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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

JEFF OSTROW (admitted *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 Plaintiff
(additional counsel listed on signature page)*

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
PLAINTIFF’S UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND FOR
CERTIFICATION OF
SETTLEMENT CLASS**
Judge: Hon. M. James Lorenz
Place: Courtroom 5B
Hearing Date: December 11, 2017
**NO ORAL ARGUMENT UNLESS
REQUESTED BY COURT**

1 TO DEFENDANT AND COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on December 11, 2017, in the United States
3 District Court for the Southern District of California, located at 221 West Broadway,
4 San Diego, California, Courtroom 5B, before the Honorable M. James Lorenz,
5 Plaintiff, Joanne Farrell, will respectfully move for Preliminary Approval of the
6 Settlement Agreement and Release, attached as *Exhibit A* to Plaintiff's Memorandum
7 of Points and Authorities, which will resolve all claims against Bank of America,
8 N.A. in the above-captioned action.

9 This Motion is based on this Notice of Motion and Motion, the accompanying
10 Memorandum of Points and Authorities, the Joint Declaration of Class Counsel and
11 the exhibits thereto, the pleadings and other papers filed in this action, and such other
12 written and oral argument as may be allowed or presented to the Court.

13
14 Dated: October 31, 2017

Respectfully submitted,

15 /s/ Jeffrey Kaliel
16 JEFFREY KALIEL (CA 238293)
17 **TYCKO & ZAVAREEI LLP**
18 1828 L Street, NW, Suite 1000
19 Washington, DC 20036
20 Telephone: (202) 973-0900
21 Facsimile: (202) 973-0950
22 *jkaliel@tzlegal.com*

23 JEFF OSTROW (*pro hac vice*)
24 **KOPELOWITZ OSTROW**
25 **FERGUSON WEISELBERG GILBERT**
26 One West Las Olas Blvd., Suite 500
27 Fort Lauderdale, FL 33301
28 Telephone: (954) 525-4100
Facsimile: (954) 525-4300
ostrow@kolawyers.com

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BRYAN GOWDY (*pro hac vice*)
CREED AND GOWDY, P.A.
865 May Street
Jacksonville, FL 32204
Telephone: 904-350-0075
Facsimile: 904-503-0441
bgowdy@appellate-firm.com

JOHN JOSEPH UUSTAL (*pro hac vice*)
CRISTINA MARIA PIERSON (*pro hac vice*)
JOHN R. HARGROVE (*pro hac vice*)
KELLEY UUSTAL PC
500 North Federal Highway, Suite 200
Fort Lauderdale, FL 33301
Telephone: 954-522-6601
jju@kulaw.com
cmp@kulaw.com
jhr@hargrovelawgroup.com

WALTER W. NOSS (CA 277580)
SCOTT + SCOTT LLP
707 Broadway, 10th Floor
San Diego, CA 92101
Telephone: (619) 233-4565
Facsimile: (619) 233-0508
wnoSS@scott-scott.com

Counsel for Plaintiff

1 JEFFREY D. KALIEL (CA 238293)
2 **TYCKO & ZAVAREEI LLP**
3 1828 L Street, N.W., Suite 1000
4 Washington, DC 20036
5 Telephone: (202) 973-0900
6 Facsimile: (202) 973-0950
7 *jkaliel@tzlegal.com*

8 JEFF OSTROW (admitted *pro hac vice*)
9 **KOPELOWITZ OSTROW FERGUSON**
10 **WEISELBERG GILBERT**
11 One West Las Olas Blvd., Suite 500
12 Fort Lauderdale, FL 33301
13 Telephone: (954) 525-4100
14 Facsimile: (954) 525-4300
15 *ostrow@kolawyers.com*

16 ***Counsel for Plaintiff***
17 ***(additional counsel listed on signature page)***

18 UNITED STATES DISTRICT COURT
19 SOUTHERN DISTRICT OF CALIFORNIA

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

22 Plaintiff,

23 vs.

24 BANK OF AMERICA, N.A.,

25 Defendant.

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

**MEMORANDUM IN SUPPORT
OF PLAINTIFF’S UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND FOR
CERTIFICATION OF
SETTLEMENT CLASS**

Judge: Hon. M. James Lorenz

Place: Courtroom 5B

Hearing Date: December 11, 2017

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1 **I. INTRODUCTION**

2 Plaintiff, Joanne Farrell (“Plaintiff Farrell”), respectfully moves for Preliminary
3 Approval of the Settlement Agreement and Release (“Settlement” or “Agreement”),
4 attached as *Exhibit 1*, which will resolve all claims against Bank of America, N.A.
5 (“BANA” or the “Bank”) in the above-captioned action (“Action”).¹ The Court should
6 grant Preliminary Approval because the Settlement provides substantial relief for the
7 class of BANA Bank account holders defined in paragraph 2.1. of the Agreement
8 (“Settlement Class”), and the terms of the Settlement are well within the range of
9 reasonableness and consistent with applicable case law. The Settlement requires BANA
10 to cease charging the extended overdrawn balance charge of \$35 (“EOBC”) that it has
11 been assessing for years, a fundamental shift in overdraft practices that will save class
12 members approximately \$1.2 billion over the next five years. The Settlement also
13 provides for \$66.6 million in monetary relief to all members of the Settlement Class
14 who do not opt-out of the Settlement (“Settlement Class Members”), all of which will
15 be delivered automatically, without Settlement Class Members having to submit
16 claims. Importantly, the Settlement also provides that there is no reverter of any portion
17 of the \$66.6 million Settlement Amount to BANA. In addition, BANA will pay notice
18 and administration costs estimated to be \$2 million—another benefit that will accrue
19 to the Settlement Class. In short, the Settlement accomplishes real and valuable benefits
20 for the Settlement Class, especially in the face of certain risks discussed below, and the
21 Settlement Class should now be notified of the proposed Settlement.

22 **II. STATEMENT OF FACTS**

23 **A. Background**

24 This case is a putative class action focused on the Bank’s practice of levying a
25 \$35 EOBC against Account holders for failing to cure negative balances on overdrawn
26 _____

27 ¹ Capitalized terms are defined in this memorandum or have the same meanings as
28 those found in the Agreement.

1 deposit accounts within five business days.

2 When a customer has insufficient funds in a checking account to cover a check
3 