10	600000012	GEORGE O'DELL
11	600000014	ALGERINE ROMERO
12	600000015	MARK GULLICKSON
13	600000016	MICHAEL E COLLEY

STEVEN F. HELFAND

415.596.5611
s.helfand@icloud.com

900 West Avenue
Apt. 701
Miami Beach, FL 33139

March 30, 2018

United States District Court
Judge M. James Lorenz
Courtroom 5B, Suite 5145
221 West Broadway
San Diego, CA 92101

Jeff Ostrow
Kopelowitz Ostrow P.A.
1 W. Las Olas Blvd., Ste. 500
Ft. Lauderdale, FL 33301

Matthew C. Close
O'Melveny & Myers LLP
400 S. Hope Street
Los Angeles, CA 90071

RE: Joanne Farrell v. Bank of America, N.A., Case No. 3:16-cv-00492-L-WVG

The Honorable Court:

I am a class member in the above case. I have been charged the $35 fees at issue. I fit within the contours of the class definition.

The fee request is utterly unconscionable. It is an abomination. A multiplier of the amount requested is simply untenable and should not be allowed. Over eleven is sought; this is even more when you take into account utterly inflated hourly rates. Atrocious. Class counsel should be embarrassed; far from it. A multiplier of negative .5 should be awarded,

chop the lodestar in half. The fees sought are excessive, hourly rates, inflated, everything that is wrong with class action practice; this is the case hallmark. Irreconcilable conflicts between counsel and the class; largely metastasized by the overly inflated rates. The settlement offers class members illusory benefits of debt relief; which will never materialize, the cash is all gobbled up by the untoward fee request made by class counsel. The settlement is pure farce; should not be approved. No meaningful information is shared with the class; everyone is left to simply take there best guess. Class counsel should be disqualified; with new notice. The present notice was defective. Was not received. Most class members did not get timely notice and objections have been stymied.

I will not provide docket numbers; simply because they are not available. This requires that I look up on Pacer, at my expense, information that is equally available. I would estimate approximately five cases more than listed in the abundance of caution. I have never been sanctioned in any class action. In no case have I ever been found to have propounded a frivolous objection although court's have said they may have lacked merit. In some cases in which a district court said my objection lacked merit I prevailed on appeal; obtaining reversal.

a. Cipro Cases, California, JCCP 4154
b. Cipro Cases, California, JCCO 4220
c. Jane Doe v. Twitter, Inc. SF Case No. 10-503630
d. Acer American Corp., et al v. Gateway, 3:10-md-02143-RS
e. White v. Experian, 8:05-cv-01070-DOC-MLG
f. Alexander v. Fedex, 3:05-cv-00038-EMC
g. In re Midland, 11md2286-mma
h. Haine Celestial, 3:11-cv-03082
i. Tom's of Maine, 14cv60604 KMM
j. Barba v. Shire, Inc, 13cv21158
k. Cynthia Spann v. JC Penney, 9th Cir 16-56474
l. Perkins v. Linkedin, 16-15398
m. Ackerman v. CocaCola, 11md00395
n. Legg v. Laboratory Corporation of America, 14:cv:61543

o. Kaufman v. Amex, 07cv01707
p. Steve Chambers v. Whirlpool, 11cv01733
q. In re Autoparts Class Action 12md02311
r. Schlesinger v. Ticketmaster, B263529
s. In re: jp Morgan chase & co securities, 12cv03852
t. Hooker v. Sirius XM Radio, 4:13cv00003 AWA (E.D. Va.)
u. Ebarle v. Lifelock, 9th Circuit, 16-16685
v. Morales v. Conopco 2:13cv02213 (E.D. Cal.)
w. Baharestan v. Venus Laboratories, 3:15cv03578
x. Justice Class Action [Rougvie, et al. v. Ascena Retail Group] 15cv724-MAK
y. Rodman v. Safeway 3:11-cv-JST (CAND)

I have been called a professional objector. I am professional. I do pay attention to class action cases. My objections tend to be professionally made and would like the opportunity to speak with the Court for ten to fifteen minutes as to my objection. My signature is below. I reserve the right to appear in person but; as a contingency, I request permission to appear telephonically.

This letter is sent under penalty of perjury under the laws of the United States of America. It is executed on March 30, 2018 in Miami Beach, Florida.

Steven F. Helfand

Steven F. Helfand, Esq.

4/4/2018

From:

BRUCE EBNETER

1095 MISSION ST #307

SAN FRANCISCO, CA, 94103-2892

Ph. #650-344-4376

TO: Mathew C. Close ; JEFF OSTROW

Regarding: The Action ie: Joanne Farrell V. Bank of America, N.A., Case # 3:16-ev-00492-L-WVG

- ***# 0 Times objecting to class action settlement***
- ***Legal counsel 1] Tycko @ Zavareei LLP***
- ***2] Kopelowitz OSTROW P.A.***

Declaration; yes, I intend to testify at final approval hearing

Explanation of NATURE OF OBJECTION TO SETTLEMENT AS A WHOLE

FOLLOWING STATEMENT IS MADE AS A CLAIM FOR DAMAGES

BANA not only charged me multiple 'EOBC" it did accept payments made on over-draft check and re-direct that payment ,un-known to me,to different checks larger than payment amount, triggering additional over-drafts and fees.

Due to this action a request to Class Counsel from Class Representative Is being made for the sum of $5,000.00 [Five Thousand] dollars to be paid from Cash Settlement.

Sincerely;

Bruce Ebneter

R.E.
1095 Mission #307
S.F. CA. 94103

Jeff Ostrow
Kopelowitz Ostrow P.A.
1 W. Las Olas Blvd. Ste. 500
Ft. Lauderdale FL.
33301-2828 022

Mr Ashwin K Khobragade BE MS ME
Direct Telephone: 415 967 9541
Email: BeLoyal2AshwinK@gmail.com
BeLoyal2AshwinKKhobragade@gmail.com
(In care off)
Law office of William Dalebout Bowen
3420 Barham Boulevard #1
Los Angeles, CA 90068

Dear Litigation Settlement Team,
EOBC Litigation
P.O. Box 3170
Portland, OR 97208-3170
Phone: 1-888-396-9598

Date: April 6 2018

Subject: Objection to the Overdraft fee lawsuit Farrell v. Bank of America, N.A. Settlement.

Respected Team,

I was a customer of Bank of America, who is part of the Overdraft fee lawsuit settlement. As I am not longer having an account with Bank of America (account closed in 2015), I would like to make an objection to the settlement amount, because I am not aware if the damages and suffering (is related to this lawsuit/was on purpose/or as a result of this lawsuit) that I have gone through would compensate for the amount that I would receive (knowing that the lead plaintiff would receive less than $5000 - $10,000)(and I having suffered more suffering and damage as a matter of fact, would not be happy even with the amount of $5000-$10,000, as the damages and suffering are huge and monetary damages are as I have spent more than $110,000.00 in cash).

I have received no benefit what so ever because of the lawsuit and may have incurred only suffering/damages because of this lawsuit before uptill today. And I was made aware about this lawsuit in December of 2017. And I was allowed in this lawsuit in March of 2018 and yet I don't believe I am a part of the class action benefits (i.e. if there is such a thing of getting help with education benefits). I was told that there was a lawsuit people are fighting with Bank of America in March/April 2016 (but there are many lawsuit with Bank of America) and was not aware how and if that it was relevant to me.

My name is Mr. Ashwin K Khobragade who was charged huge amount of overdraft fee between early 2014 and mid-2014. I was once an Interviewed selected candidate 2015

to Said Business School, University of Oxford, Oxford, UK; Ranked #1 University in the World. I have not got into that University yet.

Your help in this matter is very valuable and highly valued. As I have become a man of no means, who does not have money to rent his apartment, and until yesterday March 6 2018, I didn't have money to feed myself a onetime meal, could you please be able to be generous in granting me the settlement amount for all the damages caused as a result of this lawsuit.

I look forward to a reply from the EOBC Litigation Team. Please correct me if I am wrong. I would request that you please contact me by emails and by phone for settlement and communication. I could be able to be reached at the address below by lettered mail attention direction to me and the phone number below.

Best Regards

/Electronic Signature/

Mr Ashwin K Khobragade BE MS ME
Direct Telephone: 415 967 9541
Email: BeLoyal2AshwinK@gmail.com
BeLoyal2AshwinKKhobragade@gmail.com
(In care off)
Law office of William Dalebout Bowen
3420 Barham Boulevard #1
Los Angeles, CA 90068

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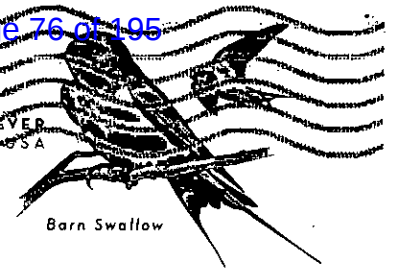
USA



EOBC LITIGATION
P O Box 3170
Portland, OR 97208-3170
1-888-396-9598

97208-317070

ASHWIN K KHOBRAGADE
415-967-9541

Objection Letter

Shenita Lenice Ann Thompson

Current Address:

2510 Suncrest Dr Apt 10

Flint, MI 48504

Cell Number:

(810) 766-3621

Mail Address:

P.O. Box 321404

Flint, MI 48532-0024

Counsel Representing

Jeff Ostrow

Kopelowitz Ostrow P.A.

1 W. Las Olas Blvd., Ste. 500

Ft. Lauderdale, FL 33301

Nature Of My Objection

I Shenita L, A Thompson Object to some part of the settlement for Class Counsel's request for awards for the Class Representatives regarding Joanne Farrell v. Bank of America, Case No. 3:16-cv-00492-L-WVG. This is my first time objecting in any lawsuit because of economic hardship I am unable to hire an attorney to represent me to testify at the final approval hearing.

I believe it should also be ~~add~~ added to the settlement that Settlement Class member should also be awarded cash relief for damages and financial hardships incurred in connection with their BANA personal checking accounts between February 25, 2014 and December 30, 2017. I am aware that I am a Settlement Class member who no longer has a BANA checking account because of the NSF/OD fees Bank of America took my money of $109.00 in my accounts. My health insurance payments were linked to my accounts but the payments wasn't successful so now my credit is damaged because I also still owe money to the health insurance company.

Brief Summary of What Happened

I'm aware of the Anti- bribery and Anti- corruption U.S Foreign Corrupt Act and U.K. Bribery Act, whenever you conduct business on behalf of Bank of America. You may not give, promise or offer money or anything of value of authorize any third party working on behalf of Bank of America to give, promise, or offer anything of value including but not limited to currency, offers of employment, lavish gifts and entertainment to any customer, government employee, or any other persons for the purpose of improperly influence a decision. I'm aware of your code of conduct if employees of Bank of America engage in such behavior the employee exposes himself and the corporation to a civil and/or criminal liability by undermining the trust of a customer.

I would like to report a fraudulent action on Monday June 08, 2015 I arrived at Bank of America at 1:15pm located on 5116 Greenville Ave Dallas, TX 75206. I walk into the building up to the teller and requested to make withdraw from my saving account of $9.00 and deposit $100.00 of cash into my checking account. The teller#0005 Juan Cruz requested that I swipe my debit card and provide identification on my account to verify the accountholder. The teller#0005 Juan Cruz than gave me back my identification. The teller#0005 Juan Cruz handed me a deposit slip to fill out my deposit amount and while I was doing that the teller handed me a TLR cash withdrawal slip to sign. I reviewed the amount to be withdrawn which was a written amount of $9.00 dollar. I furnished filling out the deposit slip and handed to the teller the cash to be deposit with the deposit slip, while being process I request the teller to deposit the $9.00 dollars as well the teller than handed me back the deposit slip and requested that I cross out the $100.00 in cash and write under the line stating coins $109.00. The teller#0005 Juan Cruz stated that it is still consider as cash. I did what the teller#0005 Juan Cruz requested and initial my first and last name. I than verify the transaction being processed in front of me while the teller#0005 Juan Cruz stood behind the teller line. While the teller#0005 Juan Cruz furnished the process my headaches started to occur the teller then handed me a receipt of the transaction and I left the building. I became light head because the heat from the sun beaming down on me so I decide to walk next door where there is a restaurant named Raising Cane's Chicken Finger. I decide to eat a meal there to regain my strength I paid $6.59 in cash for my meal I took a sip of my drink and sit my personal belonging down because it was too heavy . I realize than I forgot to withdraw funds for my trip to go to Michigan so while waiting on my food to process I decide to walk over to Bank of America to make withdrawal from my checking account of $400.00 to take along with me to Michigan. I arrived at the ATM at 2:00pm on 06/08/2015 and made two transactions of $200.00 my balanced was $109.82. According to email alerts and customer

receipt the first transaction of the amount of $200.00 showed an available balance of $309.82. The second transaction of the amount of $ 200.00 showed an available balance of $109.82.

The damages to my accounts also start here I have my health insurance payments setup to come from my accounts on the 3rd United Healthcare in the amount of $96.40 dollar which should have been posted and Humana Dental plan in the amount of $20.99 this should have posted because I was aware I had $109.82 in my account. I was also aware that my secondary checking account was linked to my savings account. I did have direct deposit setup to Social Security every month. I am aware that the overdraft protection services of Bank of America provides to my account Overdraft protection transfers which are made for the amount required to cover the overdraft and the applicable transfer fee, if my savings or secondary checking account does not have enough available funds to cover the necessary amount, Bank of America may decline to make the transfer. When Bank of America receive one or more items which would overdraw my account, and saving or secondary checking has enough available funds to cover at least one of those items, Bank of America generally make one transfer at the end of the day. I am also aware of Bank of America Interest Checking and Advantage accounts plus Platinum Privileges and Preferred Rewards customers qualify for a waiver of this fee. The description of the overdraft protection transfer fee – transfer from a linked Bank of America line of credit the fee amount is $10.00 each transfer.

I arrived in Dallas, TX back from my trip from Michigan on Saturday, June 13, 2015. On Monday, June 15, 2015 I was aware that my insurance payments would apply to my savings account so I went to Bank of America located at 5636 Lemmon Ave, Dallas, TX 75209 and spoke to Alex I requested a statement on my checking account. Alex alerted me that I was negative in my checking account and that my Humana insurance will apply to my saving account which will cause an overdraft fee. While reviewing my statement on my checking account I requested from Alex a copy of the deposit slip processed on June 08, 2015 and a copy of my overdraft protection policy on my accounts. As Alex processed my requests I realize that on my statement for my checking account there was a TX TLR cash withdrawal from CHK 6218 confirmation# 1678955176 so I requested a copy of that withdrawal slip. Alex hand me the first request and stated that for the TRL I would have to put in the request at the location where the transaction was performed. So I took the information that I requested and thanked Alex and left the building. I continue to observer my statement for checking account I was negative $290.18. Than on my savings account an NSF: Returned Item fee from activity of 06-15 electronic transaction on posting date 06-15-15 posting seq 00001 applied to my saving account. So the $109.00 I deposited into my checking account that's linked to my savings account for my insurance payment to be paid on the 06-15-2015 was not available for payment. As I became aware I started to look for any documentation that would be useful. I reviewed the customer receipt given to me by the teller#0005 Juan Cruz on June 08, 2015 at 1:55pm stated that the

total deposit to CHK is $509.00 and the available balance is $509.82. The teller#0005 Juan Cruz ethics are deceitful and deceptive due to the teller intent dishonest of the deposit slip that he request that I fill out and the teller review the cash transaction and processed it the same day.

On June 22, 2015 at 4:30 pm I met with Personal banker Janet Flores and Manager Rebecca Whittington to address the issue that involved my checking and saving account. Rebecca Whittington explained to me that the error occurred due to a typo error on the teller behalf. She explained to me that Bank of America informed me on the same day the error occurs by telephone. I confirmed with Rebecca Whittington that I didn't receive a call from Bank of America I told her that I could provide telephone records to prove this. Rebecca Whittington and Janet Flores questioning of, why I the customer would withdraw funds from my account due to the teller mistake? Rebecca Whittington and Janet Flores understatement affected their judgement the speakers intentionally made the teller errors seem less important than it really is. On June 26, 2015 I met with Jose Reygadas and Andrew Henk financial advisor of a relating to finance to clarify if any administrator from Bank of America contact me by phone they both ask me for my Identification and confirmed in there system that there was no record of a call made out to me on June 08, 2015. I decide to call the Bank of America hotline to dispute the error. I talk to Jonna who transfer me to electronic transaction they transferred me to claim department Denise. Denise transfers me to Keeyona Ward who transferred me to back to claims Hilary. How Bank of America handle the situation due to the errors of Teller#0005 Juan Cruz. I realize that the teller#0005 Juan Cruz implied consent by utilizes criteria and methods of administration this intentional behavior and ethics attempted to influence the recipient Shenita Thompson decision. According to the deposit slip, TX TLR cash withdrawal from CHK 6218 confirmation# 1678955176, customer receipts, statements, and email alerts teller#0005 Juan Cruz credit checking account 488053746218 of an amount of $ 509.00 dollars when he should have processed $109.00 dollars. This is not expressly granted by a person, but rather inferred from a person's actions the facts and circumstances of this particular situation Bank of America is a corporation employed with professional abusers who committed a fraudulent scheme on my account which cheated and victimize me adding to my suffering. My saving account is now negative -512.46 of a NSF: Returned Item fee and my checking account is now -$302.18

Bank of America

Bank of America, TX2-981-05-07, Enterprise Customer Care Resolution
100 North Tryon Street, Charlotte, NC 28255-0001

PRESORTED
FIRST CLASS

U.S. POSTAGE PITNEY BOWES
ZIP 75024 $ 000.41
02 1W
0001394226 SEP 11 2015

Ms. Shenita Thompson
2209 Empire Central Apartment 234
Dallas, TX 75235

COAIA- 2510 SUNCREST DR 48504

015 HIA-A3B 48504

Enterprise Customer Care Resolution

Ms. Shenita Thompson
2209 Empire Central Apartment 234
Dallas, TX 75235

September 9, 2015

Contact Us:
1.855.834.5400, extension 423251

Account Ending:
6218
6221

Correspondence received on: August 12, 2015

Dear Ms. Thompson:

Our Enterprise Customer Care Resolution team received correspondence sent on your behalf from the Office of the Comptroller of the Currency (OCC). We understand the importance of listening to you, our customer. We appreciate the time you took to share the concerns. Below is a summary of our research and the resolution.

Summary of our research

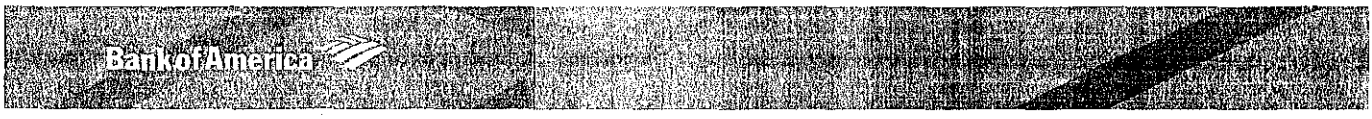
Our research indicates that a deposit was made to your checking account ending in 6218 at the Greenville/Lovers Financial Center on June 8, 2015, in the amount of $109.00. Initially the deposit was incorrectly credited for the amount of $509.00, and was corrected to reflect the amount of $109.00 later that same day. Our research further indicates that on June 8, 2015, you made two withdrawals at an ATM in the amount of $200.00, each. This brought the balance in your checking account to negative $290.18.

Additionally, we can confirm that your checking account is linked to your savings account ending in 6221 for Overdraft Protection. Our Overdraft Protection Service provides payment for transactions when there are insufficient funds in an account. Available funds from the linked account are automatically transferred to the receiving account to prevent insufficient funds activity. This service can protect customers from overdrawing their accounts or from having items returned unpaid due to insufficient funds. Customers can also avoid overdraft or returned item fees, when the accounts remains funded, as well as avoid declined point of sale debit card transactions. Overdraft Protection does not transfer funds from your checking account to your savings account in the event of an overdraft.

The ending balance on your savings account ending in 6221 on June 8, 2015, was $0.34. There have been multiple Returned Items on the account since that date, which resulted in Return Item fees being assessed. These fees have caused your account to become overdrawn. As of the date of this letter, the balance in your savings account is negative $389.66.

Our response

Ms. Thompson, at Bank of America we strive to provide exceptional customer service during every customer interaction. It appears, in this case, we may have fallen short of that goal. This matter has been elevated to the appropriate level of management to ensure we are upholding the level of service our customers expect and deserve.



September 9, 2015

Contact Us:
1.855.834.5400, extension 423251

Account Ending:
6218
6221

Documents enclosed

- Hold and Transaction History dated June 1, through August 12, 2015, for the checking account ending in 6218
- Hold and Transaction History dated June 1, through August 12, 2015, for the savings account ending in 6221

If you have any questions

Thank you for the opportunity to address your concerns. If you have any questions or would like to discuss this further, my phone number is 1.855.834.5400, extension 423251, and I am available Monday through Friday from 7:30 a.m. to 4:30 p.m. Central.

Sincerely,

Patrick Bulger
Customer Advocate
Enterprise Customer Care Resolution
C-3512557

cc: Office of the Comptroller of the Currency Case Number: 03047869

Bank of America

Hold and Transaction History

Hold and Transaction History Search Results

Account# XXXXXXXXXXXXXXXXX6221 **Search Period:** 06/01/15 - 08/12/15 **Transaction Type:** Authorizations, Holds, Debits and Credits

Original Auth/Hold Date	Posting Date	Merchant Category	Transaction Description	Trans Type	Amount	Available Balance History	Statement Balance	NSF/OD Fee
			Ending Balance August 11				(389.66)	
	08/11/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(389.66)	(389.66)	
	08/11/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(354.66)	(354.66)	
	08/11/15		UNITEDHEALTHONE DES:RDP INS. P		(96.40)	(319.66)	(319.66)	35.00
	08/11/15		UNITEDHEALTHONE DES:RDP INS. P		(96.40)	(319.66)	(319.66)	35.00
			Ending Balance August 06				(319.66)	
	08/06/15		Monthly Maintenance Fee		(5.00)	(319.66)	(319.66)	
			Ending Balance August 05				(314.66)	
	08/05/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(314.66)	(314.66)	
	08/05/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(279.66)	(279.66)	
	08/05/15		UNITEDHEALTHONE DES:INS. PREM.		(96.40)	(244.66)	(244.66)	35.00
	08/05/15		UNITEDHEALTHONE DES:INS. PREM.		(96.40)	(244.66)	(244.66)	35.00
			Ending Balance July 10				(244.66)	
	07/10/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(244.66)	(244.66)	
	07/10/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(209.66)	(209.66)	
	07/10/15		TIME INSURANCE DES:RDP INS. P		(7.26)	(174.66)	(174.66)	35.00
	07/10/15		TIME INSURANCE DES:RDP INS. P		(40.00)	(174.66)	(174.66)	35.00
			Ending Balance July 09				(174.66)	
	07/09/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(174.66)	(174.66)	
	07/09/15		Extended Overdrawn Balance Char		(35.00)	(139.66)	(139.66)	
	07/09/15		UNITEDHEALTHONE DES:RDP INS. P		(96.40)	(104.66)	(104.66)	35.00
			Ending Balance July 03				(104.66)	
	07/03/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(104.66)	(104.66)	
	07/03/15		UNITEDHEALTHONE DES:INS. PREM.		(96.40)	(69.66)	(69.66)	35.00
			Ending Balance July 02				(69.66)	
	07/02/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(69.66)	(69.66)	
	07/02/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(34.66)	(34.66)	
	07/02/15		TIME INSURANCE DES:INS. PYMNT		(7.26)	0.34	0.34	35.00
	07/02/15		TIME INSURANCE DES:INS. PYMNT		(40.00)	0.34	0.34	35.00
			Ending Balance June 29				0.34	
	06/29/15		Fee Refund		70.00	0.34	0.34	
			Ending Balance June 22				(69.66)	
	06/22/15		Extended Overdrawn Balance Char		(35.00)	(69.66)	(69.66)	
			Ending Balance June 15				(34.66)	
	06/15/15		NSF: RETURNED ITEM FEE FOR ACTI		(35.00)	(34.66)	(34.66)	
	06/15/15		HUMANA COMPBENEF DES:7709988936		(20.99)	0.34	0.34	35.00
			Ending Balance June 08				0.34	

	06/08/15	Online Banking transfer from CH	6.00	0.34	0.34
		Ending Balance June 05			(5.66)
	06/05/15	Fee For Checks And/Or Withdrawa	(12.00)	(5.66)	(5.66)
06/06/2015 01:23:45:000	06/05/15	Online Banking transfer to CHK	(50.00)	6.34	6.34
		Ending Balance June 03			56.34
	06/03/15	TIME INSURANCE DES:INS. PYMNT	(7.26)	56.34	56.34
	06/03/15	TIME INSURANCE DES:INS. PYMNT	(40.00)	63.60	63.60
	06/03/15	UNITEDHEALTHONE DES:INS. PREM.	(96.40)	103.60	103.60
	06/03/15	Online Banking transfer from CH	200.00	200.00	200.00

Print | New Transaction Search | Back | Close

Bank of America

Hold and Transaction History

Hold and Transaction History Search Results

Account# XXXXXXXXXXXXXXXX6218 **Search Period:** 06/01/15 - 08/12/15 **Transaction Type:** Authorizations, Holds, Debits and Credits

Original Auth/Hold Date	Posting Date	Merchant Category	Transaction Description	Trans Type	Amount	Available Balance History	Statement Balance	NSF/OD Fee
			Ending Balance August 06				(302.18)	
	08/06/15		Monthly Maintenance Fee		(12.00)	(302.18)	(302.18)	
			Ending Balance June 08				(290.18)	
06/08/2015 07:01:56:000	06/08/15		BKOFAMERICA ATM 06/08 #00000987		(200.00)	(290.18)	(290.18)	
06/08/2015 07:01:10:000	06/08/15		BKOFAMERICA ATM 06/08 #00000987		(200.00)	(90.18)	(90.18)	
06/08/2015 06:52:31:000	06/08/15		TX TLR cash withdrawal from CHK		(9.00)	109.82	109.82	
06/06/2015 09:30:57:000	06/08/15		BKOFAMERICA ATM 06/06 #00000877		(100.00)	118.82	118.82	
06/06/2015 09:29:35:000	06/08/15		BKOFAMERICA ATM 06/06 #00000877		(200.00)	218.82	218.82	
06/06/2015 07:33:06:000	06/08/15		Online Banking transfer to Sav		(6.00)	418.82	418.82	
06/06/2015 07:11:40:000	06/08/15	Restaurant	▶ CHECKCARD 0606 BIG ALS SMOKE H		(11.52)	424.82	424.82	
06/05/2015 05:20:07:000	06/08/15	Fast Food/	▶ CHECKCARD 0605 CHIPOTLE 0314		(15.80)	436.34	436.34	
	06/08/15		Counter Credit		109.00	452.14	452.14	
			Ending Balance June 05				343.14	
06/03/2015 11:13:46:000	06/05/15	Railways P	▶ CHECKCARD 0603 AMTRAK .COM		(358.00)	327.34	343.14	
06/05/2015 05:20:07:000	06/05/15	Fast Food/	▶ CHIPOTLE MEXICAN DALLAS	Processing	(15.80)	685.34	701.14	
	06/05/15		Online Banking transfer from SA		50.00	701.14	701.14	
			Ending Balance June 04				651.14	
06/03/2015 11:13:46:000	06/04/15	Railways P	▶ AMTRAK.COM WASHINGTON	Processing	(358.00)	293.14	651.14	
			Ending Balance June 03				651.14	
06/03/2015 03:30:48:000	06/03/15		Online Banking transfer to Sav		(200.00)	293.14	651.14	
06/03/2015 11:13:46:000	06/03/15	Railways P	▶ AMTRAK.COM WASHINGTON	Processing	(358.00)	493.14	851.14	
	06/03/15		SSA TREAS 310 DES:XXSOC SEC		905.00	851.14	851.14	
			Ending Balance June 02				(53.86)	
	06/02/15		OVERDRAFT ITEM FEE FOR ACTIVITY		(35.00)	(53.86)	(53.86)	
06/02/2015 10:55:56:000	06/02/15		BKOFAMERICA ATM 06/02 #00000775		(20.00)	(18.86)	(18.86)	35.00
			Ending Balance June 01				1.14	

05/29/2015 09:22:28:000	06/01/15 Direct Mar	CHECKCARD 0529 NETFLIX.COM	(9.73)	1.14	1.14
05/30/15	06/01/15	BKOFAMERICA ATM 05/30 #00000771	10.00	10.87	10.87

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Golden Rule®
A UnitedHealthcare Company

Premium Notice

Visit www.MyUHOne.com

SHENITA THOMPSON
PO BOX 601801
DALLAS TX 75360-1801

ID Number:	093-650-966	
To Pay Period Of:	06/28/15 to 09/28/15	
Payment Due:	AUG 28 2015	
Total Amount Due:	$319.20	
Payment Breakdown:	Insurance Payment:	$92.40
	Assoc. Fee:	$4.00
	Administrative Fee:	$10.00
	Balance Forward:	$212.80
	Total Amount Due:	$319.20

Make future policy payments automatically from your bank account! Call (800) 657-8205 for details or to set up Electronic Funds Transfer.

Please return this lower part of the form with your payment in the form of a check.
We do not accept credit card payments.

Make check payable to: GOLDEN RULE

Primary Insured: THOMPSON,SHENITA
ID Number: 093-650-966

Total Amount Due: $319.20
Due Date: AUG 28 2015

Mail to: GOLDEN RULE INSURANCE COMPANY
PO BOX 740209
CINCINNATI, OH 45274-0209

0009365096 6/1524010001064000000000*2

Humana

PO Box 769649
Roswell, GA 30076-8225

Invoice

For plan period from Sep 1, 2015 to Oct 1, 2015

CMPIVI042A20150810024492
Shenita Thompson
2209 empire central Apt 234
Dallas, TX 75235-4368

ID Number
0000023508786

Invoice date
August 10, 2015

Payment due
September 1, 2015

Your Dental Invoice Detail

Outstanding Balance	$41.98
Adjustments	$0.00
Current Period Charges	$20.99
Please pay total amount due	$62.97

Your invoice has an exciting new look! Nothing about your plan has changed. You'll still receive the same, helpful information in an easier-to-read format. As always, we're here to assist you with any questions you may have.

How You Can Pay

To make a onetime payment online or over the phone, please refer to the website and phone number listed on your ID card. If you prefer to pay by check or credit card, fill out and detach the portion below, and mail it in the envelope provided.

How You Can Reach Us

Please call Customer Service at the number listed on your ID card, Monday-Friday, 8 am - 6 pm Eastern Time

Continued>

RETURN THIS PORTION WITH YOUR PAYMENT

Humana

ID Number: 0000023508786

Shenita Thompson
2209 empire central Apt 234
Dallas, TX 75235-4368

Payment Coupon

Payment due date:	09/01/15
Plan Period:	Sep 1 2015 to Oct 1 2015
Amount due:	$62.97
Amount enclosed:	$ _____

☐ To pay by credit card, complete the back of this form and check this box

Please remit to:
Humana Insurance Company
P.O. Box 219051
Kansas City, MO 64121-0000

For change of address, please call Customer Service

06 00000023508786 S 029557240 0000006297 4

Bank of America

Checking / Savings Deposit - TX
Depósito de cuenta de cheques / Ahorros - TX

CREDIT

Date / Fecha June 8th 2015

Name / Nombre: Shenita Thompson
Address / Dirección: 2209 Empire Central
Dallas Tx 75235
Telephone No. / Nº de teléfono (
Sign here if cash received / Firma aquí si recibes efectivo
Store # (For Business customers only) / Tienda # (Solo para clientes comerciales)

All items received subject to terms and conditions of applicable laws, regulations and deposit agreement. Proper identification required.

Todo efectivo y cheques recibidos están sujetos a los términos y condiciones de las leyes, regulaciones y convenios de depósito correspondientes. Se requiere identificación apropiada.

Cash / Efectivo — Currency - Billetes	~~100.00~~
Coin - Monedas	1 09.00
Checks / Cheques	
Sub Total	~~100.00~~
Less Cash Received / Menos efectivo recibido	~~100.00~~
Total Deposit / Total de depósito	

For TX Use Only 43-14-3074SNIT 07-2014

Bank Use Only (Out of State Code)

Account Number / Número de cuenta (Numbers only. No spaces / dashes): 4880537467218

$ ~~100.00~~ X5T 109.00

⑆540740134⑆

Bank of America

Customer Receipt

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

Thank you for banking with Bank of America.
Save time with fast, reliable deposits, withdrawals, transfers and more at thousands of convenient ATM locations.

Member FDIC
95-14-2005B 10-2012

06/08/2015 13:55 NTX T00111 R540740138
Acct# ********6218 CC 0002940 Tlr 00005

Total Deposit To CHK	$509.00
Available Now	$509.00
Available Balance	509.82
IntRef#	20502940HADDE16D2CD

Raising Cane's Chicken Fingers

5030 Greenville Ave
Dallas, TX 75206
(214) 360-6080

3 April E

Chk 6159 SHANITA Gst 1
Jun08'15 01:58PM

Dine In

1	3 FINGER COMBO	6.59
	REGULAR	
	FOUNTAIN DRINK	
Cash		10.00
Subtotal		6.59
TAX		0.54
Payment		7.13
Change Due		2.87

* * Customer's Copy * *

Bank of America

For Customer Service Call
1-800-432-1

BankAmericard Cash Rewards(TM)
Visit bankofamerica.com/getcashback

06/08/15 14:01 ITXN3516

XXXXXXXX7202
*GREENVILLE/LOVERS
DALLAS TX

Ser. No. 9876
Withdrawal $200.00
From PRIMARY Checking
Available Balance $309.82

Member FDIC

OBJECTION TO SOME PART OF THE SETTLEMENT

CASE NAME :- Joanne Farrel v. Bank of America N.A., Case No. 3:16-cv-00492-L-WVG.

CASE NUMBER :- 3:16-cv-00492-L-WVG.

MY NAME :- Ohiochioya Eidon
MY ADDRESS :- 2260 California Street, Denver Colorado, 80205.
MY TELEPHONE NUMBER :- 615-810-6942
MY SIGNATURE :- Ohiochioya Eidon

NATURE OF OBJECTION :- I Ohiochioya Eidon was charged for more than 40 overdraft fees and the amounting interest for lack of early payment. During my account period with Bank of America, the total of overdraft fees were more than $2,500 and it caused me Serious financial distressed. My account is closed with negative balance, but i need all my overdraft fees I paid while I was in business with Bank of America. I also need Compensation for all the damages caused at that period. Am asking for the full $5,000 in Compensation for damages Caused. I object to any payment o Settlement that excludes me from the full $5,000 Compensation.

TIMES OBJECTED TO CLASS ACTION SETTLEMENT IN PAST FIVE YEARS :- This is my first time being part of a class action and have never objected to a class acti Settlement in the last five years.

OBJECTION TO SOME PART OF THE SETTLEMENT

At the final approval hearing, I choose to testify by myself.

MY CLASS COUNSEL REPRESENTING ME:- JEFF

OSTROW KOPELOWITZ
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale,
FL 33301

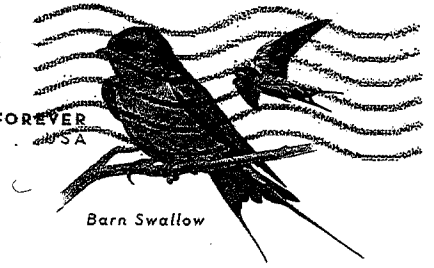
"Section 5 of the Federal Trade Commission Act (FTC Act), 15 USC 45 (a)(1) (UDAP), prohibits "Unfair or deceptive acts or practices in or affecting Commerce".

Reference

ABA Staff Analysis: Reg Z Final Rule on Mortgage Practices Under HOEPA Unfairness Authority (2008)

TO: JEFF OSTROW KOPELOWITZ
OSTROW P. A
1 West Las Olas Blvd
Suite 500
Fort Lauderdale, FL 33301

DENVER CO 802
16 APR 2018 PM 9 L



33301-19225

Timothy R. Hanigan (SBN 125791)
LANG, HANIGAN & CARVALHO, LLP
21550 Oxnard Street, Suite 760
Woodland Hills, CA 91367
Tel: (818) 883-5644
Fax: (818) 704-9372
Attorneys for Objector/Class Member,
Amy Collins

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,

v.

BANK OF AMERICA, N.A,
Defendant.

Case No. 3:16-cv-00492-L-WVG

OBJECTION OF AMY COLLINS

INTRODUCTION

Class counsels' $16.6 million fee request cannot be reconciled with the less than two years of labor required to achieve the settlement. That is not to say class counsel did not work hard in mastering the relevant facts, drafting complaints and memoranda, formulating strategy, preparing motions, and preparing for and attending mediation. Doc. 80-2, at 8. But, they litigated this matter for less than two years, and asked to be paid as if it were many times that.

They admit that "[a]pplying [their] requested rates to the total hours expended results in $1,428,047.50 lodestar. **An award of $16.65 million would require a multiplier of 11.66**." Doc. 80-1, at 22 (emphasis added). If we pause a moment to consider those statements, the fee request is absurd. At least three partners who ordinarily charge a reasonable hourly rate of $800 will be compensated at $9,280 per hour. Doc. 8-8, at 4. Associates whose rates are normally between $250 and $500 will be compensated at rates between $2,900 and $5,800 per hour. *Id.* Those are not just on the high end for attorneys' fees, they are unconscionable. *See Gutierrez v. Wells Fargo Bank, N.A.*, C 07-05923 WHA, 2015 WL 2438274, at *8 (N.D. Cal. May 21, 2015) (noting that lodestar multiplier "would translate to [fees at] more than $4,900 per hour" and that "[s]uch compensation is 'ridiculous'"0.

The 11.6 multiplier is nearly three times the outer range (4) for typical multipliers in the Ninth Circuit. And though class counsel hired an expert to support it, his own study suggests it is out of bounds.

The Ninth Circuit recently reminded that when reviewing fee requests in class actions, "the district court has "an independent obligation to ensure that the award, like the settlement itself, is reasonable, even [as here] if the parties have already agreed to an amount." *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679, 705–06 (9th Cir. 2018) (quotation omitted). When the court fails to take into account, on cross-check, the "'comparison between the lodestar amount and a reasonable percentage award,' [the Ninth Circuit] may remand the case to the district court for further consideration." *Id.* at 706 (quotation omitted).

With this binding precedent in mind, the Court should exercise its fiduciary duty on behalf of the absent class members and deny class counsels' overreaching fee request. Nothing in excess of a 4 multiplier on cross-check should be permitted. Resultingly, class counsel should be awarded no more than $5.7 million in fees for their less than two years of work, which amounts to 8.5% of the settlement fund. The excess $10.9 million should be returned to the class.

STANDING AND PRELIMINARY STATEMENTS

Objector's full name, address, telephone number, are as follows: Amy Collins, 111 Illinois Street, Rochester, NY 14609-7432; 585-626-0853.

Ms. Collins is a member of the class because she is a holder of a Bank of America, N.A. (BANA) consumer checking account who between February 25, 2014 and December 30, 2017, was assessed at least one extended overdrawn balance charge that was not refunded. *See* Exhibit 1 attached hereto, Declaration of Amy

Collins, incorporated by reference herein as if set forth in full. Specifically, on September 27, 2016, Ms. Collins was assessed a $35 Extended Overdrawn Balance Charge to her Bank of America personal checking account number ending in 4924. *Id*. Additionally, on January 31, 2017, she was assessed a $35 Extended Overdrawn Balance Charge to her Bank of America personal checking account number ending in 4924. *Id*. Upon information and belief, her account was not refunded for these charges. *Id*. There may be additional extended overdrawn balance charges to her Bank of America personal checking account ending in 4924 of which she is unaware. *Id*. She is therefore a class member as defined by the class notice, and has standing to make this objection.

Ms. Collins has not filed an objection to a class action settlement in the preceding five years. Ms. Collins is represented by local counsel, Timothy R. Hanigan, LANG, HANIGAN & CARVALHO, LLP. Ms. Collins is also represented by Bandas Law Firm, PC, as his general counsel in objecting to the settlement. Chris Bandas of Bandas Law Firm does not presently intend on making an appearance for himself or his firm, though he reserves the right to do so.

Ms. Collins objects to the settlement and proposed fees in the *Joanne Farrell v. Bank of America, N.A.*, Case No. 3:16-cv-00492-L-WVG for the reasons stated herein. While reserving the right to do so, Ms. Collins does not intend on appearing at the fairness hearing either in person or through counsel, but asks that her objection be submitted on the papers for ruling at that time. Ms. Collins relies upon the documents

contained in the Court's file in support of these objections. Objection is made to any procedures or requirements to object in this case that require information or documents other than those that are contained herein on grounds that such requirements seek irrelevant information to the objections, are unnecessary, unduly burdensome, are calculated to drive down the number and quality of objections to the settlement and violate Ms. Collins's and counsel's due process rights and/or Rule 23.

Objector incorporates by reference the arguments and authorities contained in other filed objections, if any, made in opposition to the fairness, reasonableness and adequacy of the proposed settlement, the adequacy of class counsel and to the proposed award of attorneys' fees and expenses that are not inconsistent with this objection.

OBJECTIONS

I. Because Defendant Agreed Not to Contest Class Counsels' Fee Request, this Court Should Exercise its Fiduciary Duty Carefully in Assessing Reasonable Attorneys' Fees.

It is axiomatic that district courts have a fiduciary duty to protect the interests of the absentee class members. *See In re: Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988, 994 (9th Cir. 2010) (because "the relationship between plaintiffs and their attorneys turns adversarial at the fee-setting stage, courts have stressed that when awarding attorneys' fees from a common fund, the district court must assume the role of fiduciary for the class plaintiffs"). This is because in a common fund settlement, every dollar awarded to class counsel is a dollar taken from the class.

Bank of America, as a settling defendant, only cares about its total settlement payments and keeping them as low as possible. *In re Southwest Voucher Litigation*, 799 F.3d 701, 712 (7th Cir. 2015); *Piambino v. Bailey*, 757 F.2d 1112, 1139 (11th Cir. 1985) ("*Piambino II*"). At the same time, class counsel have a natural incentive to enrich themselves at the expense of the unnamed members of the class. *See Southwest Voucher*, 799 F.3d at 712 ("[j]udicial scrutiny of class action fee awards and class settlements more generally is based on the assumption that class counsel behave as economically rational actors who seek to serve their own interests first and foremost").

When, as here, the parties have agreed to a certain amount of fees,[1] and there is no one with an interest in the outcome (save objecting class members) to protest the amount sought,[2] there is a real danger that fees awarded may be excessive. *In re HP*

[1] Doc. 69-2, at 11 ("BANA agrees not to oppose or appeal any such application that does not exceed 25% of the Settlement Value plus reimbursement for costs and expenses incurred in the Action").

[2] Objector anticipates class counsels' response to his objection will be to shoot the messenger rather than focus on the merits of her complaint. Yet, it should be remembered that objectors "add value to the class-action settlement process by . . . preventing collusion between lead plaintiff and defendants." *UFCW Loc. 880-Retail Food Employers Jt. Pension Fund v. Newmont Min. Corp.*, 352 Fed. Appx. 232, 236 (10th Cir. 2009) (citation omitted); *see also* 2003 Committee Note, Rule 23(h) ("In some situations, there may be a basis for making an award to other counsel whose work produced a beneficial result for the class, such as . . . attorneys who represented objectors to a proposed settlement under Rule 23(e) or to the fee motion of Class Counsel"). Further, "[o]bjectors can encourage scrutiny of a proposed settlement and identify areas that need improvement. They can provide important information regarding the fairness, adequacy, and reasonableness of the settlement terms." *Pallister v. Blue Cross and Blue Shield of Montana*, 285 P.3d 562, 568 (Mont. 2012). Because objectors may pose a risk to class counsels' fees "class action

Inkjet Printer Litig., 716 F.3d 1173, 1178 (9th Cir. 2013) ("because the interests of class members and class counsel nearly always diverge, courts must remain alert to the possibility that some class counsel may 'urge a class settlement at a low figure or less-than-optimal basis in exchange for red-carpet treatment on fees'") (quotation omitted). Thus, "[a]s a fiduciary for the class, the district court must 'act with a jealous regard to the rights of those who are interested in the fund' in determining what a proper fee award is." *Mercury*, 618 F.3d at 994; *In re Daou Sys., Inc., Sec. Litig.*, 98-CV-1537-L(AJB), 2008 WL 2899726, at *1 (S.D. Cal. July 24, 2008) (this Court describing its fiduciary obligation on behalf of the class).

In this respect, "[a]ttorneys' fees provisions included in proposed class action agreements must be 'fundamentally fair, adequate and reasonable.' The court is not bound by the parties' settlement agreement as to the amount of attorneys' fees." *Foos v. Ann, Inc.*, 11CV2794 L MDD, 2013 WL 5352969, at *4 (S.D. Cal. Sept. 24, 2013).

II. Class Counsels' $16.6 Million Fee Request, With Just $1.4 Million Lodestar Invested and a Resulting 11.6 Multiplier, is Outrageous.

Class counsel attempt to justify their fee as a benchmark 25% recovery. But, the benchmark should be adjusted when "special circumstances indicate the recovery would be either too small or too large in light of the hours devoted to the case or other

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lawyers may try to fend off interlopers who oppose a proposed settlement as insufficiently generous to the class[.]" *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 743 (7th Cir. 2011) (Posner, J.). These tactics are improper: objectors "prevent[] cozy deals that favor class lawyers and defendants at the expense of class members. . . ." *Id.*

relevant factors." *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (quoting *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.1990)); *In re Daou Sys., Inc., Sec. Litig.*, 98-CV-1537-L(AJB), 2008 WL 2899726, at *1 (S.D. Cal. July 24, 2008) (this Court noting that the 25% benchmark "serves as a starting point for the analysis" and that "[c]alculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award") (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002)).

Special circumstances are clearly present. Class counsels' 11.6 lodestar multiplier reveals the requested $16.6 million fee would be far too generous considering the 2,158 hours dedicated to the case. An 11.6 multiplier is not just on the fringes of reasonable recovery. It is off the chart. "Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases. *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, *4 (N.D. Cal. 2013); *see also In re Cathode Ray Tube Antitrust Litig..*, 3:07-CV-5944 JST, 2016 WL 721680, at *43 (N.D. Cal. Jan. 28, 2016) (observing the multiplier range of 1-4 for 83% of the 24 class action settlements discussed in *Vizcaino*); *Asghari v. Volkswagen Group of Am., Inc.*, CV1302529MMMVBKX, 2015 WL 12732462, at *51 (C.D. Cal. May 29, 2015) (declining a request for 1.4 multiplier, and holding class counsel to their lodestar despite a "positive result" and the risk undertaken by class counsel); *Torchia v. W.W. Grainger, Inc.*, 304 F.R.D. 256, 277 (E.D. Cal. 2014) (refusing to award a 4.39

multiplier, "which exceeds the range typically awarded in the Ninth Circuit"); *Dennis v. Kellogg Co.*, 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (S.D. Cal. Nov. 14, 2013) (upholding $1 million fee on lodestar cross-check with essentially no multiplier). Not to mention, in the Ninth Circuit, there is a "strong presumption that the lodestar amount represents a reasonable fee, [and that] adjustments to the lodestar, 'are the exception rather than the rule.'" *Stranger v. China Elec. Motor, Inc.*, 812 F.3d 734, 738 (9th Cir. 2016) (quotation omitted); *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 556 (2010) (noting the "'strong presumption" that the lodestar figure is reasonable").

While Class counsel string cite a number of overdraft fee cases where similar or greater percentage-based fees, they fail to identify a similar case with anything approaching an 11.6 multiplier. Doc. 80-1, at 18-19. In this Circuit, the highest lodestar multiplier counsel for Ms. Collins was able to locate in an overdraft case was a collective 4.53. *Gutierrez v. Wells Fargo Bank, N.A.*, C 07-05923 WHA, 2015 WL 2438274, at *8 (N.D. Cal. May 21, 2015). Though class counsel in *Gutierrez* petitioned for the 25% benchmark, Judge Alsup found the resulting 10.38 multiplier untenable. *Id.* at *4 (noting fees sought would require a 10.38 multiplier and that "[s]uch an extraordinary multiplier is not justified"). Accordingly, the court reduced recovery to 9% with a 4.53 multiplier.[3] As Judge Alsup commented, "This is an

[3] Judge Alsup allowed a 5.5 multiplier to the law firm of Lieff Cabraser, and a lower multiplier to another firm which produced a collective 4.53 multiplier. *Gutierrez*, 2015 WL 2438274, at *7.

exceptional fee award compared to multipliers used in other comparable actions. In *Vizcaino*, for example, which involved a bitterly-contested and 'extremely risky' litigation spanning eleven years, our court of appeals affirmed an award amounting to a multiplier of 3.65." *Gutierrez*, 2015 WL 2438274, at *8. Critically, the exceptional 4.53 multiplier was only allowed based on *complete* recovery of $203 million after full blown trial on the merits (and two appeals), which included a trial performance that was one of the best Judge Alsup had seen in sixteen years on the bench. *Id.* at *7.

Other bank overdraft cases fall well within the typical multiplier range of one to four. For example, the Northern District of California awarded 25%, supported with a .98 multiplier, in a case where the settlement provided the class with "about a third of the amount they could have recovered if they had prevailed at trial." *Hawthorne v. Umpqua Bank*, 11-CV-06700-JST, 2015 WL 1927342, at *5 (N.D. Cal. Apr. 28, 2015). And, in *Johnson v. Cmty. Bank, N.A.*, in the Middle District of Pennsylvania awarded 33% with a 2.96 lodestar multiplier on cross-check in a case where the settlement provided 50% of potential class damages. 3:12-CV-01405, 2013 WL 6185607, at *9 (M.D. Pa. Nov. 25, 2013); *see also Bodnar v. Bank of Am., N.A.*, CV 14-3224, 2016 WL 4582084, at *4 (E.D. Pa. Aug. 4, 2016) (allowing a 4.69 multiplier for a 33% recovery where the settlement provided between 13 and 48% of class damages). Class counsel here, in contrast to those cases, seek an outrageous 11.6 multiplier even though the $66 million settlement fund is less than 9% of the $756 million class damages. Doc. 69-1, at 17.

III. Fitzpatrick's Opinions are Contradicted by his Own Study.

Though he tries, class counsels' expert Brian Fitzpatrick, routinely paid to justify fees for class counsel across the nation, cannot rationalize the 11.6 multiplier. Doc. 80-3. Indeed, Fitzpatrick's opinions here are internally consistent with his own study.

Not one of the 218 cases in Fitzpatrick's empirical study that considered lodestar in assessing the reasonableness of a fee percentage involved a multiplier as high as 11.6. Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and their Fee Awards*, 7 JOURNAL OF EMPIRICAL LEGAL STUDIES 811, 833-34 (Dec. 2010). In fact, only one court of the 218 permitted a multiplier above 6. *Id*. at 834. As Fitzpatrick's declaration here notes, his results are consistent with other experts' studies. Doc. 80-3, at 17 (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 273 (2010) (finding mean multiplier of 1.81 for cases between 1993 and 2008); Theodore Eisenberg et al., *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. Law Review 937, 965 (2017) (finding mean multiplier of 1.48 for cases between 2009 and 2013)).

In his study, Fitzpatrick remarked these statistically prevalent low multipliers, "with the bulk of the range not much above 1.0 . . . cast doubt on the notion that the percentage-of-the settlement method results in windfalls to class counsel." *Id*. If those multipliers denote the absence of an excessive recovery, a multiplier ten times greater

confirms a windfall. Nevertheless, Fitzpatrick contends application of the lodestar cross-check here would create a disincentive for attorneys to reach settlement quickly, and might instead encourage unnecessary and protracted litigation. The notion that paying class counsel $5.7 million, or 4 times their hourly rates, is any kind of deterrent for similar efficient work is dubious at best. Indeed, class counsel were aware that they were litigating in a Circuit which recognizes the importance of lodestar relative to a percentage-based fee, and nevertheless reached the proposed settlement in under two years.

Since his study is unsupportive, Fitzpatrick clings to outliers. He references a list of cases in *Vizcaino* which he notes show "multipliers of up to 19.6". *Vizcaino*, 290 F.3d at 1051 n.6 (noting multipliers of up to 19.6). What he leaves out is that the one case allowing a 19.6 multiplier did not even involve a class action settlement at all, but rather was a bankruptcy opinion in which the court approved a contingency fee agreement beforehand. *In re Merry-Go-Round Enterprises, Inc*., 244 B.R. 327, 340 (Bankr. D. Md. 2000). Otherwise, most of the multipliers (83%) fell between 1 and 4, and none came close to 11.6. *Vizcaino*, 290 F.3d at 1052 n.1, n.6 (9th Cir. 2002).

Finally, Fitzpatrick's declaration focuses on the non-monetary aspect of the settlement which benefit class members and non-class members alike. Doc 80-3, at 18. Yet inexplicably, he never takes into account that the $66 million of actual monetary compensation to the class is less than 9% of the $756 million class

damages. Doc. 69-1, at 17. Fitzpatrick's result-oriented opinions provide little reason to indulge class counsels' 11.6 multiplier.

IV. Class Counsels' Lodestar is Inflated, Meaning the Multiplier is Actually Greater than 11.6.

Even then, the actual multiplier is almost certainly greater than 11.6. Fitzpatrick's study anticipates that "there is always the possibility that class counsel are optimistic with their timesheets when they submit them for lodestar consideration." Fitzpatrick, Empirical Study, at 834. That appears to be the case here.

Class counsels' 2,158 hours include considerable time spent preparing their motion for attorneys' fees (Docs. 80-4, at 3; 80-5, at 6, 80-6, at 4, 80-7, at 3) and a substantial amount of time spent on other cases. Docs. 80-4, at 3, 80-5, at 5, 80-6, at 3, 80-7, at 3. Fitzpatrick believes that "*much* of the work class counsel did in these cases was of benefit to the class in this case." Doc. 80-3, at 17 n.6 (emphasis added). Presumably *some* of it was not. It is not clear to what extent the hours from the other unsuccessful cases were limited to those useful in this litigation. Further, a significant amount of time, if not the majority of it, appears dedicated to mediation and settlement rather than litigation. Docs. 80-4, at 3-4, 80-5, at 5-6, 80-6, at 3-4, 80-7, at 3-4. *See Manner v. Gucci Am., Inc.*, 15-CV-00045-BAS(WVG), 2016 WL 6025850, at *4 (S.D. Cal. Oct. 13, 2016) (the fact "that a substantial portion of the requested

fees were incurred *after* the settlement was reached at the mediation" "casts doubt on the value to the class of the billed hours") (emphasis original).[4]

Class counsels' actual lodestar is likely less, and probably much less, than the $1.4 million represented, which means the real multiplier necessary to reach $16.6 million is likely to be even greater than the already ridiculous 11.6 multiplier.

V. The Relevant Factors Do Not Support 25%.

At least three of the factors relevant to awarding fees under the percentage indicate $16.6 million is not a reasonable fee in this case. *See Gutierrez-Rodriguez v. R.M. Galicia, Inc.*, 16-CV-00182-H-BLM, 2018 WL 1470198, at *6 (S.D. Cal. Mar. 26, 2018) (listing factors)[5] (citing *Vizcaino*, 290 F.3d at 1048-50).

The results are considerably overstated. Class members who were wrongfully charged the EOBC will not receive full refunds, but rather a *pro rata* division of $37.5 million among class members with current Bank of America checking accounts who paid the EOBCs. Doc. 80-3, at 5. The remaining $29.1 million is earmarked for those who have yet to pay the EOBCs. *Id.* As it turns out, the total $66.6 million compensation is less than 9% of the $756 million in class damages. While it is true

[4] Because class counsels' lodestar declarations include essentially the same generic categorization of work tasks, it is impossible to assess the extent to which their work was duplicative. Considering four firms were involved, there was almost certainly some duplicative labor.

[5] The factors include "(1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases." *Gutierrez-Rodriguez*, 2018 WL 1470198, at *6 (citing *Vizcaino*, 290 F.3d at 1048-50.).

that "a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair[,]" that does not amount to a result that warrants more than 11 times class counsels' hourly rates. Meanwhile, the future practice changes flouted by class counsel apply equally to class members and non-class members alike.

As described *supra*, similar cases have allowed similar percentages, but all with lodestar multipliers only a fraction of what class counsel submit here. And finally, the contingent nature of the fees, and the time and labor spent here do not justify anything approaching a 11.6 multiplier. Just a year after filing suit, class counsel began to explore settlement. Doc. 80-1, at 4-5 (suit filed on February 25, 2016 and in "February 2017 . ..began to explore the possibility of settlement"). And, they settled in less than two. Doc. 69-2 (settlement executed on October 30, 2017). That is far less than the average three years it takes to reach a class action settlement. Fitzpatrick, *Empirical Study*, at 820. "Where [the lodestar] investment is minimal, as in the case of an early settlement, the lodestar calculation may convince a court that a lower percentage is reasonable." *Vizcaino*, 290 F.3d at 1050; *In re ECOtality, Inc. Sec. Litig.*, 13-CV-03791-SC, 2015 WL 5117618, at *4 (N.D. Cal. Aug. 28, 2015) ("[e]ven when applying the percentage method, the Court should use the lodestar method as a cross-check to determine the fairness of the fee award") (citing *Vizcaino*, 290 F.3d at 1050).

CONCLUSION & PRAYER

Objector/Class Member Amy Collins urges that this Court reject class counsels' request to be paid more than eleven times their lodestar in a case where the monetary compensation afforded the class is under 9% of the class damages. Any award of attorneys' fees should be substantially less than class counsels' requested $16.6 million, and in no case above a 4 lodestar multiplier, with the difference applied to the benefit of the class.

DATED: April 20, 2018

Respectfully submitted,

/s/ Timothy R. Hanigan

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DATED: April 20, 2018

4/20/18

Amy Collins
Objecting Class Member

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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,

v.

BANK OF AMERICA, N.A,
Defendant.

Case No. 3:16-cv-00492-L-WVG

DECLARATION OF AMY COLLINS IN SUPPORT OF OBJECTION

Comes now Amy Collins and states the following under oath and under penalty of perjury in support of her objection:

My name is Amy Collins. I am over the age of eighteen (18) years. I am qualified and competent to make this affidavit. The facts stated herein are within my personal knowledge.

My address is 111 Illinois Street, Rochester, NY 14609-7432. My phone number is 585-626-0853. I am a holder of a Bank of America, N.A. (BANA) consumer checking account who between February 25, 2014 and December 30, 2017, was assessed at least one extended overdrawn balance charge that was not refunded. Specifically, on September 27, 2016, I was assessed a $35 Extended Overdrawn Balance Charge to my Bank of America personal checking account number ending in 4924. Additionally, on January 31, 2017, I was assessed a $35 Extended Overdrawn Balance Charge to my Bank of America personal checking account number ending in 4924. Upon information and belief, my account was not refunded for these charges. There may be additional extended overdrawn balance charges to my Bank of America personal checking account ending in 4924 of which I am unaware. Additionally, I received a class notice in the mail. For the above stated reasons, I am a class member as defined by the class notice.

I have not filed an objection to a class action settlement in the preceding five years.

Dated this the 20th of April, 2018.

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

4/20/18

Amy Collins

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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,

v.

BANK OF AMERICA, N.A,
Defendant.

Case No. 3:16-cv-00492-L-WVG

CERTIFICATE OF SERVICE

Certificate of Service

The undersigned certifies that today he filed the foregoing Objection of Amy Collins and supporting Declaration of Amy Collins with the Clerk of the Court for the United States, Southern District of California by using the Court's CM/ECF system, which will send notifications of such filing to all counsel of record. The foregoing objection was also mailed today to:

Clerk of the Court
U.S. District Court for the S. Dist. of California
Judge M. James Lorenz
Courtroom 5B, Suite 5145
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DATED: April 20, 2018

/s/ Timothy R. Hanigan

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant,

RACHEL THREATT,

Objector.

Case No. 3:16-cv-00492-L-WVG

OBJECTION OF RACHEL THREATT

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018, at 11:00 a.m.

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INTRODUCTION

Class counsel seek an astonishing $7,715 per hour in fees for their work over the course of a mere 20 month-litigation that settled on docket entry number 69. The work did not require a massive team of lawyers working around the clock. Rather, it was a fly-by-night operation requiring less than 2200 hours, with counsel lobbing similar actions in various other courts to see where they might succeed. *See* Fee Motion 12, 20. The fee request is audacious on its face, representing more than 11 times the claimed value of their hourly work, but it gets worse once one looks past the superficial lodestar presentation. In particular, counsel improperly seek credit in their lodestar for work on *other* litigations, future anticipated hours, and time spent on their fee request, as well as an excessive number of hours for settlement work. Once one removes those excessive hours, the fee multiplier increases to nearly 18, equal to an hourly rate of $11,894. This unreasonableness is compounded by the strong presumption set by the Supreme Court that lodestar is sufficient without a multiplier.

The class should not be billed such an excessive amount. Their claims were significantly compromised; by class counsel's own estimation, they are recovering less than 10% of the value of their claims. In other words, the class is being asked to settle, while counsel is handsomely rewarded many times over with funds that should be used to augment class members' recovery. The Court should reduce the fee award to no more than 10% of the net fund, or $6.66 million, which still amounts to a 4.75 multiplier and will return about $10 million to the class.

That counsel seeks to apply the Circuit's benchmark shows precisely why a lodestar crosscheck is important to prevent windfalls. But even when assessed on its own, 25% of $66.6 million is too high. First, the fund amount includes $29.1 million of "debt reduction," for class members whose accounts were closed with a negative balance—a structure that is less beneficial

to them than cash and costs Bank of America, N.A. ("BANA") significantly less due to the unlikelihood it would ever recover anywhere close to 100% of the delinquent amounts. Second, the size of the fund is due not to the efforts of class counsel but to the size of the class. In such cases, the fee percentage should be reduced from the benchmark to account for economies of scale. Finally, the change in BANA's practice regarding extended overdrawn balance charges ("EOBCs") should be disregarded for purposes of the fee award, as it will simply shift the types of fees that BANA charges the class rather than eliminate them entirely.

In addition, the Court should strike or disregard the Declaration of Brian T. Fitzpatrick because the gist of his report constitutes inadmissible legal conclusions. The Court is solely responsible for, and fully capable of, concluding what the law is and how it applies to the applicable facts. Fitzpatrick's aggregation of the case law and opinions about the value of this particular case are unhelpful and improper.

Finally, the Settlement includes an impermissible provision giving the parties authority to decide whether to redistribute residual funds to an unnamed third party or to the class. The Court should require amendment of this *cy pres* provision before approving the settlement.

I. Rachel Threatt is a member of the class and intends to appear through counsel at the fairness hearing.

Objector Rachel Threatt is a member of the class. Her address is 304 Sunset Trail, New Lenox, IL 60451. Her telephone number is (314) 750-0921. *See* Declaration of Rachel Threatt ("Threatt Decl.") ¶ 2. Threatt holds a BANA consumer checking account. Between February 25, 2014, and December 30, 2017, she was assessed at least one EOBC that was not refunded. She received notice by postcard of the proposed settlement in this action. *Id.* ¶¶ 3-4. She has not previously filed an objection to any class action settlement. *Id.* ¶ 6.

Threatt intends to appear at the June 18, 2018, fairness hearing through her *pro bono* attorney Theodore H. Frank of the Competitive Enterprise Institute's Center for Class Action Fairness ("CCAF"). Frank is a member of the bar of the Southern District of California. At this time, Threatt does not intend to call any witnesses at the fairness hearing, but reserves the right to make use of all documents entered on the docket by any settling party or objector and the right to cross-examine any witnesses who testify at the hearing in support of final approval.

CCAF represents class members *pro bono* in class actions where class counsel employs unfair class action procedures to benefit themselves at the expense of the class. Since it was founded in 2009, CCAF has "recouped more than $100 million for class members" by driving the settling parties to reach an improved bargain or by reducing outsized fee awards. Andrea Estes, *Critics hit law firms' bills after class-action lawsuits*, BOSTON GLOBE (Dec. 17, 2017). CCAF's track record—and preemptive response to the most common false *ad hominem* attacks made against it by attorneys defending unfair settlements and fee requests—can be found in the Declaration of Theodore H. Frank. To avoid doubt about her motives, Threatt is willing to stipulate to an injunction prohibiting her from accepting compensation in exchange for the settlement of her objection. *See* Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 VAND. L. REV. 1623 (2009) (suggesting inalienability of objections as solution to objector blackmail problem). Threatt brings this objection through CCAF in good faith to protect the interests of the class. Threat Decl. ¶8.

II. The Court owes a fiduciary duty to unnamed class members.

"Class-action settlements are different from other settlements. The parties to an ordinary settlement bargain away only their own rights—which is why ordinary settlements do not require court approval." *In re Dry Max Pampers Litig.*, 724 F.3d 713, 715 (6th Cir. 2013). Unlike

ordinary settlements, "class-action settlements affect not only the interests of the parties and counsel who negotiate them, but also the interests of unnamed class members who by definition are not present during the negotiations…. [T]hus, there is always the danger that the parties and counsel will bargain away the interests of unnamed class members in order to maximize their own." *Id.* To guard against this danger, a district court must act as a "fiduciary for the class … with 'a jealous regard'" for the rights and interests of absent class members. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) (quoting *In re Washington Pub. Power Supply Sys. Litig.* ("*WPPSS*"), 19 F.3d 1291, 1302 (9th Cir. 1994)). Threatt raises two primary objections, both of which invoke the Court's special fiduciary role: (1) the settlement's residual clause authorizes class counsel to prioritize yet-to-be-designated *cy pres* recipients ahead of class members' interests; and (2) class counsel seeks an excessive and unreasonable fee.

First, *cy pres*, "unbridled by a driving nexus between the plaintiff class and the *cy pres* beneficiaries—poses many nascent dangers to the fairness of the distribution process." *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011). As such, any *cy pres* provision "must be examined with great care to eliminate the possibility that it serves only the 'self-interests' of the attorneys and the parties, and not the class, by assigning a dollar number to the fund that is fictitious." *Dennis v. Kellogg Co.*, 697 F.3d 858, 868 (9th Cir. 2012).

With respect to Threatt's objection to class counsel's fee request, the need for court oversight is even more apparent. At the fee-setting stage, the relationship between class counsel and the class turns directly and unmistakably adversarial because counsel's "interest in getting paid the most for its work representing the class [is] at odds with the class' interest in securing the largest possible recovery for its members." *Mercury Interactive*, 618 F.3d at 994. Given this inherent adversity, there can be no deference to class counsel's recommendation. Meanwhile,

"in most common-fund cases, defendants have little interest in challenging class counsel's timesheets." *Gutierrez v. Wells Fargo Bank, N.A.*, No. 07-cv-05923 WHA, 2015 WL 2438274, at *6 (N.D. Cal. May 21, 2015). That is the case here. The settlement permits without opposition from the defendant, any fee request up to 25% of the gross settlement fund. Settlement § 3.2. No individual class member has the financial incentive to object to an exorbitant fee request either; "[h]is gain from a reduction, even a large reduction, in the fees awarded the lawyers would be miniscule." *In re Continental Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992). The district court (and good-faith public-minded objectors) serve as the last line of defense. "Active judicial involvement in measuring fee awards is singularly important to the proper operation of the class-action process." Advisory Committee Notes on 2003 Amendments to Rule 23.

III. Before the settlement can be approved, the parties must amend the settlement's residual clause to comport with limitations on *cy pres*.

In relevant part, the settlement provision governing the dispositive of residual settlement funds reads as follows: "At the election of Class Counsel and counsel for BANA, and subject to the approval of the Court, the funds may be distributed to Settlement Class Members via a secondary distribution if economically feasible or through a residual cy pres program." Settlement § 3.5. This provision suffers from two fatal defects. First, neither the settlement nor accompanying class notice identify a proposed *cy pres* beneficiary, thus rendering the settlement "unacceptably vague." *Dennis*, 697 F.3d at 867. Second, Section 3.5 permits the parties to choose between a secondary class distribution or a *cy pres* distribution at their discretion. But there should be no discretion granted; if secondary class distributions are economically feasible, the law requires them. *E.g.* AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF AGGREGATE LITIG. § 3.07(b) (2010) ("*ALI Principles*"); *In re BankAmerica Corp. Secs. Litig.*, 775

F.3d 1060, 1066 (8th Cir. 2015) (finding "void ab initio" a provision that purported to override *ALI Principles* § 3.07(b)); *see also In re Hydroxycut Mktg. & Sales Practices Litig.*, No. 09-md-2087-BTM, 2013 WL 6086933, at *4 (S.D. Cal. Nov. 19, 2013) (following *ALI Principles* § 3.07(b) and denying settlement approval). Simply put, *cy pres* "is not appropriate" where "the settlement is distributable to class members." *Hofmann v. Dutch LLC*, 317 F.R.D. 566, 578 (S.D. Cal. 2016).

As a threshold matter, the residual clause founders by failing to propose a "concrete, identifiable beneficiary." *Hofmann v. Dutch LLC*, No. 14-cv-02418-GPC, 2017 WL 840646, at *5 (S.D. Cal. Mar. 2, 2017). "To ensure that the settlement retains some connection to the plaintiff class and the underlying claims … a cy pres award must qualify as the next best distribution to giving the funds directly to class members." *Dennis*, 697 F.3d at 865. Where the parties do not establish the potential recipient has such an appropriate nexus, the settlement will not be approved. *E.g.*, *Koby v. ARS Nat'l Servs.*, 846 F.3d 1071, 1080 (9th Cir. 2017); *Couser v. Comenity Bank*, 2017 WL 2312080, at *4 (S.D. Cal. May 26, 2017).

Moreover, in an opt-out settlement, providing the identity of potential *cy pres* recipients preserves the right of absent class members to distance themselves from causes or institutions that they would rather not support. The information can underpin a valid objection if there is an abuse of the *cy pres* mechanism if, for example, the intended recipient is related to class counsel or a defendant, or when there is a geographic incongruence between the class and the recipient. *See Nachshin*, 663 F.3d 1034. Even where *cy pres* only arises from residual funds, it is still "impermissible" to decline to specify a particular recipient. *Thomas v. Magnachip Semiconductor Inc.*, No. 14-cv-01160-JST, 2016 WL 1394278, at *8 (N.D. Cal. Apr. 7, 2016). The settlement's failure to designate a recipient deprives the class of its due notice and this Court of any ability to conduct the searching review necessary. "'Just trust us. Uphold the settlement now, and we'll

tell you what it is later'" is not a permissible limiting principle. *Dennis*, 697 F.3d at 869.

Nor is "just trust us" an acceptable proposition for deciding whether remaining funds should go to the class or non-class third parties. "The settlement should presumptively provide for further distributions to participating class members unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair." *ALI Principles* § 3.07(b). This "last resort" rule follows from the precept that "[t]he settlement-fund proceeds, … generated by the value of the class members' claims, belong solely to the class members." *Klier v. Elf Atochem N. Am.*, 658 F.3d 468, 474 (5th Cir. 2011). To serve the class's interests, *cy pres* can only be employed as a last resort upon a showing that further distributions are impossible. *BankAmerica*, 775 F.3d at 1064; *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014).[1] The residual clause unlawfully gives the parties discretion to ignore the last resort rule. The Court should deny settlement approval until the parties amend Section 3.5 to conform with applicable law.

IV. The lodestar cross-check illuminates the excess of class counsel's fee request.

The Ninth Circuit encourages cross-checking any percentage-based fee request using the lodestar method to "confirm that a percentage of recovery amount does not award counsel an exorbitant hourly rate." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 945 (9th Cir.

[1] If additional distributions would provide "a windfall to class members with liquated-damages claims that were 100 percent satisfied by the initial distribution," then a *cy pres* remedy may also be proper. *BankAmerica Corp.*, 775 F.3d at 1064. But "a vague anxiety over windfalls" cannot justify preferring *cy pres* to class redistributions. Rhonda Wasserman, *Cy Pres In Class Action Settlements*, 88 S. CAL. L. REV. 97, 160 (2014). In any event, there should be no dispute here that class members are not fully compensated. Debt reduction claims are capped at $35, and the cash component of the settlement ($37 million) is less than 5% of the amount plaintiffs claim is at stake in the case ($756 million). Mot. for Prelim. App. (Dkt. 69-1) at 17.

2011). A second method provides a "useful perspective" and enables the Court to "guard against an unreasonable result." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002); *In re Hyundai and Kia Fuel Economy Litig.*, 881 F.3d 679, 705 (9th Cir. 2018). Cross-checking becomes even more important as the size of the settlement increases. *Alexander v. FedEx Ground Package Sys.*, No. 05-cv-00038, 2016 WL 3351017, at *2 (N.D. Cal. June 15, 2016); *see also WPPSS*, 19 F.3d at 1298 (describing how percentage-based awards become particularly arbitrary for large funds). Keeping in mind the Court's duty to class members, the goal is to uncover a "disparity between the percentage-based award and the fees the lodestar method would support." *Wininger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1124 n.8 (9th Cir. 2002).

Because of the potential to discourage hasty, undervalued settlements with generous attorney payments, legal scholars, practitioners, and judges have even gone so far as to call the lodestar cross-check "essential." Brian Wolfman & Alan B. Morrison, *Representing the Unrepresented in Class Actions Seeking Monetary Relief*, 71 N.Y.U. L. REV. 439, 503 (1996); *see also* Brian Wolfman, *Judges! Stop Deferring to Class-Action Lawyers*, 2 U. MICH J. L. REFORM 80, 84-85 (2013) (describing risk of cheap, quick and undervalued settlement); Neil M. Gorsuch & Paul B. Matey, *Settlements in Securities Fraud Class Actions: Improving Investor Protection*, WASH. L. FOUND., 23 (2005), *available at* http://www.wlf.org/upload/0405WPGorsuch.pdf (lodestar cross-check is an "important safeguard"); Vaughn R. Walker & Ben Horwich, *The Ethical Imperative of a Lodestar Cross-Check: Judicial Misgivings About "Reasonable Percentage" Fees in Common Fund Cases*, 18 GEO. J. LEGAL ETHICS 1453, 1454 (2005) ("[W]e argue that courts making common fund fee awards are ethically bound to perform a lodestar cross-check.").

Here, plaintiffs concede that they resolved the case at an early stage, yet they resist the application of the lodestar cross-check that is meant to safeguard the class in such situations.

Compare Fee Motion 14-15 *with* Fee Motion 20-21. Plaintiffs' expert Professor Fitzpatrick not only disagrees with Justice Gorsuch that the cross-check is an "important safeguard," he opines that a lodestar cross-check is affirmatively bad policy. Fitzpatrick Decl. ¶ 24. He is incorrect, mostly because he ignores the difference between employing the lodestar as baseline methodology and employing the lodestar as a backup cross-check. When used as a base methodology, lodestar occasions a misalignment between the interests of class members and their counsel, because a counsel's fees do not depend on the success its client obtains. However, when lodestar is only employed as a cross-check, the ultimate fee still depends upon the benefit conferred on class members. The cross-check resolves certain problems created by a pure percentage approach: It prevents a trial penalty,[2] it forecloses hourly windfalls that a functioning marketplace would not allow, and it discourages risk-averse[3] counsel from entering into quick agreements that amount to a small percentage of potential recovery. Fitzpatrick and plaintiffs quote out of context the Ninth Circuit's decision in *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536 (9th Cir. 2016), to claim that the lodestar cross-check is entirely discretionary. Fee Motion 20; Fitzpatrick Decl. ¶23. The full sentence from *Yamada* reads: "But where, as here, classwide benefits are not easily monetized, a cross-check is entirely discretionary." 825 F.3d at 547. *Yamada* refers only to percentage cross-checks of a base lodestar award; it is irrelevant here. What is relevant is the Ninth Circuit's general principle that "courts cannot rationally apply any particular percentage…without reference to all the circumstances of the case." *WPPSS*, 19 F.3d at 1298. "All the circumstances of the case" certainly includes the time expended

[2] *See Brytus v. Spang & Co.*, 203 F.3d 238, 247 (3d Cir. 2000).

[3] Because they have more at stake, class counsel are naturally more risk averse than any given absent class member. *E.g., Anderson Living v. Wpx Energy Prod.*, 306 F.R.D. 312, 442 n.90 (D.N.M. 2015).

by class counsel. "Without such an inquiry there is a grave danger that the bar and bench will be brought into disrepute, and there will be prejudice to those whose substantive interests are at stake and who are unrepresented except by the very lawyers who are seeking compensation." *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 128 (8th Cir. 1975) (cleaned up).

Unsurprisingly then, a large number of courts have heeded the Ninth Circuit's advice by employing a lodestar cross-check, reducing fees and augmenting class recovery, even where class counsel has requested no more than the 25% benchmark. *See, e.g.*, *In re Chiron Corp. Sec. Litig.*, 2007 WL 4249902, at *7 (N.D. Cal. Nov. 30, 2007) (refusing to grant 25% where it equated to excessive multiplier of 8-10); *Rose v. Bank of Am.*, 2014 WL 4273358, at *12-*13 (N.D. Cal. Aug. 29, 2014) (refusing to grant 25% where it equated to excessive multiplier of 8.65, instead granting multiplier of 2.59 or 7.4% of fund); *Xuechen Yang v. Focus Media Holding*, 2014 WL 4401280, at *16 (S.D.N.Y. Sept. 4, 2014) (refusing to award 25% where it amounted to a 3.99 multiplier, instead awarding 10%); *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065, at *7 (N.D. Cal. Dec. 19, 2014) (refusing to grant 25% where it would have amounted to a 1.63 multiplier; instead awarding 17% in fees for 1.12 multiplier); *Bayat v. Bank of the West*, 2015 WL 1744342, at *8-*9 (N.D. Cal. Apr. 15, 2015) (refusing to award 25% that equated to 2.76 multiplier when result was less than stellar); *Greenberg v. Colvin*, 2015 WL 4078042, at *8 (D.D.C. July 1, 2015) (reducing fee from 25% to 20% where class counsel would have otherwise been entitled to $3,000/hour); *Fangman v. Genuine Title*, 2016 U.S. Dist. LEXIS 160434, at *36 (D. Md. Nov. 18, 2016) (refusing to grant 20% of constructive common fund with 7.5 multiplier, instead granting fees of 15% for 5.6 multiplier); *Viceral v. Mistras Group*, 2017 WL 661352, at *4 (N.D. Cal. Feb. 17, 2017) (refusing to grant 25% where 1.13 multiplier would result); *Nitsch v. DreamWorks Animation SKG*, 2017 WL 2423161 (N.D. Cal. June 5, 2017) (finding 3.91 multiplier too high

(amounting to 21%), awarding 2.0 multiplier (amounting to 11%)); *Hillson v. Kelly Servs.*, 2017 WL 3446596, at *5-*6 (E.D. Mich. Aug 11, 2017) (declining to award 25% when it amounted to 4.5 multiplier; following Newberg's presumptive multiplier ceiling of 4 and awarding 21.5%).

The Court should cross-check plaintiffs' fee request using the lodestar method, and find, for reasons discussed below, that awarding class counsel the fee they seek would in fact result in the type of "exorbitant hourly rate" that the crosscheck seeks to protect against.

A. Class counsel's proclaimed lodestar includes non-compensable hours; the actual multiplier approaches 18.

Although the lodestar cross-check does not require the bean-counting that the base lodestar method entails, it would "serve[] little purpose as a crosscheck if it is accepted at face value." *In re Citigroup Inc. Secs. Litig.*, 965 F. Supp. 2d 369, 389 (S.D.N.Y. 2013). For purposes of the calculation, plaintiffs proffer that class counsel here has reasonably expended a total of 2,158 hours. Fee Motion 20. But district courts "should exclude" "hours that were not reasonably expended" where cases are "overstaffed" and hours are "excessive, redundant or otherwise unnecessary." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). Here, the following categories of hours should be excluded entirely: (1) pre-*Farrell* time for work on other litigation (*i.e. McGee v. Bank of Am., N.A.*, 2015 WL 4594582 (S.D. Fla. July. 30, 2015); *Shaw v. BOKF, N.A.*, 2015 WL 6142903 (N.D. Okla. Oct. 19, 2015)); (2) anticipated future hours that have not yet been expended; and (3) time spent on class counsel's fee application. Additionally, time spent on settlement mediation, negotiation and drafting is excessive and should be reduced.

Contrary to Fitzpatrick's unsupported assertion,[4] attorney time is not compensable when

[4] The only case Fitzpatrick cites for the proposition that "it is not uncommon to treat time intertwined across cases as one for purposes of the lodestar crosscheck" is *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on Apr. 20, 2010*, 2016 WL 6215974 (E.D.

it is "fundamentally related to a separate legal proceeding." *Lota v. Home Depot U.S.A*, 2013 WL 6870006, at *8 (N.D. Cal. Dec. 31, 2013); *In re Infospace, Inc. Secs. Litig.*, 330 F. Supp. 2d 1203, 1214 (W.D. Wash. 2004); *Parsons v. Volkswagen*, 341 P.3d 662, 667-68 (Okla. 2014). "An attorney is not entitled to be paid in [an action] for the work he or another attorney did in some other case." *ACLU v. Barnes*, 168 F.3d 423, 430 (11th Cir. 1999); *cf. also Halley v. Honeywell Int'l*, 861 F.3d 481, 501 (3d Cir. 2017) (vacating decision allowing attorney expenses from one case to be charged in settlement of another). There is good reason to treat each litigation as its own unit. While classes may overlap across cases, they are not coextensive. For example, neither *McGee* nor *Shaw* was brought on behalf of *Farrell* class members who incurred their first extended overdrawn balance charge in 2017 (*McGee* and *Shaw* had terminated by then). Such class members should not be charged for class counsel's earlier work on behalf of other persons. More generally, it does not "confer a benefit on the class" to incur litigation costs from two duplicative parallel cases. *Drazin v. Horizon Blue Cross Blue Shield of N.J.*, 832 F. Supp. 2d 432, 443 (D.N.J. 2011), *aff'd* 528 Fed. Appx. 211 (3d Cir. 2013). Further, class counsel seek to be awarded Southern District of California rates (a blended rate of more than $660/hr)[5] for work done in less expensive forums: Ft. Lauderdale, FL (*McGee*) and Tulsa, OK (*Shaw*). Finally, paying class counsel for unsuccessful

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La. Oct. 25, 2016). Fitzpatrick Decl. ¶26 n.6. But that decision has no analysis of the issue, nor the further problem of work expended in cases spanning multiple jurisdictions.

[5] Although Threatt does not contest class counsel's hourly rates *per se*, a blended rate of $661/hour is likely well above the typical blended rate in this Circuit. *Bruno v. Quten Research Inst.*, 2013 WL 990495, at *4 (C.D. Cal. Mar. 13, 2013) (blended rate of $366.87/hr); *Nguyen v. BMW of N. Am.*, 2012 WL 1380276, at *3 (N.D. Cal. Apr. 20, 2012) (blended rate of $470/hr); *see also Gabriel Techs. Corp. v. Qualcomm*, 2013 WL 410103, at *9 (S.D. Cal. Feb. 1, 2013) (blended rate of $447/hr is "in line with that of the community" when compared to California peers).

outside work undermines their fundamental argument for a lodestar multiplier: that the risk of this litigation necessitates a multiplier to make them whole. Thus the 343.75 hours[6] spent litigating pre-*Farrell* cases should be eliminated from the lodestar.

Second, courts do not permit attorneys to include anticipated future time in their lodestar. "The law is settled that in calculating the lodestar, the Court must use 'the number of hours reasonably **expended** on the litigation,' and the movant 'should submit evidence supporting the hours worked." *See Nat'l Alliance for Accessability v. Hull Storey Retail Group*, No. 2012 WL 3853520, at *4 (M.D. Fla. Jun 28, 2012) (quoting *Hensley*, 461 U.S. at 433 (1983) and adding emphasis); *see also 7-Eleven, Inc. v. Etwa Enter.*, 2013 WL 2947112, at *5 (D. Md. Jun. 12, 2013) ("Plaintiff has not identified any authority that would entitle it to an award of 'anticipated legal fees and costs,' nor is the court aware of any."); *St. Hilaire v. Indus. Roofing*, 346 F. Supp. 2d 212, 215 (D. Me. 2004) (rejecting "Plaintiff's bald projection of reasonable future fees without corroborating support in the record"). The 88 anticipated future hours[7] should be excluded.

Third, "[t]ime spent obtaining an attorneys' fee in common fund cases is not compensable because it does not benefit the plaintiff class." *WPPSS*, 19 F.3d at 1999; *accord Manner v. Gucci Am., Inc.*, 2016 WL 6025850, at *4 (S.D. Cal. Oct. 13, 2016). The 64.75[8] hours spent on the fee application should be excluded.

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[6] *See* Decl. of Jeff Ostrow (Dkt. 80-4) ¶10.2; Decl. of Hassan Zavareei (Dkt. 80-5) ¶16.2; Decl. of Cristina M. Pierson (Dkt. 80-6) ¶6.2; Decl. of Bryan S. Gowdy (Dkt. 80-7) ¶7.2. The fact that counsel channeled more than five times greater effort into this case in comparison to the unsuccessful *McGee* and *Shaw* also demonstrates why a multiplier is not warranted.

[7] *See* Ostrow Decl. ¶¶10.15-10.16; Zavareei Decl. ¶¶16.15-16.16; Pierson Decl. ¶¶6.15-6.16; Gowdy Decl. ¶¶7.13, 7.16.

[8] Ostrow Decl. ¶10.14; Zavareei Decl. ¶16.14; Pierson Decl. ¶6.14; Gowdy Decl. ¶7.14.

Fourth, class counsel includes an excessive 561.75 hours[9] spent on settlement mediation, negotiation and drafting. *See Dugan v. Lloyds Tsb Bank*, No. C 12-02549, 2014 WL 1647652, at *4 (N.D. Cal. Apr. 24, 2014) (327 hours for class settlement negotiation "is excessive"). The root of the overbilling is that plaintiffs involved at least 8 high-priced attorneys in the settlement process. *See Makaeff v. Trump Univ.*, 2015 WL 1579000, at *14 (S.D. Cal. Apr. 9, 2015) (it was "excessive to have three partners participating in the settlement conference"); *Reyes v. Bakery & Confectionary Union*, 2017 WL 6623031, at *11 (N.D. Cal. Dec. 28, 2017) ("no ... justification for having five partners attend the mediation"; reducing time by 60%). Threatt recommends that the Court reduce time spent on settlement to 300 hours to account for the duplication and inefficiency of so many attorneys.

All said, the proclaimed 2,158 hours are due to be reduced by approximately 758 hours, bringing the compensable hour count to 1399.75 hours. Keeping constant class counsel's blended rate of $661.74/hour—itself remarkably high—class counsel's actual lodestar amounts to $926,278.72, and actual requested multiplier is almost 18. In other words, class counsel seeks a total fee award equal to a fee of $11,894/hour of compensable work.

B. A multiplier of 18 or of 11 is unreasonable.

"[T]here is a strong presumption that the lodestar is sufficient" without an enhancement multiplier. *Perdue v. Kenny A*, 559 U.S. 542, 546 (2010). *Kenny A.* allocates "the burden of proving that an enhancement is necessary [to] the fee applicant." *Id.* at 553. A lodestar enhancement is only justified in "rare and exceptional" circumstances where "specific evidence" demonstrates that an unenhanced "lodestar fee would not have been adequate to attract competent counsel." *Id.* at 554; *accord Hyundai*, 881 F.3d at 706-07. Here, there was no trouble attracting counsel as there are four

[9] Ostrow Decl. ¶10.10; Zavareei Decl. ¶16.10; Pierson Decl. ¶6.10; Gowdy Decl. ¶7.10.

firms serving as class counsel who achieved a quick settlement for a small fraction of potential recovery. A multiplier of 18 or 11 is outside the permissible range of outcomes.

Kenny A's limitation on enhancements was made in the context of interpreting 42 U.S.C. § 1988's language of "reasonable" fee awards, but there's little justification for claiming that "reasonable" in § 1988 means something different than "reasonable" in class action fee awards made under Fed. R. Civ. P. 23(h). *E.g., Hyundai*, 881 F.3d at 706-07 (applying *Kenny A.* to Rule 23(h) fee award pursuant to settlement); *Bluetooth*, 654 F.3d at 942 n.7 ("the Kerr factors only warrant a departure from the lodestar figure in rare and exceptional cases") (internal quotation omitted); *In re Sears Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, 867 F.3d 791 (7th Cir. 2017) (applying *Kenny A.* to reduce 1.75 multiplier to 1); *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 361 (3d Cir. 2010) (Weis, J. concurring/dissenting) (referring to *Kenny A.* as an "analogous statutory fee-shifting case."); *Weeks v. Kellogg Co.*, 2013 WL 6531177, at *34 n.157 (C.D. Cal. Nov. 23, 2013) (citing *Kenny A.* and finding "little basis for an application of a multiplier" when calculating lodestar cross-check). All but one case cited by Fitzpatrick (Fitzpatrick Decl. ¶26) that awarded a significant multiplier predates *Kenny A.*, and that one outlier was an out-of-circuit decision that did not mention *Kenny A. Beckman v. Keybank, N.A.* 293 F.R.D. 467 (S.D.N.Y. 2013) (endorsing multiplier of 6.3). Indeed the very sentence plaintiffs rely on from *Beckman*—"courts regularly award lodestar multipliers of up to eight times lodestar, and in some cases, even higher multipliers"—has been criticized as having "made its way into many court 'decisions' in [the Second] Circuit via proposed orders drafted by plaintiffs' attorneys." *Fujiwara v. Yasuda LTD.*, 58 F. Supp. 3d 424, 437 (S.D.N.Y. 2014). But in reality, "the cases cited … in support of this

proposition provide weak support for such loft multipliers." *Id.* at 438.[10]

In fact, the Third Circuit has "strongly suggest[ed]" that a multiplier of 3 is an "appropriate ceiling for a fee award." *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 742 (3d Cir. 2001) (vacating award that amounted to a multiplier of 7 or 10). Likewise, the Seventh Circuit has suggested that a multiplier of 2 might be a "sensible ceiling" to avoid unwarranted attorney windfalls." *E.g. Florin v. Nationsbank*, 34 F.3d 560, 565 (7th Cir. 1994). And while, *Vizcaino* ratified a 3.65 multiplier in 2002, the Ninth Circuit has more recently been skeptical of multipliers even less than 2. *See Hyundai*, 881 F.3d at 706-07 (doubting propriety of 1.22 multiplier); *In re Magsafe Apple Power Adapter Litig.*, 571 Fed. Appx. 560, 564 (9th Cir. 2014) (doubting propriety of 1.51 multiplier).

Class counsel fail to provide a proper legal basis for the requested multiplier here. A multiplier "may not be awarded based on a factor that is subsumed in the lodestar calculation"—either in the number of hours or hourly rate. *Kenny A.*, 559 U.S. at 553. Thus, "the novelty and complexity of a case generally may not be used as a ground for an enhancement because these factors presumably are fully reflected in the number of billable hours recorded by counsel." *Id.* (cleaned up); *accord Bluetooth*, 654 F.3d at 942 n.7; *Brown v. 22nd Dist. Agricultural Ass'n*, 2017 WL 3131557, at * 7 (S.D. Cal. Jul. 21, 2017) (quoting *Blum v. Stenson*, 465 U.S. 886, 899 (1984)). Similarly, a multiplier based on outstanding results requires "exceptional success" beyond the "expectancy of excellent or extraordinary results" already baked into high hourly rates. *WPPSS*, 19 F.3d at 1304; *accord Rodriguez v. Barrita, Inc.*, 53 F. Supp. 3d 1268, 1287 (N.D. Cal. 2014); *Brown*,

[10] It is true that *Vizcaino* "noted" a multiplier as high as 19.6, but it never endorsed such a multiplier. The case involved only a 3.65 multiplier, and observed also that 83% of the multipliers it surveyed were less than 4.0. *See* 290 F.3d at 1051 n.6.

2017 WL 3131557, at * 7.

The settlement provides the class with less than 10% of its potential damages, with cash payouts of less than 5% of potential damages. Meanwhile, class counsel requests an 11 multiplier that is in reality an 18 multiplier, equating to fees of more than $11,000/hour. "[T]he class is being asked to 'settle,' yet Class Counsel has applied for fees as if it had won the case outright." *Sobel v. Hertz*, No. 3:06-CV-00545, 2011 WL 2559565, at *14 (D. Nev. Jun. 27, 2011).

Besides outstanding results, the other basis plaintiffs offer for an enhancement multiplier is the riskiness of the litigation. Fee Motion 13-14. But "the weak strength of Plaintiffs' case should not constitute a 'special circumstance' justifying enhancement of the fee award." *Viceral*, 2017 WL 661352, at *3. "This rationale would have the perverse effect of rewarding counsel for taking on weak or otherwise dubious cases" amounting to a "no lose proposition." *Id.* Rewarding weak cases more than strong cases is, to put it nicely, an "uncomfortable rule." *Kmiec v. Powerwave Tech.*, 2016 WL 5938709, *5 (C.D. Cal. Jul. 11, 2016); *see also Hyundai*, 881 F.3d at 706-07 (rejecting multiplier based on risk and complexity of case).

Even if risk multipliers are sometimes appropriate, granting the excessive one requested here is inappropriate for several reasons. Class counsel (1) included time spent on unsuccessful outside litigation in its lodestar accounting, effectively insuring away risk by seeking compensation whether they win or lose; (2) demonstrated the ability to funnel most of its hours to successful litigation and away from unsuccessful litigation; (3) took little opportunity risk in pursuing an overdraft action, an area with which it has great familiarity, and; (4) reached an early settlement. A 10% fee award of the undiscounted overinflated settlement value ($6.66 million) still amounts to a multiplier of 4.75. That stands at the outer limits of what this Court should permit.

V. The percentage of recovery requested by class counsel is excessive and should be reduced to augment class recovery.

The fee request is excessive even if the Court relies exclusively on the percentage-of-recovery approach. Again, "courts cannot rationally apply any particular percentage—whether 13.6[%], 25[%] or any other number—in the abstract, without reference to all the circumstances of the case." *Vizcaino*, 290 F.3d at 1048 (cleaned up). Here, there are several circumstances that make a $16.6 million fee based on the 25% benchmark independently excessive.

First, the $66 million that plaintiffs use as the denominator in the calculation is not all cash and should not be valued as equivalent to such in the fee analysis. Under the settlement, BANA will pay $37.5 million in cash and reduce debt currently owed by class members whose accounts were closed while an EOBC was still due by $29.1 million. Settlement §2.2(b). This structure costs BANA and benefits class members far less than the $66.6 million aggregate figure suggests because the "debt reduction" is worth less than cash to class members and costs BANA significantly less than a cash payment. Either the percentage should be reduced or the $29.1 million of debt reduction should be heavily discounted to account for its lower value.

The parties do not disclose whether BANA has already sold any debt from the closed, overdrawn accounts or how it otherwise has accounted for the debt. BANA may have sold the debt for mere pennies on the dollar or may not expect to recover anything from the accounts and have already written them off. (At least some of the class members with overdrawn accounts would have declared bankruptcy and had debts extinguished.) While these questions remain open, there is no question that BANA would not have recovered 100% of the $29.1 million debt eligible for reduction under the settlement. If a consumer has not paid her balance within 60 days—typically the length of time before a bank will close an overdrawn account—and has her account closed, the likelihood of later repayment is low.

At the same time, class members are worse off with debt reduction than cash. The parties do not disclose how many of these former accountholder-class members owe more than $35. (Since the $35 represents a credit of one EOBC, it is likely that many of them owe more than that amount because a negative balance is what would have triggered the EOBCs.).

As a result, it is not surprising that class attorneys commonly seek less than the 25% benchmark where the settlement relief includes debt reduction, even when courts recognize that such relief is of some benefit to class members. *E.g.*, *Smith v. CRST Van Expedited*, 2013 WL 163293 (S.D. Cal. Jan. 14, 2013) (approving request for 33.3% of cash payment, equaling 7.5% of settlement that included $2.6 million in cash and $9 million in debt relief, without including outreach to credit agency outreach and changes to training); *Cosgrove v. Citizens Auto. Finance*, 2011 WL 3740809, at *9-*10 (E.D. Pa. Aug. 25, 2011) (approving request for 11.7% of cash and debt relief without including value of credit repair).

Second, the percentage should be reduced to account for the economies of scale represented by the large settlement fund. "Absent unusual circumstances, the percentage will decrease as the size of the fund increases." *Alexander*, 2016 WL 3351017, at *1 (quoting a previous order of the court) (cleaned up). The Ninth Circuit has thus instructed that where, for example, awarding 25% of a "megafund" settlement yields "windfall profits for class counsel in light of the hours spent on the case, courts should adjust the benchmark percentage or employ the lodestar method instead." *Bluetooth*, 654 F.3d at 942-43. This holding reflects that "[t]he existence of a scaling effect—the fee percent decreases as class recovery increases—is central to justifying aggregate litigation such as class actions. Plaintiffs' ability to aggregate into classes that reduce the percentage of recovery devoted to fees should be a hallmark of a well-functioning class action system." Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class*

Action Settlements: 1993-2008, 7 J. EMPIRICAL LEGAL STUD. 248, 263 (2010). Failing to apply a sliding scale will result in overcompensating law firms "who obtain huge settlements, whether by happenstance or skill, … to the detriment of the class members they represent." *Wal-Mart Stores v. Visa USA*, 396 F.3d 96, 122 (2d Cir. 2005).

At $66.6 million, this settlement at least approaches "megafund" status and, in any event, is large enough to implicate windfall concerns. Due to economics of scale, "[i]t is not [66] times more difficult to prepare, try, and settle a [$66] million case than it is to try a $1 million case. In many instances, the increase in recovery is merely a factor of the size of the class and has no direct relationship to the efforts of counsel." *Alexander*, 2016 WL 3351017, at *1 (cleaned up). Such is the case here. The settlement class includes approximately 5.9 million people. Notice § 5. Plaintiffs do not claim any added difficulty from the size of the class. Rather, the primary challenges were due to uncertainty over how certain legal issues involving the EOBCs would be resolved. Fee Motion 12-13. The work would have been the same whether there were 59 accountholders or 5.9 million. The 8-figure recovery is simply a result of plaintiffs targeting a large company.

No other factor justifies the windfall 25% sought by plaintiffs' counsel either. As discussed above, the result here was far from extraordinary, with class counsel compromising over 90% of the value of the class's claims. Counsel billed under 2200 hours on the case (and less than half of that on actual litigation of *this* case), settling about 20 months after filing the initial complaint. In other words, class counsel seek over $16.6 million for what amounts to barely more than one attorney-year of work. Few private attorneys, associate or partner, make an annual salary of $16.6 million. Plaintiffs try to explain away the significance of this factor, Fee Mem. 15, but, in reality, they had put little time or resources on the line by the time of

settlement. *See Walsh v. Popular, Inc.*, 839 F. Supp. 2d 476, 483-84 (D.P.R. 2012) (reducing fees from 33% to 23% of $8.2 million fund where full discovery was not conducted in case involving "complicated web of jurisprudence" and motion to dismiss but no motion for summary judgment had been filed).

Further, while it is true, as reflected in class counsel's citations to cherry-picked case law, that courts have awarded fees of 25% or higher even in larger cases, empirical studies demonstrate that courts apply a sliding scale to prevent a windfall for plaintiffs' attorneys at the expense of the class. This is reflected even in the empirical work of plaintiffs' expert. Fitzpatrick has found that "fee percentages are strongly and inversely associated with the size of the settlement" and "the age of the case is positively associated with fee percentages." Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811, 814 (2010). For settlements in the $30 million to $72.5 million range for the study's two-year period, the scaling effect is apparent, with mean and median percentages of 22.3% and 24.9%, respectively. *Id.* at 839. *See also, e.g.*, *Allen v. Dairy Farmers of Am.*, No. 5:09-cv-230, 2016 WL 3361544, at *8-*9 (D. Vt. June 14, 2016) (reducing fee from 33% to 14% of $80 million fund to augment recovery). In a short litigation such as this, where the fund is relatively large, and the class recovery relatively small compared to the amount sought by the complaint, then, a percentage further below the benchmark is appropriate.

That plaintiffs' counsel have retention agreements with the named plaintiffs setting their fees at 33.33% should not alter the Court's analysis. Such agreements "are owed little weight, given that named plaintiffs are usually paws of the class lawyers, and do not have a sufficient stake to drive a hard—or any—bargain with the lawyer[s]." *Gehrich v. Chase Bank U.S.*, 316 F.R.D. 215, 235 (N.D. Ill. 2016) (cleaned up); *Sinanyan v. Luxury Suite Int'l*, No. 2:15-cv-00225-

GMN-VCF, 2016 WL 4394484, at *3 n.3 (D. Nev. Aug. 17, 2016) (court must fully assess reasonableness of fee regardless of percentage agreed to by class representative).

Finally, the change in BANA's business practices will not benefit class members and thus does not provide any support for a higher percentage of recovery. Class counsel do not directly ask for fees to be based on the espoused benefit of the change but mention "non-monetary benefits" as a relevant consideration, and their expert opines that an upward departure where such benefits are achieved will incentivize class counsel to secure non-monetary relief. *See* Fee Mem. 16-17; Fitzpatrick Decl. ¶21. The problem, however, is that accountholders will not actually benefit. They will not "save" the estimated hundreds of millions of dollars in EOBC fees resulting from the change in practice.

Instead, BANA will simply charge accountholders other fees to make up for the revenue loss, leaving them no better off than if EOBCs were undisturbed. The effect of the Durbin Amendment to the Dodd-Frank financial reform legislation is illustrative. That amendment capped debit card interchange fees for large banks. The cap cut the average interchange fee for covered banks by about 50% per transaction, reducing annual revenues from these fees by $6-$8 billion. The banks nevertheless found ways to recover these lost revenues. For example, they reduced the availability of free accounts, tripled the minimum holding for free accounts, and doubled the monthly fee on non-free accounts, contributing to many with lower incomes leaving the banking system. Todd J. Zywicki, *et al.*, *Price Controls on Payment Card Interchange Fees: The U.S. Experience*, George Mason Law & Economics Research Paper No. 14-18 (2014).

Proverbially, there is no such thing as a free lunch. Accountholders who may be at risk of extended overdrawn balances will not suddenly receive a free benefit from BANA. Many of them may get frozen out of the banking system, or they will incur higher monthly account fees.

Plaintiffs have not made any showing to overcome this economic reality, yet they carry the burden of showing that class members will benefit from the settlement relief and of establishing a factual basis to support the requested fees. *See Koby*, 846 F.3d at 1079; *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996). Nor have they established that BANA would not have changed its EOBC practice for business reasons and to avoid further litigation in the absence of the settlement. *Koby*, 846 F.3d at 1080.

VI. The Court should strike or disregard the Fitzpatrick Declaration.

Threatt asks the Court to strike or, in the alternative, to disregard the Fitzpatrick Declaration because it contains inadmissible legal conclusions and other legal arguments regarding the calculation of attorneys' fees. Testimony regarding matters of law is inadmissible under either Rule 701 or 702 because "[r]esolving doubtful questions of law is the distinct and exclusive province of the trial judge." *Nationwide Transport Finance v. Cass Info. Sys.*, 523 F.3d 1051, 1058 (9th Cir. 2008) (internal quotation omitted). It is well established that "that expert testimony by lawyers, law professors, and others concerning legal issues is improper." *Pinal Creek Group v. Newmont Mining Corp.*, 352 F. Supp. 2d 1037, 1043 (D. Ariz. 2005). Such legal opinions invade this Court's province as the "sole arbiter of the law." *GPF Waikiki Galleria v. DFS Group*, 2007 WL 3195089, at *5 (D. Haw. Oct. 30, 2007). "[T]he court is well equipped to instruct itself on the law." *Stobie Creek Invs. v. United States*, 81 Fed. Cl. 358, 361 (Ct. Fed. Cl. 2008), *aff'd* 608 F.3d 1366 (Fed. Cir. 2010). Having recently and successfully moved to strike expert testimony similar to Fitzpatrick's for offering legal opinions on the reasonableness of fees, class counsel should be familiar with these principles. *See Stathakos v. Columbia Sportswear*, No. 15-cv-04543, 2018 WL 1710075, at *5 n.6 (N.D. Cal. Apr. 9, 2018).

Here, the plaintiffs' expert seeks to usurp the Court's role by telling the Court which of

the available methodologies it should use and how to apply it to award fees and concluding that "this fee request is within the range of reason" under his review of the law. *E.g.*, Fitzpatrick Decl. ¶¶8, 11-12, 19. The Fitzpatrick Declaration predominantly analyzes *case law*, not facts. Class counsel may argue that the declaration presents factual "empirical data," but the declaration consists of little more than discussion of Fitzpatrick's interpretation of the case law and improper legal opinion dressed up as statistics, but derived exclusively from case law. (He also usurps the Court's role by opining on the value of BANA's change in practice regarding EOBCs and the risk in litigating over EOBCs without establishing *any* authority by which to do so. *E.g.*, *id.* ¶¶14, 19.) Citations to case law remain legal argument when the case law is averaged, and this is especially true when the averages are stretched into dubious legal conclusions. District courts often approve unopposed fee requests, and Fitzpatrick does not discuss how the characteristics of the averaged cases fare in comparison to this case. "Expert testimony" which simply surveys the law ought to be excluded under Rule 702. *See Lukov v. Schindler Elevator Corp.*, 2012 WL 2428251, at *2 (N.D. Cal. June 26, 2012) (excluding expert opinion based on "survey of state laws"); *Heighley v. J.C. Penney Life Ins. Co.*, 257 F. Supp. 2d 1241, 1260 & n.23 (C.D. Cal. 2003) (striking "interpretations of case law").

To the extent the Court considers the declaration, Fitzpatrick's opinion supports a deterrence-based class-members-don't-matter approach that would hold that it is appropriate to pay the attorneys 100% of the fund—and indeed, he has taken that position in his writings. Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little?*, 158 U. PA. L. REV. 2043, 2047 (2010). It is little wonder that he is willing to endorse a contingency fee that pays the attorneys over $7700/hour—despite the fact that his own empirical work shows that a sub-25% fee is more typical in a settlement of this magnitude—and to excuse those characteristics that favor a

downward adjustment, such as length of litigation and double-digit lodestar multiplier. *See* Fitzpatrick, *supra*, 7 J. EMPIRICAL L. STUD. at 836, 839. This Court should join others in refusing to follow Fitzpatrick's opinion and apply its own discretion to award a more reasonable fee than the windfall requested by counsel. *E.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 2017 WL 1352859, at *3 (N.D. Cal. Apr. 12, 2017).

CONCLUSION

For the foregoing reasons, the Court should deny settlement approval until the parties agree to amend the *cy pres* provision and reduce attorneys' fees to $6.66 million.

Dated: April 20, 2018

Respectfully submitted,

/s/ Theodore H. Frank
Theodore H. Frank (SBN 196332)
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Attorney for Objector Rachel Threatt

I, Rachel Threatt, am the objector. I sign my this written objection drafted by my attorneys as required by the Court's Preliminary Approval Order (Dkt. 72) ¶ 4(a)(i) and Class Notice § 14.

Rachel Threatt

Theodore H. Frank (SBN 196332)
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Attorney for Rachel Threatt

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

RACHEL THREATT,

Objector.

Case No. 3:16-cv-00492-L-WVG

DECLARATION OF RACHEL THREATT

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018, at 11:00 a.m.

I, Rachel Threatt, declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. My name is Rachel Melita Threatt. My address is 304 Sunset Trail, New Lenox,

Illinois 60451. My telephone number is (314) 750-0921. My email address is Rthreatt86@icloud.com.

3. I hold a Bank of America, N.A. consumer checking account. Between February 25, 2014, and December 30, 2017, I was assessed at least one extended overdrawn balance charge that was not refunded.

4. I received notice by postcard of the proposed settlement in this action. It is my understanding that any settlement benefits due to me will be automatically deposited in my checking account.

5. On or about April 10, 2018, I contacted the Competitive Enterprise Institute's Center for Class Action Fairness ("CCAF") through the contact form on CCAF's web page. CCAF agreed to represent me in objecting to the settlement.

6. I have not previously filed an objection to any proposed class action settlement.

7. I intend to appear through my counsel Theodore H. Frank at the fairness hearing currently scheduled for June 18, 2018.

8. I bring this objection in good faith. I have no intention of settling this objection for any sort of side payment. Unlike many objectors who attempt or threaten to disrupt a settlement unless plaintiffs' attorneys buy them off with a share of attorneys' fees, it is my understanding and belief that CCAF does not engage in *quid pro quo* settlements and will not withdraw an objection or appeal in exchange for payment.

9. Thus, if, contrary to CCAF's practice and recommendation, I agree to withdraw my appeal for a payment by plaintiffs' attorneys or the defendant paid to me or any person or entity related to me in any way without court approval, I hereby irrevocably waive any and all defenses to a motion seeking disgorgement to the class of any and all funds paid in exchange for dismissing my appeal.

10. If I were to opt out from the settlement, I would not find it financially feasible to vindicate any claims I might have against the defendant.

11. The specific grounds of my objection are identified in the memorandum to be

filed by my attorney contemporaneously with this declaration.

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

Executed on April 16, 2018, in New Lenox, Illinois.

Rachel Threatt

Theodore H. Frank (SBN 196332)
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Attorney for Rachel Threatt

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

RACHEL THREATT,

Objector.

Case No. 3:16-cv-00492-L-WVG

DECLARATION OF THEODORE H. FRANK

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018, at 11:00 a.m.

I, Theodore H. Frank, declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. My business address is Competitive Enterprise Institute, 1310 L Street NW, 7th

Floor, Washington, DC 20005. My telephone number is (202) 331-2263. My email address is ted.frank@cei.org.

3. I represent Objector Rachel Threatt, a class member in this matter.

Center for Class Action Fairness

4. I founded the non-profit Center for Class Action Fairness ("CCAF"), a 501(c)(3) non-profit public-interest law firm based out of Washington, DC, in 2009. In 2015, CCAF merged with the non-profit Competitive Enterprise Institute ("CEI") and became a division within their law and litigation unit.

5. CCAF's mission is to litigate on behalf of class members against unfair class action procedures and settlements. *See, e.g.*, *Pearson v. NBTY, Inc.*, 772 F.3d 778, 787 (7th Cir. 2014) (praising CCAF's work); *In re Dry Max Pampers Litig.*, 724 F.3d 713, 716-17 (6th Cir. 2013) (describing CCAF's client's objections as "numerous, detailed and substantive") (reversing settlement approval and certification); *Richardson v. L'Oreal USA, Inc.*, 991 F. Supp. 2d 181, 205 (D.D.C. 2013) (describing CCAF's client's objection as "comprehensive and sophisticated" and noting that "[o]ne good objector may be worth many frivolous objections in ascertaining the fairness of a settlement") (rejecting settlement approval and certification.) The Center has won millions of dollars for class members and received national acclaim for its work. *See, e.g.*, Adam Liptak, *When Lawyers Cut Their Clients Out of the Deal*, N.Y. TIMES, Aug. 13, 2013 ("the leading critic of abusive class action settlements"); Roger Parloff, *Should Plaintiffs Lawyers Get 94% of a Class Action Settlement?*, FORTUNE, Dec. 15, 2015 ("the nation's most relentless warrior against class-action fee abuse"); The Editorial Board, *The Anthem Class-Action Con*, WALL ST. J., Feb. 11, 2018 (opining "[t]he U.S. could use more Ted Franks" while covering CCAF's role in exposing "legal looting" in the Anthem data breach MDL).

6. The Center has been successful, winning reversal or remand in fifteen federal appeals decided to date. *In re Subway Footlong Mktg. Litig.*, 869 F.3d 551 (7th Cir. 2017); *In re Target Corp. Customer Data Sec. Breach Litig.*, 847 F.3d 608 (8th Cir. 2017); *In re Walgreen Co. Stockholder Litig.*, 832 F.3d 718 (7th Cir. 2016); *In re EasySaver Rewards Litig.*, 599 Fed. Appx.

274 (9th Cir. 2015) (unpublished); *In re BankAmerica Corp. Secs. Litig.*, 775 F.3d 1060 (8th Cir. 2015); *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014); *Redman v. RadioShack Corp.*, 768 F.3d 622 (7th Cir. 2014); *In re MagSafe Apple Power Adapter Litig.*, 571 Fed. Appx. 560 (9th Cir. 2014) (unpublished); *In re Dry Max Pampers Litig.*, 724 F.3d 713 (6th Cir. 2013); *In re HP Inkjet Printer Litigation*, 716 F.3d 1173 (9th Cir. 2013); *In re Baby Products Antitrust Litigation*, 708 F.3d 163 (3d Cir. 2013); *Dewey v. Volkswagen*, 681 F.3d 170 (3d Cir. 2012); *Robert F. Booth Trust v. Crowley*, 687 F.3d 314 (7th Cir. 2012); *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011). Several of these appeals centered around excessive fee awards. *E.g., Redman*; *Pearson*; *Bluetooth*. While, like most experienced litigators, we have not won every appeal we have litigated, CCAF has won the majority of them, including the majority of appeals brought in the Ninth Circuit.

7. CCAF has won more than a hundred million dollars for class members by driving the settling parties to reach an improved bargain or by reducing outsized fee awards. Andrea Estes, *Critics hit law firms' bills after class-action lawsuits,* BOSTON GLOBE (Dec. 17, 2016). *See also, e.g., McDonough v. Toys "R" Us*, 80 F. Supp. 3d 626, 661 (E.D. Pa. 2015) ("CCAF's time was judiciously spent to increase the value of the settlement to class members") (internal quotation omitted); *In re Citigroup Inc. Secs. Litig.*, 965 F. Supp. 2d 369 (S.D.N.Y. 2013) (reducing fees, and thus increasing class recovery, by more than $26 million to account for a "significantly overstated lodestar"); *In re Apple Inc. Sec. Litig.*, No. 5:06-cv-05208-JF, 2011 U.S. Dist. LEXIS 52685 (N.D. Cal. May 17, 2011) (parties nullify objection by eliminating *cy pres* and augmenting class fund by $2.5 million).

Representation of Ms. Threatt

8. On or about April 10, 2018, Ms. Threatt contacted CCAF regarding the proposed settlement in this action. After confirming that she is a class member and that she sought to object for good-faith reasons, CCAF agreed to represent Ms. Threatt in this case and file an objection on her behalf. In addition to myself, CCAF attorneys representing Ms. Threatt are Anna St. John, Adam Schulman, and Frank Bednarz.

Pre-empting *Ad Hominem* Attacks

9. In my experience, class counsel, including some of the attorneys in this case, often respond to CCAF objections by making a variety of *ad hominem* attacks, often wildly false. The vast majority of district court judges do not fall for such transparent and abusive tactics. In an effort to anticipate such attacks and to avoid collateral litigation over a right to file a reply, I discuss and refute the most common ones below. If the Court is inclined to disregard the *ad hominem* attacks, it can avoid these collateral disputes entirely.

10. Class counsel often try to tar CCAF as "professional objectors," and then cite court opinions criticizing for-profit attorneys who threaten to disrupt a settlement unless plaintiffs' attorneys buy them off with a share of attorneys' fees. But this is not the non-profit CCAF's *modus operandi*, so the court opinions class counsel rely upon to tar CCAF are inapposite. *See* Edward Brunet, *Class Action Objectors: Extortionist Free Riders or Fairness Guarantors*, 2003 U. Chi. Legal F. 403, 437 n. 150 (public interest groups are not professional objectors); Paul Karlsgodt & Raj Chohan, *Class Action Settlement Objectors: Minor Nuisance or Serious Threat to Approval*, BNA: Class Action Litig. Report (Aug. 12, 2011) (distinguishing CCAF from professional objectors). CCAF refuses to engage in *quid pro quo* settlements, and has never withdrawn an objection in exchange for payment. Instead, it is funded entirely through charitable donations and court-awarded attorneys' fees. The difference between a for-profit "professional objector" and a public-interest objector is a material one. As the federal rules are currently set up, "professional objectors" have an incentive to file objections regardless of the merits of the settlement or the objection. In contrast, a public-interest objector such as myself has to triage dozens of requests for *pro bono* representation and dozens of unfair class action settlements, loses money on every losing objection (and most winning objections) brought, can only raise charitable donations necessary to remain afloat by demonstrating success, and has no interest in wasting limited resources and time on a "baseless objection." CCAF objects to only a small fraction of the number of unfair class action settlements it sees.

11. While one district court called me a "professional objector" in a broader sense, that court stated that it was not meant pejoratively, and awarded CCAF fees for a successful objection and appeal that improved the settlement for the class. *Dewey v. Volkswagen*, 909 F. Supp. 2d 373, 396 n.24 (D.N.J. 2012). Similarly, the Seventh Circuit in *In re Subway Footlong Mktg. Litig.*, 869 F.3d 551 (7th Cir. 2017) referred to me non-pejoratively as a "professional objector" in an opinion agreeing with my objection and reversing a settlement approval and class certification.

12. Indeed, CCAF feels strongly enough about the problem of bad-faith objectors profiting at the expense of the class through extortionate means that it has initiated litigation to require such objectors to disgorge their ill-gotten gains to the class. *See Pearson v. Target Corp.*, No. 17-2275 (7th Cir.); *see generally* Jacob Gershman, *Lawsuits Allege Objector Blackmail in Class Action Litigation*, WALL ST. J., Dec. 7, 2016.

13. Before I joined CEI, I had a private practice unrelated to my non-profit work. One of my former clients, Christopher Bandas, is a professional objector who has settled objections and withdrawn appeals for cash payments. I withdrew from representation of Mr. Bandas in 2015 when he undertook steps that interfered with my non-profit work. Mr. Bandas was criticized by the Southern District of New York after I ceased to represent him, and class counsel in other cases often cites that language and attempts to attribute it to me. Class counsel in multiple cases, using boilerplate language, has tried to make it seem like my paid representation of Mr. Bandas was somehow scandalous, using language like "forced to disclose" and "secret." The sneering is false: my representation of Mr. Bandas was not secret, as I filed declarations in my name on his behalf in multiple cases, noting under oath that I was being paid to perform legal work for him; I filed notices of appearances in cases where he had previously appeared; and my declaration in the *Capital One* case ending the relationship was filed voluntarily at great personal expense to myself, as I had been offered and refused to take a substantial sum of money to accede to a Lieff Cabraser fee award of over $3400/hour. I only worked for Mr. Bandas in cases where I believed there was a meritorious objection to

be made, had no role in any negotiations he made to settle appeals, and my pay was flat-rate or by the hour and not tied to his ability to extract settlements. I argued two appeals for Mr. Bandas, and won both of them. There is nothing scandalous about that, unless one believes it is scandalous for an attorney to be paid to perform successful high-quality legal services for a client. CCAF had no attorney-client relationship with Mr. Bandas, and Mr. Bandas never paid CCAF, other than for his share of printing expenses when he was an independent co-appellant representing clients unrelated to CCAF.

14. Firms whose fees we have objected to have previously (including one of the firms named as class counsel in this case) cited to *City of Livonia Employees' Ret. Sys. v. Wyeth*, No. 07 Civ 10329 (RJS), 2013 WL 4399015 (S.D.N.Y. Aug. 7, 2013), in efforts to tar CCAF. While the *Wyeth* court did criticize our client's objection (after mischaracterizing the nature of that objection), it ultimately agreed with our client that class counsel's fee request was too high, and reduced it by several million dollars to the benefit of shareholder class members.

15. Class counsel (again including one of the firms in this case) frequently cite an eight-year-old case, *Lonardo v. Travelers Indemnity Co.*, 706 F. Supp. 2d 766, 804 (N.D. Ohio 2010), where the district court criticized a policy-based argument by CCAF as supposedly "short on law"; however, CCAF ultimately was successful in the Seventh and Ninth Circuits on that same argument. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011) (agreeing that reversionary clauses are a problematic sign of self-dealing); *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014) (same). Moreover, the court in *Lonardo* stated its belief that "Mr. Frank's goals are policy-oriented as opposed to economic and self-serving" and even awarded CCAF about $40,000 in attorneys' fees for increasing the class benefit by $2 million. *Lonardo*, 706 F. Supp. 2d at 813-17.

16. CCAF has no interest in pursuing "baseless objections," because every objection we bring on behalf of a class member has the opportunity cost of not having time to pursue a meritorious objection in another case. We are confronted with many more opportunities to object (or appeal erroneous settlement approvals) than we have resources to

use, and make painful decisions several times a year picking and choosing which cases to pursue, and even which issues to pursue within the case. CCAF turns down the opportunity to represent class members wishing to object to settlements or fees when CCAF believes the underlying settlement or fee request is relatively fair.

17. While I am often accused of being an "ideological objector," the ideology of CCAF's objections is merely the correct application of Rule 23 to ensure the fair treatment of class members. Likewise, I have often seen class counsel assert that I oppose all class actions and am seeking to end them, not improve them. The accusation—aside from being utterly irrelevant to the legal merits of any particular objection—has no basis in reality. I have been writing and speaking about class actions publicly for nearly a decade, including in testimony before state and federal legislative subcommittees, and I have never asked for an end to the class action device, just proposed reforms for ending the abuse of class actions and class-action settlements. That I oppose class action abuse no more means that I oppose class actions than someone who opposes food poisoning opposes food. As a child, I admired Ralph Nader and consumer reporter Marvin Zindler (whose autographed photo was one of my prized childhood possessions), and read every issue of *Consumer Reports* from cover to cover. I have focused my practice on conflicts of interest in class actions because, among other reasons, I saw a need to protect consumers that no one else was filling, and as a way to fulfill my childhood dream of being a consumer advocate. I have frequently confirmed my support for the principles behind class actions in declarations under oath, interviews, essays, and public speeches, including a January 2014 presentation in New York that was broadcast nationally on C-SPAN and in my certiorari petition filed in 2015 in *Frank v. Poertner*. On multiple occasions, successful objections brought by CCAF have resulted in new class-action settlements where the defendants pay substantially more money to the plaintiff class without CCAF objecting to the revised settlement. And I am the class representative in a pending federal class action, represented by a prominent plaintiffs' firm. *Frank v. BMOCorp., Inc.*, No. 4:17-cv-870 (E.D. Mo.).

18. On October 1, 2015, after consultation with its board of directors and its donors, CCAF merged with the much larger Competitive Enterprise Institute ("CEI"), to take advantage of the economies of scale realized by eliminating some of the enormous fixed costs required for bureaucratic administration of and regulatory compliance by non-profits. CCAF was on financially sound footing, and consistently growing its assets faster than its spending, but a disproportionate amount of attorney time was taken up with non-litigation tasks, and we were not large enough to justify hiring full-time communications, fundraising, or regulatory-compliance staff, which I felt was limiting our effect.

19. Prior to its merger with CEI, CCAF never took or solicited money from corporate donors other than court-awarded attorneys' fees. CEI, which is much larger than CCAF, does take a percentage of its donations from corporate donors. As part of the merger agreement, I negotiated a commitment that CEI would not permit donors to interfere with CCAF's case selection or case management. In the event of a breach of this commitment, I am permitted to treat the breach as a constructive discharge entitling me to substantial severance pay. CEI has honored that commitment.

20. To my knowledge, none of the corporate donors to CEI have earmarked contributions to CCAF. I am unaware of whether there exist any corporate donors to CEI who take a position on the underlying litigation in this case, though it is possible one exists. CEI pays me on a salary basis that does not vary with the result in any case. I do not receive a contingent bonus based on success in any case, a structure that would be contrary to I.R.S. restrictions.

21. For example, I am personally the objector-appellant in pending Third Circuit and Supreme Court appeals against two *cy pres* settlements of a corporate donor to CEI. No one at CEI has complained that I am currently prosecuting that appeal against the donor, sought to interfere with the pending appeal, or even told me that I was adverse to the donor. I only discovered that information by happenstance when looking at the corporate donor's website.

22. Similarly, CEI represented an objector to the massive Volkswagen Diesel MDL settlement, arguing that the settlement structure short-changed class members by hundreds of millions of dollars. I learned only after a plaintiffs' attorney opposed our motion for leave to file an *amicus* brief in that case that Volkswagen had previously donated to CEI. No one at CEI had told me Volkswagen was a donor, or asked me to refrain from litigating against a donor's interests.

23. My understanding is that CEI's litigation history includes several lawsuits against the interests of some of its corporate donors. Based on this and based on my own experience working at CEI since 2015, I have every confidence that CCAF will continue to have the autonomy for which I negotiated.

24. CEI was willing to merge with CCAF because it supported CCAF's pro-consumer mission and success in challenging abusive class-action settlements and fee requests. But it is a large organization affiliated with dozens of scholars who take a variety of controversial positions. Neither I nor CCAF's clients agree with all of those positions, and they should not be ascribed to me, my client, or this objection, any more than my support for a Pigouvian carbon tax should be ascribed to CEI scholars who have publicly opposed that position.

25. Some class counsels have accused us of improper motivation because CEI/CCAF has on occasion sought attorneys' fees. While CCAF is funded entirely through charitable donations and court-awarded attorneys' fees, the possibly of a fee award never factors into the Center's decision to accept a representation or object to an unfair class-action settlement or fee request.

26. CCAF's history in requesting attorneys' fees reflects this approach. Despite having made dozens of successful objections and having won over $100 million on behalf of class members, CCAF has not requested attorneys' fees in the majority of its cases or even in the majority of its appellate victories. CCAF regularly passes up the opportunity to seek fees to which it is legally entitled. In *Classmates*, for example, CCAF withdrew its fee request and

instead asked the district court to award money to the class; the court subsequently found that an award of $100,000 "if anything" "would have undercompensated CCAF." *In re Classmates.com Consol. Litig.*, No. 09-cv-0045-RAJ, 2012 WL 3854501, at *11 (W.D. Wash. June 15, 2012). In other cases, CCAF has asked the court for a fraction of the fees to which it would be legally entitled based on the benefit CCAF achieved for the class and asked for any fee award over that fractional amount be returned to the class settlement fund.

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

Executed on April 20, 2018, in Washington, D.C.

/s/ Theodore H. Frank
Theodore H. Frank

THEODORE H. FRANK (SBN 196332)
Competitive Enterprise Institute
Center for Class Action Fairness
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Washington, DC 20005
Voice: (202) 331-2263
Email: ted.frank@cei.org
Attorney for Rachel Threatt

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant,

RACHEL THREATT,

Objector.

Case No. 3:16-cv-00492-L-WVG

CERTIFICATE OF SERVICE

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: June 18, 2018, at 11:00 a.m.

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically served the (i) Objection of Rachel Threatt, (ii) Declaration of Rachel Threatt, and (iii) Declaration of Theodore H. Frank on all CM/ECF participating attorneys at their registered email addresses, thus effectuating electronic service under S.D. Cal. L. Civ. R. 5.4(d).

DATED this 20th day of April, 2018.

/s/ Theodore H. Frank
Theodore H. Frank

CERTIFICATE OF SERVICE PURSUANT TO CLASS NOTICE AND PRELIMINARY APPROVAL ORDER

Pursuant the requirements of class notice and Preliminary Approval Order, Dkt. 72 ¶ 4.a.vi, I hereby certify that on this day I caused service of the foregoing on the following persons via first class mail:

Jeff Ostrow Kopelowitz Ostrow P.A. 1 West Las Olas Blvd. Suite 500 Fort Lauderdale, FL 33301	Clerk of the Court U.S. District Court for the Southern District of California Judge M. James Lorenz Courtroom 5B Suite 5145 221 West Broadway San Diego, CA 92101
Matthew W. Close O'Melveny & Myers LLP 400 S. Hope Street Los Angeles, CA 90071	

DATED this 20th day of April, 2018.

/s/ Theodore H. Frank
Theodore H. Frank

MICHAEL D. LUPPI (CA 55865)
LAW OFFICE OF MICHAEL D. LUPPI
11366 Christy Avenue
Sylmar, CA 91342
Telephone (818) 897-3344
Facsimile: (323) 726-3106
monica@luppilaw.com

Counsel for Objector Estafania Osorio Sanchez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL,
On behalf of themselves and all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,,

Defendant,

ESTAFANIA OSORIO SANCHEZ,

Objector.

Case No.: 3:16-cv-00492-l-WVG

OBJECTION OF ESTAFANIA OSORIO SANCHEZ

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

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

OBJECTOR ESTAFANIA OSORIO SANCHEZ
OBJECTIONS TO PROPOSED SETTLEMENT AND MOTION FOR ATTORNEY FEES

PROOF OF MEMBERSHIP IN THE SETTLEMENT CLASS

Estefania Osorio Sanchez a/k/a Stephanie Osorio ("Osorio") through undersigned counsel, Objects to the proposed settlement and motion for attorney fees, and states:

Osorio an identifiable harmed member of the class had received, on February 7, 2018, a class action notice through e mail from "Farrell v. Bank of America, N.A." noreply@EOBCsettlement.com. On more than one occasion, Bank of America charged her and she paid Extended Overdrawn Bank Charges(EOBC). Osorio has never objected to a class action settlement, and she does not intend to testify at the final approval hearing scheduled for June 18, 2018. Her address is 2626 Fountain View Drive, Apt. 335, Houston Texas 77057. Her telephone number, if needed, will be readily provided upon request.

NOTICE OF INTENT TO APPEAR

Objector Osorio gives Notice that she may appear, by counsel, at the Fairness Hearing before the Hon. M. James Lorenz, U.S. District Judge, which is presently

scheduled in Courtroom 5B, Suite 5145 , of the United States District Court for the Southern District of California, located at 221 West Broadway , San Diego, CA, 92101, on June 18, 2018, at 11:00a.m. Objector Osorio through counsel, if an appearance is made, will not call any witness, present any papers, exhibits, or other evidence in connection with the Fairness Hearing.

OBJECTIONS

1. The Settlement Notice(the Notice) denies class members due process in that it fails to provide any information: regarding either the number of class members or the aggregate estimated damages suffered by the class for the damages set forth in the prayer for relief in first amended class action complaint, including but not limited to "Awarding Plaintiffs and Class damages (including twice the amount of usurious interest paid), prejudgment interest from the date of loss, and their costs and disbursements in connection with this action, . . .[Dkt.78] The Notice does not provide any information regarding the amount of monies that Bank of America siphoned off from their scheme to slam customers with an extended overdrawn bank charge. In paragraph 13 of the First Amended Class Action Complaint, Plaintiffs allege "In 2012 alone, banks took in approximately $32 billion in overdraft-related fees." [Dkt.78] If ever there were a case where the

information regarding the amount of ill-gotten gain should be available to absent class members through the Notice, this is that case. For absent class members such as Osorio, that information placed in the Notice is essential for her to evaluate the fairness, adequacy and reasonableness of the proposed settlement.

2. The Notice and other supporting documents, at best, are unclear as to an accurate value of the settlement benefits. At worst, the information regarding value of the proposed settlement is misleading. The Notice identifies two categories of settlement benefits. One benefit provides a fund of $37.5 million cash. For this benefit, Class Counsel negotiated away any claim process, which is commendable. The monies are paid to absent class members directly and without them having to file any claims, or engage in processing whatsoever. The significant drawback, however, concerns the lack of information of the number of absent class members that qualify for the benefit. Without knowing the aggregate number of class members entitled to the cash benefit, absent class members like Osorio have no idea what the distributed cash benefit will be.

Without that information, they, and the Court, are not provided adequate information to determine the fairness, adequacy and reasonableness of the proposed settlement.

The other benefit, the debt-reduction payment benefit, which the Notice values at $29, 100,000 is largely illusory. The Notice states "The debt relief will be provided to Settlement Class members whose personal checking accounts BANA closed in overdrawn status with an EOBC still pending and whose overdrawn balances remain due and owing to BANA." No money is paid to absent class members. Without additional substantial evidence provided, which should be the burden of the proponent of the proposed settlement, this purported benefit is an adjusting entry on the books of Bank of America. Perhaps, Bank of America garners a tax benefit, but absent class members garner nothing. Alternatively, if Bank of America sells its portfolio of these debts, the market value would approximate pennies on the dollar. There is no evidentiary basis to value this alleged benefit at anywhere near the cash benefit.

3. In that these two benefits, the cash benefit and the debt-reduction payment benefit, are entirely different and in conflict, separate subclasses should be created with separate subclass representatives. Each separate subclass

representative should speak for the absent class members that are in that particular group. *See Amchem Products, Inc.* v. *Windsor,* 521 US 591 (1997).

4. No value to the proposed settlement for purposes of evaluating a proper fee award should be attributed to the described injunctive relief going forward. This action applies to individuals who are not even class members. In that the benefit does not confer on strictly absent class members, the Court should reject any request to assign a value for purposes of determining whether the proposed settlement is fair, adequate and reasonable. Similarly, this global benefit should not be factored in the fee award.

5. In accordance with Rule 23 of Federal Rules of Civil Procedure, the parties should mail the long form Notice to all class members. Such Notice is "the best ***notice*** that ***is*** practicable under the circumstances. . . ."

6. The phrase "Settlement Value" as placed in the Notice is misleading, should be stricken, and unambiguous words should be substituted. For example, stating that the "Settlement is X dollars" would be clear.

7. The *cy pres* provision needs to be redrawn to comply with *Dennis v. Kellogg* Co., 697 F.3d 858 (9th Cir. 2012). If a secondary distribution is

economically feasible, then the Proposed Settlement should require that be implemented. There should not be discretion to use those funds for *cy pres*.

8. The requested fee award is unreasonable and excessive. The fee should only be paid on the $37.5 benefit. 25% of that amount equals a fee of $9.375 million as opposed to the requested fee of $16, 650,000. $7,275million should be redirected to the settlement fund for the benefit of absent class members.

WHEREFORE, Objector Osorio respectfully requests that this Court sustain these Objections and enter such Orders as are necessary and just to adjudicate these Objections including but not limited to an order:

A. Disapproving the proposed settlement because it doesn't meet the requirements of Fairness, Adequacy or Reasonableness;

B. Disapproving the proposed settlement because of the improper and constitutionally defective Notice to the class;

C. Requiring class counsel and the settling defendants to submit a new Notice and then to re-Notice the class to address Notice objections as set forth above;

D. Denying the requested attorney's fees to Class Counsel and determining attorney's fees as set forth above;

E. Redirecting the excess fee to the cash fund for the benefit of class members;

F. Revising the *cy pres* provisions in accordance with objections set forth above;

G. Creating two subclasses—one for the cash fund and one for the debt-reduction payment fund and appointing two subclass representatives; and,

H. Granting such other relief that this Court deems necessary and proper for the absent class members.

Dated this 20th of April, 2018.

/s/ Michael D. Luppi
Michael D. Luppi

CERTIFICATE OF SERVICE

I HEREBY certify that on April 20th, 2018, I electronically filed the foregoing **OBJECTOR ESTAFANIA OSORIO SANCHEZ NOTICE OF INTENT TO OBJECT TO PROPOSED SETTLEMENT AND MOTION FOR ATTORNEY FEES PROOF OF MEMBERSHIP IN THE SETTLEMENT CLASS** with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record in this action.

Joanne Farrell v. Bank of America, N.A., Case No. 3:16-cv-00492-L-WVG

Dated: April 20, 2018

Estefania Osorio Sanchez

Objector, Class Member

Tucker | Pollard
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Attorney for Objector
STEPHEN KRON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOANNE FARRELL, on behalf of herself and all others similarly situated, Plaintiff, v. BANK OF AMERICA, N.A., Defendant.	CASE NO. 3:16-cv-00492-L-WVG

OBJECTION TO CLASS ACTION SETTLEMENT

Class member and objector, Stephen Kron, ("hereinafter Objector") opposes the approval of this class action settlement. His contact information is: P.O. Box 7015, Laguna Niguel, CA 92607, 949-283-2214. My client does not recall any information about past objections, but has objected in the past. My past objections are not relevant, but I have objected in several cases. A district court may approve a class action settlement only if the settlement is "fair, reasonable, and adequate." Fed R. Civ. P. 23(e)(2). The district court fulfills both its "duty to act as a fiduciary who must serve as a guardian of the rights of absent class members and ... the requirement of a searching assessment regarding attorneys' fees that should properly be performed in each case." *In*

re Bank of Am. Corp. Securities, Derivative, and Employee Ret. Income Sec. Act (ERISA) Litig., 772 F.3d 125, 134 (2d Cir. 2014) citing *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 419 (2d Cir. 2010).

"Class-action settlements are different from other settlements. The parties to an ordinary settlement bargain away only their own rights—which is why ordinary settlements do not require court approval." *In re Dry Max Pampers Litig.*, 724 F.3d 713, 715 (6th Cir. 2013). Unlike ordinary settlements, "class-action settlements affect not only the interests of the parties and counsel who negotiate them, but also the interests of unnamed class members who by definition are not present during the negotiations. *Id*. "[T]hus, there is always the danger that the parties and counsel will bargain away the interests of unnamed class members in order to maximize their own." *Id*.

The Court must ensure that the class certification criteria have been met pursuant to the 9th Circuit's recent opinion in *In re Hyundai and Kia Fuel Econ. Litig.*, 15-56014, 2018 WL 505343, at *3–4 (9th Cir. Jan. 23, 2018):

> Rule 23 "does not set forth a mere pleading standard." *Comcast*, 569 U.S. at 33, 133 S.Ct. 1426. The plaintiff seeking class certification bears the burden of demonstrating that all the requirements of Rule 23 have been met. *See Zinser*, 253 F.3d at 1188. This requirement means that the plaintiff must first demonstrate through evidentiary proof that the class meets the prerequisites of Rule 23(a), which provides that class certification is proper only if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a); *see also Comcast*, 569 U.S. at 33, 133 S.Ct. 1426. The Rule 23(a) prerequisites "effectively limit the class claims to those fairly encompassed by the named plaintiff's claims." *Dukes*, 564 U.S. at 349, 131 S.Ct. 2541 (internal quotation marks omitted). To meet the commonality requirement of Rule 23(a)(2), the plaintiffs' claims "must depend upon a common contention" that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350, 131 S.Ct. 2541.

After carrying its burden of satisfying Rule 23(a)'s prerequisites, the plaintiff must establish that the class meets the prerequisites of at least one of the three types of class actions set forth in Rule 23(b). Fed. R. Civ. P. 23(b); *Comcast*, 569 U.S. at 33, 133 S.Ct. 1426. Here, the district court certified the class under Rule 23(b)(3), which provides that a class action may be maintained only if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy," and which lists a number of matters "pertinent to these findings." Fed. R. Civ. P. 23(b)(3).[2]

The Rule 23(b)(3) predominance inquiry is "far more demanding" than Rule 23(a)'s commonality requirement. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 624, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). The "presence of commonality alone is not sufficient to fulfill Rule 23(b)(3)." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998). Rather, a court has a "duty to take a close look at whether common questions predominate over individual ones," and ensure that individual questions do not "overwhelm questions common to the class." *Comcast*, 569 U.S. at 34, 133 S.Ct. 1426 (internal quotation marks omitted). In short, "[t]he main concern of the predominance inquiry under Rule 23(b)(3) is the balance between individual and common issues." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 545–46 (9th Cir. 2013) (internal quotation marks omitted).

Where plaintiffs bring a nationwide class action under CAFA and invoke Rule 23(b)(3), a court must consider the impact of potentially varying state laws, because "[i]n a multi-state class action, variations in state law may swamp any common issues and defeat predominance." *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 741 (5th Cir. 1996). "Variations in state law do not necessarily preclude a 23(b)(3) action." *Hanlon*, 150 F.3d at 1022. For instance, even when some class members "possess slightly differing remedies based on state statute or common law," there may still be "sufficient common issues to warrant a class action." *Id.* at 1022–23; *see also Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 301–02 (3d Cir. 2011) (discussing the "pragmatic response to certifications of common claims arising under varying state laws," and citing a case that affirmed "the district court's decision to subsume the relatively minor differences in state law within a single class" as illustrative) (citing *In re Prudential Ins. Co. of Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 315 (3d Cir. 1998)); *In re Mex. Money Transfer Litig.*, 267 F.3d 743, 747 (7th Cir. 2001) (noting that even though "state laws may differ in ways that could prevent class treatment if they supplied the principal theories of recovery," class representatives in that case met the predominance requirement in part by limiting "their theories to federal law plus aspects of state law that are uniform"). On the other hand, where "the consumer-protection laws of the affected States vary in material ways, no common legal issues favor a class-action approach to resolving [a] dispute." *Pilgrim v. Universal Health Card, LLC*, 660 F.3d 943, 947 (6th Cir. 2011).

In determining whether predominance is defeated by variations in state law, we proceed through several steps. *See Mazza v. Am. Honda Motor Co.*, 666 F.3d 581,

590 (9th Cir. 2012). First, the class action proponent must establish that the forum state's substantive law may be constitutionally applied to the claims of a nationwide class. *Id*. at 589–90.[3] If the forum state's law meets this requirement, the district court must use the forum state's choice of law rules to determine whether the forum state's law or the law of multiple states apply to the claims. *Id*. at 590. "[I]f the forum state's choice-of-law rules require the application of only one state's laws to the entire class, then the representation of multiple states within the class does not pose a barrier to class certification." *Johnson v. Nextel Commc'ns Inc.*, 780 F.3d 128, 141 (2d Cir. 2015). But if class claims "will require adjudication under the laws of multiple states," *Wash. Mut. Bank, FA v. Superior Court*, 24 Cal. 4th 906, 922, 103 Cal.Rptr.2d 320, 15 P.3d 1071 (2001), then the court must determine whether common questions will predominate over individual issues and whether litigation of a nationwide class may be managed fairly and efficiently. *Id.* As with any other requirement of Rule 23, plaintiffs seeking class certification bear the burden of demonstrating through evidentiary proof that the laws of the affected states do not vary in material ways that preclude a finding that common legal issues predominate. *See Castano*, 84 F.3d at 741 (indicating that class action proponents must show that variations in state laws will not affect predominance; "[a] court cannot accept such an assertion on faith.") (quoting *Walsh v. Ford Motor Co.*, 807 F.2d 1000, 1016 (D.C. Cir. 1986) (Ruth Bader Ginsburg, J.)).*In re Hyundai and Kia Fuel Econ. Litig*., 881 F.3d 679, 690-691 (9th Cir. 2018).

In addition to ensuring that class certification criteria have been met, the Court must also evaluate the settlement for any potential collusion between class counsel and defendant. The Court "must be particularly vigilant not only for explicit collusion, but also for more subtle signs that class counsel have allowed pursuit of their own self interests … to infect the negotiations." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). Rather than explicit collusion, there need only be acquiescence for such self-dealing to occur: "a defendant is interested only in disposing of the total claim asserted against it" and "the allocation between the class payment and the attorneys' fees is of little or no interest to the defense." *Id.* at 949 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003) and *In re Gen. Motors Corp. Pickup Truck Fuel Tank Prod. Liab. Litig*., 55 F.3d 768, 819-20 (3d Cir. 1995).

Here, class counsel has secured the class a benefit of $66.6 million of the possible recoverable damage of $756 million it could have recovered at trial. This compensation is not

adequate for the class, especially considering that class counsel had already overcome, by its own admission, some large hurdles in potentially prevailing at trial.

Furthermore, class counsel has secured its own payday of $16.65 million, which, when compared to its lodestar, it outrageously high. Class counsel expects to expend 2,158 hours, which includes anticipated hours after final approval, with rates ranging from $250 - $825 per hour. While $250 may be a reasonable rate, $825 is not reasonable. Even with these extraordinary rates, the lodestar is still $1,428,047.50. An award of $16.65 million equate to a multiplier of 11.66. A multiplier of 11.66 is both shocking and offensive.

Though this circuit has established 25% of the common fund as a benchmark award for attorney fees, this amount is excessive when compared to its lodestar of 11.66 multiplier. A district court must also provide adequate justification for the use of a multiplier, which is appropriate in only "rare" or "exceptional" cases. See *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 554, 130 S.Ct. 1662, 176 L.Ed.2d 494 (2010). Even if the Court were to find that this case is "rare" or "exceptional," there is no way that a multiplier of 11.66 multiplier is remotely reasonable. The Court should order that class counsel receives its lodestar with no multiplier and disburse the remaining $15 million to the class. Additionally, the Court should evaluate the value of the total settlement compared to the amount received by individual members.

Costs related to administration of the settlement should not be included in calculating the fee award. If the Court were to include these costs, it would have "eliminated the incentive of class counsel to economize on that expense—and indeed may have created a perverse incentive; for higher administrative expenses make class counsel's proposed fee appear smaller in relation to the total settlement than if those costs were lower." *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014).

For the foregoing reasons, the Court should deny final approval of the settlement. Neither Objector nor I intend to appear at the fairness hearing.

DATE: 4-20-2018

Stephen Kron

Tucker | Pollard

By: /s/ Caroline Tucker

Caroline Tucker

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was filed electronically via CM/ECF on April 20, 2018, and served by the same means on all counsel of record.

/s/ Caroline Tucker

Caroline Tucker

1 of 2

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

NO. 316-CV-00492-WVG

Farrell
Petitioner/Plaintiff(s).

vs.

Bank of America NA
Respondent/Defendant(s).

DECLARATION OF:
George Dell

I OBject to the settlement
Because I Believe it is not fair, also
I Have not been Given enough info,
and no time to Look it over, also
I am a citizen and resident of the State
of Washington and Have an account with
BANA. at all times material Here to
#0000533866131000001 #138120100833
#910001537615488 Loan 5498
AND not Loose any value of accounts.
I claim economic Business Beaure

VERIFICATION

I certify under penalty of perjury under the laws of the State of Washington that I have read the above statements, know their contents, and believe them to be true and correct.

Signed in Everett, Washington on _____ Signature

Give all important dates, times, places, and case file numbers.
Attach **copies (not your originals)** of any relevant documents.

not enough info not enough time
or cause my rights with not
enough info. So until I can
get info I object to the
Settlement of Defendant Bank of
America in Washington at all times
material there to, and my accounts
with Bank of America at all
times material there to 533855181-
000001 and 9100015376 1548
and 138120100833 and
2016-5498. or Because of the
Cease the assessment of EORCS
for 5 years. Also I would like
fair relief in which I am
entitled to under the laws of
the United States. I declare under
Penalty of perjury under the laws
of the state of Washington all the
foregoing to be true to the best
of my ability.

April 19 2018

2 of 2 **AFFIRMATION**

I affirm that the information I am providing is true and accurate to the best of my knowledge.

Signature: _____ **Date:** _____

George A. Odell
130. W. Marion St.
Arlington. WA 98223

SEATTLE WA 980

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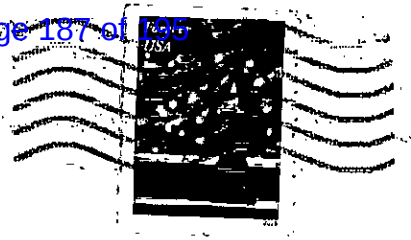

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97208

97208-317070

Bank of America checking account #
0022 3012 7777 or 80

Clerk of the Court U.S.
District Court for the S.
Dist. of California
Judge M James Lorenz
Courtroom 5B, Suite 5145
221 West Broadway
San Diego, Ca 92101

Deft Ostrow
Kopelowitz Ostrow P.
1 W. Las Olas Blvd,
Ste 500
FT Lauderdale, FL
33301

?. 1-888-396-9598
www.EOBCSettlement.com.

Matthew C Close
O'Melveny + Myers LLP
400 S Hope Street
Los Angeles, Ca 90071

Don't like Settlement.

Case Name + #
Joanne Farrell v Bank of America, N.A.
Case # 3:16-CV-00492-L-WVG
Algerine B. B Romero - acct # 0022 3012 7777
12 Sherwood Forest Trl apt 12A
Lugoff, S.C. 29078-8800
1-803 438 6241
I Disagree with the amount of settlement.
I Have been a card Holder with BOA Since 10-24-13 -
4-14-18 up until this present time & almost every
month I have had at least 4 or more $35.00 Fees
every month + paid every one except 7 of them
which were waived - out of My Direct Deposit acct.

April 14, 2018

Algerine BB Romero
12 Sherwood Forest Trl apt 12A
Lugoff, SC 29078-8800
1-803-438-6249

COBC Litigation Exclusions
P.O. Box 3170
Portland, OR 97208-3170

Algerine BB Romero

0022 3012 7777.

Unfortunately I can not attend the hearing due to my Finances. or Low very Low.

I DO not wish TO
Exclude myself.

Algerine BB. Romero

EOBC Litigation
P.O. Box 3170
Portland, OR 97208-3170

7229090569184
000 0002281 00000000 0001 0005 00457 INS: 0 0
ALGERINE B ROMERO
12 SHERWOOD FOREST TRL APT 12A
LUGOFF SC 29078

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Algerine Romero
12 Sherwood Fore:l Apt 12A
Lugoff, SC 29078

Algerine Romero
12 Sherwood Forest Trl Apt 12A
Lugoff, SC 29078

Algerine Romero
12 Sherwood Forest Trl Apt 12A
Lugoff, SC 29078

COLUMBIA SC 290

17 APR 2018 PM 2 L

COBC Litigation Exclusions
P.O. Box 3170
Portland, OR 97208-3170

97208-317070

MARK GULLICKSON
28100 Cabot Road #534
LAGUNA NIGUEL, CA 92677
Phone: (949)-433-8662
Email:mgullickson52@gmail.com

April 19, 2018

Clerk of Courts
U.S. District Court
Southern District of California
Judge M. James Lorenz
Courtroom 5B, Suite 5145
221 West Broadway
San Diego, CA 92101

Re: *Farrell v. Bank of America, N.A.*
Case No. 16-cv-0492 (S.D. Cal.)

Dear Judge:

My name is Mark Gullickson. I appear pro se in this matter.

I have banked with Bank of America ("BOA") for several years. I believe I am a member of the Class as defined in the Legal Notice in this case. I have received notice of the settlement confirming I am a class member. I am not now represented by an attorney but will, most likely, be obtaining counsel soon. I will let you know who it is, when and if , I do so. I am not planning on attending the fairness hearing.

I object to the settlement as it presently stands. My reasons are:

1. The settlement amount is inadequate. If the class won a verdict at trial the damages would be in the hundreds of millions of dollars. Also if punitive damages were awarded the verdict could well exceed the billion dollar mark.

2. There is not enough information that adequately describes the settlement.

3. Plaintiffs and Defendants have not conducted any formal discovery in this matter by their own admission. "I can't know what I don't know". I should be allowed to look at BOA's information to determine if this settlement is fair and reasonable.

4. The attorney fees are not fully documented so that I can review the detail of the attorney's work.

5. The attorney fees are too high given (a).the willingness of BOA to make amends for their actions; (b). The-self-policing done by BOA; (c). the threat of Government (CFPB and OCC) intervention; and (d). the constant oversight provided by Honorable M. James Lorenz.

6. The settlement needs to provide a more comprehensive notice procedure.

7. The Release is vague and overly broad.

If the Court requires me to make a motion to intervene I hereby assert this objection should serve as such a motion.

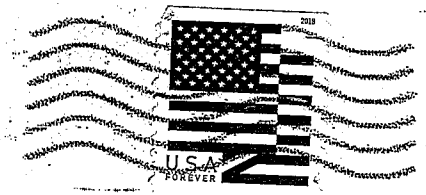
I thank you for your attention to this matter.

Very truly yours.

Mark Gullickson

E. ULICKSON
28100 CABOT RD
UNIT 534
LAGUNA NIGUEL, CA.
92677

MILWAUKEE WI 530
26 APR 2018 PM 7 L



JEFF OSTROW
KOPELOWITZ OSTROW P.A.
1 WEST LAS OLAS BLVD.
SUITE 500
FT. LAUDERDALE FL
33301

33301-192626

From The Office of:

Michael E. Colley

Post Office Box 1123
Hereford, Texas 79045-1123

Joaanne Farrell v. Bank of America, N.A.
Case Number 3:16-cv-00492-L-WVG

April 5th, 2018

Clerk of the Court
U.S. District Court for the Southern District
of California
Judge M. James Lorenz
Courtroom 5B, Suite 5145
221 West Broadway
San Diego, California - 92101

'16CV0492 L WVG

Dear Judge Lorenz:

Please except this letter as my objection to the settlement for the class action suit against Bank of America, N.A.

Bank of America, N.A. has been charging their customers , the 35.00 overdraft fee for years, sometimes even charging additional fees for the same overdraft, of the same check.

I have been with Bank of America for at least 20 years, and have known them to do this all of that time.

It is my opinion, the settlement should go back at least 10 to 15 years, instead of the original 3 years (February 25, 2014 and December 30, 2017) as stated in the court's paperwork. I would like to see the court go all the way back to at least 2005, and include those additional years in the final settlement.

EXHIBIT E

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 STEPHANIE J. FIERECK, ESQ. ON IMPLEMENTATION OF CAFA NOTICE

I, STEPHANIE J. FIERECK, ESQ., hereby declare and state as follows:

1. My name is Stephanie J. Fiereck, Esq. I am over the age of 21 and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Legal Notice Manager for Epiq Legal Noticing, a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans.

3. Epiq Legal Noticing is a division of Epiq Systems ("Epiq"), a firm with more than 20 years of experience in claims processing and settlement administration. Epiq's class action case administration services include coordination of all notice requirements, design of direct-mail notices, establishment of fulfillment services, receipt and processing of opt-outs, coordination with the United States Postal Service, claims database management, claim adjudication, funds management and distribution services.

4. The facts in this Declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues at Epiq.

CAFA NOTICE IMPLEMENTATION

5. At the direction of counsel for the Defendant Bank of America, N.A. ("BANA" or "Defendant"), 59 officials, which included the Attorney General of the United States and the Attorneys General of each of the 50 states, the District of Columbia and the United States Territories and two regulatory officials were identified to receive the CAFA notice.

6. Epiq maintains a list of these state and federal officials with contact information for the purpose of providing CAFA notice. Prior to mailing, the names and addresses selected from Epiq's list were verified, then run through the Coding Accuracy Support System ("CASS") maintained by the United States Postal Service ("USPS").[1]

7. On November 9, 2017, Epiq sent 59 CAFA Notice Packages ("Notice"). The Notice was mailed by certified mail to 56 officials, including the Attorneys General of each of the 50 states, the District of Columbia and the United States Territory. The Notice was also sent by United Parcel Service ("UPS") to the Attorney General of the United States and two regulatory officials. The CAFA Notice Service List (USPS Certified Mail and UPS) is attached hereto as **Attachment 1**.

8. The materials sent to the Attorneys General included a cover letter which provided notice of the proposed settlement of the above-captioned case. The cover letter is attached hereto as **Attachment 2**.

9. The cover letter was accompanied by a CD, which included the following:

[1] CASS improves the accuracy of carrier route, 5-digit ZIP®, ZIP + 4® and delivery point codes that appear on mail pieces. The USPS makes this system available to mailing firms who want to improve the accuracy of postal codes, i.e., 5-digit ZIP®, ZIP + 4®, delivery point (DPCs), and carrier route codes that appear on mail pieces.

a. The original complaint as well as the proposed first amended complaint in the *Farrell* Action;

b. Preliminary Approval Motion and all exhibits (which includes the "Settlement Agreement" and forms of notice); and

c. BANA's estimate of the number of class members per state, and the estimated proportionate share of the entire settlement to be distributed to class members within each state.

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

Executed on November 16, 2017.

Stephanie J. Fiereck, Esq.

Attachment 1

CAFA Notice Service List

UPS

Company	FullName	Address1	Address2	City	State	Zip
US Department of Justice	Jeff Sessions	950 Pennsylvania Ave NW		Washington	DC	20530
OFFICE OF THE COMPTROLLER OF THE CURRENCY	Michael T. McDonald	101 South Tryon Street	NC1-002-11-34 11th Floor	Charlotte	NC	28255
OFFICE OF THE COMPTROLLER OF THE CURRENCY	Gregory Taylor	400 7th Street SW		Washington	DC	20219

CAFA Notice Service List

USPS Certified Mail

Company	FullName	Address1	Address2	City	State	Zip
Office of the Attorney General	Jahna Lindemuth	PO Box 110300		Juneau	AK	99811
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Leslie Carol Rutledge	323 Center St Ste 200		Little Rock	AR	72201
Office of the Attorney General	Mark Brnovich	1275 West Washington St		Phoenix	AZ	85007
Office of the Attorney General	CAFA Coordinator	Consumer Law Section	455 Golden Gate Ave Ste 11000	San Francisco	CA	94102
Office of the Attorney General	Cynthia Coffman	Ralph L Carr Colorado Judicial Center	1300 Broadway 10th Fl	Denver	CO	80203
Office of the Attorney General	George Jepsen	55 Elm St		Hartford	CT	06106
Office of the Attorney General	Karl A. Racine	441 4th St NW		Washington	DC	20001
Office of the Attorney General	Matt Denn	Carvel State Office Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	Pam Bondi	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
Office of the Attorney General	Chris Carr	40 Capitol Square SW		Atlanta	GA	30334
Department of the Attorney General	Douglas S. Chin	425 Queen St		Honolulu	HI	96813
Iowa Attorney General	Thomas J Miller	1305 E Walnut St		Des Moines	IA	50319
Office of the Attorney General	Lawrence G Wasden	700 W Jefferson St Ste 210	PO Box 83720	Boise	ID	83720
Office of the Attorney General	Lisa Madigan	100 W Randolph St		Chicago	IL	60601
Indiana Attorney General's Office	Curtis T Hill Jr	Indiana Government Center South	302 W Washington St 5th Fl	Indianapolis	IN	46204
Office of the Attorney General	Derek Schmidt	120 SW 10th Ave 2nd Fl		Topeka	KS	66612
Office of the Attorney General	Andy Beshear	Capitol Ste 118	700 Capitol Ave	Frankfort	KY	40601
Office of the Attorney General	Jeff Landry	1885 N Third St		Baton Rouge	LA	70802
Office of the Attorney General	Maura Healey	1 Ashburton Pl		Boston	MA	02108
Office of the Attorney General	Brian E. Frosh	200 St Paul Pl		Baltimore	MD	21202
Office of the Attorney General	Janet T Mills	6 State House Sta		Augusta	ME	04333
Department of Attorney General	Bill Schuette	PO Box 30212		Lansing	MI	48909
Office of the Attorney General	Lori Swanson	445 Minnesota St	Suite 1400	St Paul	MN	55101
Missouri Attorney General's Office	Josh Hawley	PO Box 899		Jefferson City	MO	65102
MS Attorney General's Office	Jim Hood	Walter Sillers Bldg	550 High St Ste 1200	Jackson	MS	39201
Office of the Attorney General	Tim Fox	Department of Justice	PO Box 201401	Helena	MT	59620
Attorney General's Office	Josh Stein	9001 Mail Service Ctr		Raleigh	NC	27699
Office of the Attorney General	Wayne Stenehjem	State Capitol	600 E Boulevard Ave Dept 125	Bismarck	ND	58505
Office of the Attorney General	Doug Peterson	2115 State Capitol		Lincoln	NE	68509
Office of the Attorney General	Gordon MacDonald	NH Department of Justice	33 Capitol St	Concord	NH	03301
Office of the Attorney General	Christopher S. Porrino	8th Fl West Wing	25 Market St	Trenton	NJ	08625
Office of the Attorney General	Hector Balderas	408 Galisteo St	Villagra Bldg	Santa Fe	NM	87501
Office of the Attorney General	Adam Paul Laxalt	100 N Carson St		Carson City	NV	89701
Office of the Attorney General	Eric T Schneiderman	The Capitol		Albany	NY	12224
Office of the Attorney General	Mike DeWine	30 E Broad St 14th Fl		Columbus	OH	43215
Office of the Attorney General	Mike Hunter	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Ellen F Rosenblum	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Josh Shapiro	16th Fl Strawberry Square		Harrisburg	PA	17120
Office of the Attorney General	Peter Kilmartin	150 S Main St		Providence	RI	02903
Office of the Attorney General	Alan Wilson	Rembert Dennis Office Bldg	1000 Assembly St Rm 519	Columbia	SC	29201
Office of the Attorney General	Marty J Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Herbert H. Slatery III	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	300 W 15th St		Austin	TX	78701
Office of the Attorney General	Sean D. Reyes	Utah State Capitol Complex	350 North State St Ste 230	Salt Lake City	UT	84114
Office of the Attorney General	Mark R. Herring	202 North Ninth Street		Richmond	VA	23219
Office of the Attorney General	TJ Donovan	109 State St		Montpelier	VT	05609
Office of the Attorney General	Bob Ferguson	PO Box 40100		Olympia	WA	98504
Office of the Attorney General	Brad D. Schimel	PO Box 7857		Madison	WI	53707
Office of the Attorney General	Patrick Morrisey	State Capitol Complex	Bldg 1 Room E 26	Charleston	WV	25305
Office of the Attorney General	Peter K Michael	2320 Capitol Avenue		Cheyenne	WY	82002
Department of Legal Affairs	Talauega Eleasalo V. Ale	Executive Office Building	3rd Floor	Pago Pago	AS	96799
Attorney General Office of Guam	Elizabeth Barrett-Anderson	ITC Building	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	Administration Bldg	PO Box 10007	Saipan	MP	96950
PR Department of Justice	Wanda Vazquez Garced	Apartado 9020192		San Juan	PR	00902
Department of Justice	Claude Walker	34-38 Kronprindsens Gade	GERS Bldg 2nd Fl	St Thomas	VI	00802

Attachment 2

NOTICE ADMINISTRATOR FOR UNITED STATES DISTRICT COURT

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqsystems.com

November 9, 2017

VIA UPS OR USPS CERTIFIED MAIL

Mr. Michael T. McDonald
Large Bank Examiner in Charge
OFFICE OF THE COMPTROLLER OF THE CURRENCY
101 South Tryon Street
NC1-002-11-34, 11th Floor
Charlotte, NC 28255

Mr. Gregory Taylor
Acting Director, Litigation Division
OFFICE OF THE COMPTROLLER OF THE CURRENCY
400 7th Street, SW
Washington, DC 20219

Attached Service List, Attachment A

Re: CAFA Notice - Farrell v. Bank of America, N.A., Civ. No. 3:16-CV-00492-L-WVG (S.D. Cal.)

Dear Sir or Madam:

We write regarding the above-captioned action (the "*Farrell* Action"). Pursuant to 28 U.S.C. § 1715, this notice is to inform you of a proposed class action settlement of the *Farrell* Action – a lawsuit currently pending in the United States District Court for the Southern District of California (Lorenz, J.). Plaintiff in the *Farrell* Action challenged Extended Overdrawn Balance Charges ("EOBCs") assessed by defendant Bank of America, N.A. ("BANA" or "Defendant") under Sections 85 and 86 of the National Bank Act ("NBA"), claiming that EOBCs should be treated as "interest" under the NBA and that, when so considered, EOBCs exceed the NBA's usury cap.

In accordance with 28 U.S.C. § 1715(b), Defendant BANA states as follows:

1) The original complaint as well as the proposed first amended complaint in the *Farrell* Action are contained on the enclosed CD in the folder labeled Tab 1. In addition, the complaints and all other pleadings and records filed in the *Farrell* Action are available on the Internet through the federal government's Pacer service at https://ecf.casd.uscourts.gov/cgi-bin/DktRpt.pl?101489463253663-L_1_0-1. Additional information about the Pacer service may be found at http://pacer.psc.uscourts.gov.

2) On October 31, 2017, Plaintiff Joanne Farrell filed an unopposed Motion for Preliminary Approval of Class Settlement with the Court ("Preliminary Approval Motion"). The Preliminary Approval Motion and all exhibits thereto are included on the enclosed CD in the folder labeled Tab 2. The exhibits to the Preliminary

Approval Motion include the parties' settlement agreement, dated October 30, 2017, and all exhibits thereto ("Settlement Agreement"). The exhibits to the Settlement Agreement include all forms of notice to be provided to class members upon the Court's entry of an order granting the Preliminary Approval Motion. As preliminary approval has not yet been entered, the Court has not yet approved the proposed notices to the class members that the parties submitted as exhibits to the Settlement Agreement. There are no additional agreements between class counsel and counsel for Defendant BANA, other than those reflected in the Settlement Agreement. The hearing on the Preliminary Motion is scheduled for December 11, 2017 in the United States District Court for the Southern District of California.

3) No final judgment or notice of dismissal has yet been entered in the *Farrell* Action.

4) At this juncture, it is not feasible to provide the name and state of residence for each of the class members covered by the proposed settlement. However, BANA's estimate of the number of class members per state, and the estimated proportionate share of the entire settlement to be distributed to class members within each state, is enclosed in the folder labeled Tab 3. Final calculations remain underway. The proportionate share of the settlement amount that each class member is eligible to receive is dependent upon the number of EOBCs paid by each class member as well as certain matters to be determined by the Court at the preliminary and final approval hearings (including, for example, the amount of the attorneys' fees and litigation costs, if any, to award to class counsel and the amount of any class representative award to plaintiff), whether certain class members cannot be located, and certain other matters that will not be known until the time of the final approval hearing (including, for example, the number of class members that request exclusion from the *Farrell* Action). The calculation for determining class member distribution is set forth in Section 2.2(3) of the Settlement Agreement located at Tab 2.

5) No written judicial opinions have been issued relating to the proposed settlement as of this date.

6) Defendant is represented by Matthew W. Close and Danielle Oakley, O'Melveny & Myers LLP. Should you have any questions regarding this notice or any of the enclosed information, please feel free to contact Mr. Close directly at O'Melveny & Myers LLP, 400 South Hope Street, 18th Floor, Los Angeles, CA 90071-2899 or Ms. Oakley at O'Melveny & Myers LLP, 610 Newport Center Drive, 17th Floor, Newport Beach, CA 92660.

Thank you for your attention to this matter.

Best regards,

Notice Administrator for United States District Court

Attachment and Enclosure

Service List -Attachment A

UPS or USPS Certified Mail

Company	FullName	Address1	Address2	City	State	Zip
US Department of Justice	Jeff Sessions	950 Pennsylvania Ave NW		Washington	DC	20530
Office of the Attorney General	Jahna Lindemuth	PO Box 110300		Juneau	AK	99811
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Leslie Carol Rutledge	323 Center St Ste 200		Little Rock	AR	72201
Office of the Attorney General	Mark Brnovich	1275 West Washington St		Phoenix	AZ	85007
Office of the Attorney General	CAFA Coordinator	Consumer Law Section	455 Golden Gate Ave Ste 11000	San Francisco	CA	94102
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Office of the Attorney General	George Jepsen	55 Elm St		Hartford	CT	06106
Office of the Attorney General	Karl A. Racine	441 4th St NW		Washington	DC	20001
Office of the Attorney General	Matt Denn	Carvel State Office Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	Pam Bondi	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
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Department of the Attorney General	Douglas S. Chin	425 Queen St		Honolulu	HI	96813
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Office of the Attorney General	Derek Schmidt	120 SW 10th Ave 2nd Fl		Topeka	KS	66612
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Office of the Attorney General	Jeff Landry	1885 N Third St		Baton Rouge	LA	70802
Office of the Attorney General	Maura Healey	1 Ashburton Pl		Boston	MA	02108
Office of the Attorney General	Brian E. Frosh	200 St Paul Pl		Baltimore	MD	21202
Office of the Attorney General	Janet T Mills	6 State House Sta		Augusta	ME	04333
Department of Attorney General	Bill Schuette	PO Box 30212		Lansing	MI	48909
Office of the Attorney General	Lori Swanson	445 Minnesota St	Suite 1400	St Paul	MN	55101
Missouri Attorney General's Office	Josh Hawley	PO Box 899		Jefferson City	MO	65102
MS Attorney General's Office	Jim Hood	Walter Sillers Bldg	550 High St Ste 1200	Jackson	MS	39201
Office of the Attorney General	Tim Fox	Department of Justice	PO Box 201401	Helena	MT	59620
Attorney General's Office	Josh Stein	9001 Mail Service Ctr		Raleigh	NC	27699
Office of the Attorney General	Wayne Stenehjem	State Capitol	600 E Boulevard Ave Dept 125	Bismarck	ND	58505
Office of the Attorney General	Doug Peterson	2115 State Capitol		Lincoln	NE	68509
Office of the Attorney General	Gordon MacDonald	NH Department of Justice	33 Capitol St	Concord	NH	03301
Office of the Attorney General	Christopher S. Porrino	8th Fl West Wing	25 Market St	Trenton	NJ	08625
Office of the Attorney General	Hector Balderas	408 Galisteo St	Villagra Bldg	Santa Fe	NM	87501
Office of the Attorney General	Adam Paul Laxalt	100 N Carson St		Carson City	NV	89701
Office of the Attorney General	Eric T Schneiderman	The Capitol		Albany	NY	12224
Office of the Attorney General	Mike DeWine	30 E Broad St 14th Fl		Columbus	OH	43215
Office of the Attorney General	Mike Hunter	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Ellen F Rosenblum	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Josh Shapiro	16th Fl Strawberry Square		Harrisburg	PA	17120
Office of the Attorney General	Peter Kilmartin	150 S Main St		Providence	RI	02903
Office of the Attorney General	Alan Wilson	Rembert Dennis Office Bldg	1000 Assembly St Rm 519	Columbia	SC	29201
Office of the Attorney General	Marty J Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Herbert H. Slatery III	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	300 W 15th St		Austin	TX	78701
Office of the Attorney General	Sean D. Reyes	Utah State Capitol Complex	350 North State St Ste 230	Salt Lake City	UT	84114
Office of the Attorney General	Mark R. Herring	202 North Ninth Street		Richmond	VA	23219
Office of the Attorney General	TJ Donovan	109 State St		Montpelier	VT	05609
Office of the Attorney General	Bob Ferguson	PO Box 40100		Olympia	WA	98504
Office of the Attorney General	Brad D. Schimel	PO Box 7857		Madison	WI	53707
Office of the Attorney General	Patrick Morrisey	State Capitol Complex	Bldg 1 Room E 26	Charleston	WV	25305
Office of the Attorney General	Peter K Michael	2320 Capitol Avenue		Cheyenne	WY	82002
Department of Legal Affairs	Talauega Eleasalo V. Ale	Executive Office Building	3rd Floor	Pago Pago	AS	96799
Attorney General Office of Guam	Elizabeth Barrett-Anderson	ITC Building	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	Administration Bldg	PO Box 10007	Saipan	MP	96950
PR Department of Justice	Wanda Vazquez Garced	Apartado 9020192		San Juan	PR	00902
Department of Justice	Claude Walker	34-38 Kronprindsens Gade	GERS Bldg 2nd Fl	St Thomas	VI	00802

EXHIBIT F

JEFF OSTROW (*pro hac vice*)
KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT
One West Las Olas Blvd., Suite 500
Fort Lauderdale, FL 33301
Telephone: (954) 525-4100
Facsimile: (954) 525-4300
ostrow@kolawyers.com
Counsel for Plaintiffs and the Settlement Class

MATTHEW W. CLOSE (S.B. #188570)
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, California 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
mclose@omm.com
Counsel for Defendant Bank of America, N.A.

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

NOTICE AND CONSENT TO MAGISTRATE JUDGE FOR POST-JUDGMENT CLASS ACTION SETTLEMENT IMPLEMENTATION

In accordance with the Order Conditionally Granting Preliminary Approval of the Class Action Settlement [DE # 72 at ¶18.d.], and 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, Plaintiffs, Joanne Farrell, Ronald Dinkins, Larice Addamo, and Tia Little, and Defendant, Bank of America, N.A., through their respective undersigned counsel, hereby consent to proceed before a magistrate judge for the limited purpose of enforcing the parties Settlement Agreement, as set forth in Section 4.2 of the Settlement Agreement. This consent shall become effective only upon the Effective Date, as defined in the Settlement Agreement.

If the Effective Date does not come to pass, this Notice shall be of no force or effect.

Dated: May 30, 2018 Respectfully Submitted,

/s/Jeff Ostrow

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

/s/Hassan A. Zavareei
HASSAN A. ZAVAREEI (CA 181547)
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SIGNATURE CERTIFICATION

Pursuant to Section 2(f)(4) of the electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Matthew Close, counsel for Defendant Bank of America, N.A. and Hassan Zavareei, Bryan S. Gowdy, John R. Hargrove, and Cristina M. Pierson, counsel for Plaintiffs, and that I have obtained the approval of Mr. Close, Mr. Zavareei, Mr. Gowdy, Mr. Hargrove, and Ms. Pierson to affix their electronic signatures to this document.

Dated: May 30, 2018

Respectfully submitted,

KOPELOWITZ OSTROW FERGUSON WEISELBERG GILBERT

By: */s/ Jeff Ostrow*
Jeff Ostrow (Pro Hac Vice)

Counsel for Plaintiffs and the Settlement Class

EXHIBIT G

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

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

[PROPOSED] ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS SETTLEMENT AND AWARDING ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

This case comes before the Court on the motion of Plaintiffs and Class Representatives Joanne Farrell,[1] Ronald Dinkins, Larice Addamo, and Tia Little as Class Representatives ("Plaintiffs"), on behalf of themselves and the Settlement Class they represent, for an order granting Final Approval of the class action Settlement Agreement ("Motion") between Plaintiffs and Defendant, Bank of America, N.A. ("BANA"). The definitions and capitalized terms in the Settlement Agreement ("Settlement" or "Agreement"), attached to the Memorandum in Support of Plaintiffs' Unopposed Motion for Final Approval as Exhibit A thereto, are hereby incorporated as though fully set forth in this Final Approval Order ("Final Approval Order"), and shall have the meanings attributed to them in the Agreement.

The Court preliminarily approved the Agreement by Preliminary Approval Order dated December 11, 2017 [DE # 72], conditionally certified for settlement purposes the Settlement Class, and approved the form, content, and method of providing notice proposed by the Parties. The Settlement Class Notices were thereafter distributed to members of the

[1] A motion to Substitute Plaintiff Joanne Farrell's surviving adult children (Patrick Michael Farrell, Ryan Thomas Farrell, Timothy Gaelen Farrell and Brooke Ann Farrell) as Plaintiffs and Class Representatives for Joanne Farrell was filed on May 25, 2018, pursuant to Fed. R. Civ. P. 25(a), due to her unfortunate death after Preliminary Approval. [DE #100]. As of the date of the filing of this Proposed Order, the Court had not ruled on that motion.

Settlement Class pursuant to the terms of the Preliminary Approval Order. (*See* Joint Declaration of Class Counsel Jeff Ostrow and Hassan Zavareei and Declaration of Declaration of Cameron Azari in Support of Motion for Final Approval of Settlement attached as Exhibits B and D thereto.)

The Court has read and considered the Memorandum and Declarations submitted in support of the Motion and arguments of Class Counsel and BANA. The Court has also considered the objections submitted by members of the Settlement Class and the responses by Plaintiffs and Class Counsel.

The Court held a Final Approval Hearing on Monday, June 18, 2018 at 11:00 a.m., at which time the Parties and all other interested persons were heard in support of and in opposition to the Settlement.

Based on the papers filed with the Court and the presentations made to the Court by the Parties and other interested persons at the Final Approval Hearing, it appears to the Court that the Agreement is fair, reasonable, and adequate. Accordingly,

IT IS HEREBY ORDERED THAT:

1. For purposes of this Settlement only, the Court has jurisdiction over the subject matter of the Complaint and personal jurisdiction over the Parties and the Settlement Class.

2. Pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), and based on findings made in the Preliminary Approval Order, the Court certifies, solely for purposes of effectuating this Settlement, the Settlement Class, defined in paragraph 1.32 of the Agreement.

3. The Court has determined that the Class Notices given to Settlement Class members fully and accurately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class

members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

4. The Settlement Class members listed on ***Exhibit A*** to this Final Approval Order have properly and timely opted-out of the Settlement and are therefore not bound by the Settlement, Releases, Final Approval Order or Final Judgment.

5. In determining whether the Settlement is fair, adequate, and reasonable, the Court considers what are known as the *Hanlon* factors, which are:

> (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Gutierrez-Rodriguez v. R.M. Galicia, Inc., No. 16-CV-0182 H BLM, 2017 U.S. Dist. LEXIS 170982, at *15 (S.D. Cal. Oct. 16, 2017) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). When a court exercises its discretion to approve a settlement, the Ninth Circuit has instructed:

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Officers for Justice v. Civil Serv. Com., 688 F.2d 615, 625 (9th Cir. 1982). "The proposed settlement is not to be judged against a hypothetical or speculative measure of what *might* have been achieved by the negotiators." *Id.* (emphasis in original).

6. The Court finally approves the Settlement of this Action in accordance with the terms of the Agreement and, having considered the matters required under applicable law, finds that the Settlement is in all respects fair, reasonable, adequate and in the best interest of the Settlement Class members, especially in light of the fact that Plaintiffs and the Settlement Class, by and through their counsel, have investigated the facts and law relating to the matters

alleged in the Complaint and Amended Complaint, including through dispositive motion practice, legal research as to the sufficiency of the claims, an evaluation of the risks associated with continued litigation, trial, and/or appeal, including risks associated with the currently pending interlocutory appeal, and confirmatory discovery. The Settlement was reached after arm's-length negotiations between Class Counsel and counsel for BANA, which occurred as a result of mediation before the Honorable Layn R. Phillips (Ret.). The Settlement confers substantial benefits upon the Settlement Class, without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal and is fair, adequate, and reasonable. In finding the Settlement fair, reasonable and adequate, the Court has also considered the number of exclusions from the Settlement, objections by Settlement Class members, and the opinion of competent counsel concerning such matters. The Court has considered duly filed objections to the Settlement, and to the extent such objections have not been withdrawn, superseded, or otherwise resolved, they are overruled and denied in all respects on their merits.

7. As to the objections that do not relate to the amount of the attorneys' fees sought, the Objectors argue that the Settlement Amount is not enough, and that the debt relief and injunctive relief are illusory. First, it is well settled that merely objecting that a settlement is not enough is invalid. *Hanlon*, 150 F.3d at 1027 ("Of course it is possible, as many of the objectors' affidavits imply, that the settlement could have been better. But this possibility does not mean the settlement presented was not fair, reasonable or adequate. Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion."). The Court finds the Settlement Amount is fair, adequate, free of collusion, and the product of a compromise that balanced the risk, uncertainty, and expense of further litigation with the potential outcomes, resulting in a substantial benefit to the Settlement Class that this Court

finds is commensurate with the above-stated risks. As noted in the Motion for Final Approval, of the seven cases that Class Counsel litigated across the country against various banks asserting the same novel legal claim, this is the only one to date that has reached a favorable resolution for the class. Thus, this Court finds that any argument that the settlement could have been better is an insufficient basis for this Court not to grant final approval as it is nothing more than speculation. Further litigation could have ended up with a defense verdict or a reversal on appeal, leaving nothing for the Settlement Class. Additionally, the Court could have denied class certification, which likewise would have resulted in no recovery. This Court is not in a position to second guess a settlement that is fair, adequate and free from collusion. Other objectors argue that the settlement is not enough because it should encompass overdraft fees or consequential damages that are not EOBCs [DE # 82, 91, 93], or should go back 10–15 years' worth of EOBCs [DE # 92]. These objections by *pro se* objectors fail to understand that this Court lacks the authority to grant relief either outside the scope of the pleadings, or for claims unrelated to EOBC's which are not a part of this case. Furthermore, claims for consequential damages are individualized claims that cannot be maintained as a class action. To the extent any Settlement Class members wished to pursue individualized claims, they had the option to opt-out of the settlement. Finally, the *pro se* objectors fail to realize that the Court cannot grant relief from claims going back 10-15 years because they are barred by the statute of limitations. The Court overrules these *pro se* objections without further comment.

8. Next, the Court rejects the argument that the debt relief and injunctive relief are illusory. The closed accounts with negative balances represent debts that BANA could seek to recover. The speculation by objector Sanchez that BANA could sell the portfolio of debt at a market value equating to pennies on the dollar actually anticipates collection efforts could be forthcoming. [DE # 88]. Further, that BANA may sell the debt at a discount to a debt collector, does not change the fact that any potential debt collector would seek to recover

the full debt from the Settlement Class members. Thus, in seeking to argue that the benefit is illusory (but as to which the Court makes no finding), objector Sanchez actually acknowledges that the debt forgiveness has actual value to those Settlement Class members who are free from their debt obligations irrespective of who would seek to collect the debt at a later date. That BANA could obtain a tax benefit from this debt forgiveness, as argued by objector Sanchez, is irrelevant. The Settlement Class is obtaining a substantial benefit. That the defendant receives an incidental benefit too is irrelevant. Every defendant receives a benefit from a settlement namely the release granted from the plaintiff and the freedom from the cost and uncertainty of further litigation. Whether a defendant potentially has a reduced tax liability due to a settlement payout or debt forgiveness is irrelevant. Thus, the Court finds that the debt forgiveness portion of the settlement is a valuable benefit to the class.

9. Finally, the injunctive relief is exemplary, not illusory. The Settlement Class will save over a billion dollars from BANA's practice change, which eliminates overdraft fees for a period of five years. The estimated $1.2 billion in savings over five years comes directly from a sworn declaration from BANA personnel, who objectively quantified the amount based on historic transaction data maintained by BANA and confirmed by Class Counsel via confirmatory discovery. There is no evidence that BANA would have stopped charging EOBCs without this litigation. BANA will lose $1.2 billion dollars in revenue over the next five years, while other banks continue to charge EOBCs. The Court rejects the objectors' speculation that BANA would have voluntarily ceased charging EOBCs if Plaintiffs had not sued. Millions of Settlement Class members paid multiple EOBCs, and would likely have continued to incur them. Accordingly, the Court finds that the injunctive relief is a valuable benefit to the Settlement Class. *See Allen v. Similasan Corp.,* 318 F.R.D. 423, 427 (S.D. Cal. 2016). Finally, the fact that the injunctive relief would benefit Settlement Class members and non-Settlement Class members is not a valid basis to disapprove of the Settlement or to find

that the injunctive relief is not a valuable class benefit. *See In re TracFone Unlimited Service Plan Litigation,* 112 F. Supp. 3d 993, 1005 (N.D. Cal. 2015).

10. Next, the Court addresses the objections to the amount of the fee sought by Class Counsel based on arguments that the court should conduct a lodestar cross-check and use that as a basis to reduce the fee amount. The Court overrules those objections. In common fund cases, in particular, a lodestar cross-check is not favored. As the Principles of the Law of Aggregate Litigation explain: "[A]-percentage-of-the-fund approach should be the method utilized in most common-fund cases, with the percentage being based on both the monetary and nonmonetary value of the judgment or settlement." § 3.13(b) (American Law Institute, 2010). Consequently, in this District, "the percentage-of-the-fund calculation is preferable to the lodestar calculation." *Ruiz v. XPO Last Mile, Inc.*, No. 5-CV-2125 JLS (KSC), 2017 WL 6513962, at *6 (S.D. Cal. Dec. 20, 2017).

11. The Court finds that Class Counsel settled at the optimal point, maximizing relief for the Settlement Class. Inserting an incentive to work a case more than needed would have misaligned Class Counsel's interest with that of the class, and could have proven detrimental to the best interests of the Settlement Class. Had Class Counsel continued to litigate this case to increase their lodestar before settlement, they may have missed their only chance to settle for the benefit of millions of account holders. The case was certified for appeal before the Ninth Circuit, which could have reversed this Court's ruling consistent with the Eleventh Circuit and every other district court to have decided the issue. Instead, Class Counsel convinced one of the nation's largest banks to stop charging EOBCs at a cost of over a billion dollars to the Bank and to pay and forgive tens of millions of dollars to the Settlement Class.

12. The Court refuses to penalize Class Counsel for settling this case efficiently and obtaining a substantial benefit for the class valued over one billion dollars while at the

same time, mitigating the risk of a reversal on appeal and leaving the class with nothing. The Court further finds that all the relief granted to the Settlement Class should be considered when assigning the percentage of the common fund to be awarded. Considering all relief obtained through the Settlement, a 25% attorneys' fee award of total settlement value of $1,268,600,000.00 would result in a $317,150,000 fee. Class Counsel are requesting less than 5% of this amount, with their request representing a mere 1% of the total calculable settlement value and just 21% of the cash portion ($66.6 million in cash payments and debt relief and $2 million in administration costs), far less than the Ninth Circuit's 25% percentage of the fund benchmark. Thus, this Court finds that Class Counsel's attorneys' fee reqauest is reasonable and well under the 25% benchmark favored in the Ninth Circuit in common fund cases. The Court notes that Class Counsel agreed to reduce its fee request from the $16.65 million requested in their fee application to $14.5 million to address the concerns of certain objectors.

13. Even if this Court were to perform a lodestar cross-check (as the objectors advocate), this Court would find the fee requested by Class Counsel to be reasonable. First, objectors attempt to make the lodestar appear higher by arguing that investigation, settlement negotiation and drafting, time spent litigating other similar cases, preparing the fee application, and estimated future time should not be considered a part of the lodestar. This Court rejects these arguments as they are inconsistent with precedent. *E.g.*, *Bellows v. NCO Fin. Sys., Inc.*, No. 07-CV-1413 W(AJB), 2009 WL 35468, at *8 (S.D. Cal. Jan 5, 2009); *Shvager v. ViaSat, Inc.*, No. CV 12-10180 MMM (PJWx), 2014 WL 12585790, at *17 (C.D. Cal. Mar. 10, 2014); *Brown v. CVS Pharmacy, Inc.*, No. CV15-7631 PSG (PJWx), 2017 WL 3494297, at *3 & n.3, 8 (C.D. Cal. Apr. 24, 2017). The Court also finds that when the proper lodestar is used as the starting point, Class Counsel's reduced $14.5 million fee request reflects a multiplier of 10, which is well within the range courts have previously approved. *See, e.g.*, *Vizcaino*, 290 F.3d at 1051 n.6 (noting multipliers of up to 19.6); *Steiner v. American Broadcasting Co.*, 248 Fed. Appx. 780, 783

(9th Cir. 2007) (affirming fee award where the lodestar multiplier was 6.85); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) (awarding fee with 15.6 multiplier); *In re Doral Financial Corp. Securities Litigation*, No. 05-cv-04014-RO (S.D.N.Y. Jul. 17, 2007) (same with 10.26 multiplier); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."). Thus, even if this Court determined that a lodestar cross check was necessary, this Court finds that Class Counsel's request for fees is reasonable given the excellent result and substantial risk taken by Class Counsel.

14. Class Counsel have advanced and are seeking $53,119.92 in litigation costs expenses incurred in connection with the representation of the Plaintiffs and the Settlement Class in this Action.

15. The Court has considered Class Counsel's Application for Attorneys' Fees and Costs and awards the following:

a. Attorneys' Fees: _____; and

b. Costs and Expenses: _____.

16. The costs and expenses incurred by Class Counsel are unreimbursed out-of-pocket expenses and costs that were incurred in prosecution of the claims and in obtaining a settlement, and are therefore reasonable litigation expenses.

17. The Court deems these amounts appropriate for all the reasons stated above and because:

a. The Settlement provides substantial benefits for Settlement Class members, including but not limited to, a five-year cessation of the fee at issue in the litigation under specific terms and limitations set forth in the

Agreement, the Cash Settlement Fund, Debt Reduction Payments, and the payment of Settlement Administration Costs.

b. The quality of legal services provided by Class Counsel has been outstanding, in light of the Settlement itself, the complexity of the litigation, and the efficient litigation and settlement by attorneys with experience in litigating class actions relating to fees charged by national banks.

c. Class Counsel has taken considerable risks in pursuing this litigation.

d. By receiving payment from the Settlement Amount, Class Counsel's interests were fully aligned, during the settlement negotiation process, with those members of the Settlement Class, such that Class Counsel had appropriate incentives to maximize the size of the Settlement Amount.

18. The Attorneys' Fees and costs shall be paid from the Settlement Fund as provided by the Agreement. Distribution of the Attorneys' Fees and costs among Class Counsel will be at the sole discretion of Class Counsel.

19. The Court orders the Parties to the Agreement to perform their obligations thereunder pursuant to the terms of the Agreement. BANA is ordered to pay the Cash Settlement Amount and Debt Reduction Amount consistent with the terms of the Agreement. Provided it is economically feasible, should any funds remain after the initial distribution of the Class Member Awards, the Parties shall do a second distribution to Settlement Class members who received their Class Member Awards, provided it was by direct deposit or by negotiated check. Agreement ¶ 3.5. Should residual funds remain following a second distribution, or in the event a second distribution is not economically feasible, the Parties shall distribute the remaining funds, if any, to *cy pres* recipient, Consumers for Responsible Lending (www.responsiblelending.org), a non-profit organization that provides a national voice against

abusive financial practices. *Id.* Beginning on or before December 31, 2017, BANA shall not implement or assess EOBCs, or any equivalent fee, in connection with BANA consumer checking accounts, for a period of five years, or until December 31, 2022, except to the extent the Agreement expressly provides otherwise.

20. The Court dismisses the Complaint and Amended Complaint and all claims and causes of action asserted therein with prejudice. These dismissals are without costs to any party, except as specifically provided in the Agreement.

21. The Court denies and overrules all timely and valid objections and accepts the withdrawal of all objections by Objectors who have withdrawn their objections.

22. The Court adjudges that the Plaintiffs and all Settlement Class members shall be bound by this Final Approval Order.

23. Upon the Effective Date, Plaintiffs and each Settlement Class member who has not opted-out of the Settlement Class pursuant to the procedures set forth in the Agreement, shall, by operation of this Final Approval Order, be deemed to have released all BANA Releasees in accordance with the Settlement Agreement.

24. Without affecting the finality of this Final Approval Order in any way, the Court retains jurisdiction over: (a) implementation and enforcement of the Agreement pursuant to further order of the Court until the final judgment contemplated hereby has become effective and each and every act agreed to be performed by the Parties shall have been performed pursuant to the Agreement; (b) any other action necessary to conclude this Settlement and to implement the Agreement; and (c) the construction and interpretation of the Agreement.

25. The Court awards the Class Representatives Service Awards in the amount of $5,000.00 each, (with the exception of Patrick Michael Farrell, Ryan Thomas Farrell, Timothy Gaelen Farrell and Brooke Ann Farrell, who shall each receive $1,250.00), based on

a finding that such amounts represent an appropriate payment for their service to the Settlement Class and in this Action.

26. This Final Approval Order is not a finding or determination of any wrongdoing by BANA.

27. The attached ***Exhibit A*** contains a list of the Settlement Class members who have timely opted-out of the Settlement and who are not bound by the release contained therein, nor by the Final Judgment.

28. The Court finds that no just reason exists for delay in entering this Final Approval Order and, accordingly, the Clerk is hereby directed forthwith to enter this Final Approval Order.

IT IS SO ORDERED.

Date: _____ _____
United States District Judge

EXHIBIT A

Farrell v. Bank of America, N.A. Case
No. 3:16-CV-00492-L-WVG (S.D. Cal.)
Requests for Exclusions

#	Name
1	BIRK ELLIS
2	DENNIS DOUGLAS
3	BENJAMIN BAILEY
4	WILLIAM SHEEHAN
5	ADA BROWN
6	ROSA EVANS
7	FRANCES STOKROCKI
9	JOAN TOPALIAN
10	MARGARET MILLIGAN
11	JIM SCHERMERHORN
12	OCTAVIO YON
13	FELIX NILLAS
14	JORDAN STATE
15	JESSIE CALVERT
16	NATASHA TAYLOR
17	THE ESTATE OF EDWARD G LISEFSKI
18	SYLVIA MILLER
19	DEREK WILLIAMS
20	KYOKO TAMAKI
21	CHARLES PINKSTON
22	MICHAEL SMITH
23	EDNA MORTON
24	POSHANA GRANT
25	ROSA MONTESINOS
26	CHARLES RUSH
27	RHIZA TINGAL
28	HERBERT LIGHTSEY
29	DUCE SOLAGES
30	KARLA OLVERSON
31	JOHN MARKS
32	LINDA CHEN

33	SADIE EVANS
34	KENNETH BORHAUG
35	PATSY DUFFEY
36	BETTY LOOMIS
37	KIMBERLY MCCANN
38	JOSE AQUINO
39	ANDREY TOVAR SERRATO
40	JOHN SIMONIK
41	MICHAEL QUARTERMAN
42	BRANDY RAMSEY
43	ANA RODRIGUEZ
44	SEYDOU DIATTA
45	MARGIT HEIM
46	ANNE GARBARINI
47	PATRICIA DEAN
48	JEFFREY JACOBY
49	MARTHA MENA
50	GAROLD CUMMINS
51	DENNIS REED
52	JAE MYRICK
53	LUANN ANDREWS
54	MICHAEL SINISCALCHI
55	DONNA OSTERKAMP
56	COURTENAY WILLIAMS
57	IBRAHIM ALSAAB
58	NAOMI THOMPSON
59	PAUL HALES
60	ADRIANA SEGURA CASADOS
61	PAULINE WAMBUA
62	EZZE MONAH
63	MICHAEL WILSON
64	WAYNE PERRY
65	EUNA HEO
66	CAROLANN CYRAN
67	DAVID PHOMSOUVANH
68	LAQUAYSIA BOLDEN
69	WENDY NAVARRO-SOTO
70	MARIA SANTELLANO BALDOVINO
71	UTSAV THAPA

72	ROSALIND CHASE
73	HURI LEE
74	ELISABETTA MAZZI
75	HELENA HARRYSSON
76	ALBERTHA HARRIS
77	SYLVESTER WILSON
78	LAURA GRAY

79	ASHWIN KHOBRAGADE
80	AURELIA SERA
81	CHASITY STEWART
82	CLAUDIA MORGA
83	MARIANA MORALES
84	EDITH LARSON
85	NATALIE MOORE
86	ROSEMARIE SCHEREMETA
87	BELINDA CARSON
88	BRIAN MURPHY
89	HISHAM SENAN
90	ESTHER MC GIMSEY
91	ALEXA BASSETT
92	ATSUPI AKATO
93	MIGUEL OCAMPO
94	JENNIFER HALL
95	KATHERINE BRUNO
96	LORI LEONELLI
97	JESSE DELGADILLO
98	CESAR HERNANDEZ
99	GREATHEL LEWIS
100	RAHIEM HARDY

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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

CERTIFICATE OF SERVICE

I, Jeff Ostrow, on this 30th day of May, 2018, hereby certify that the foregoing 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
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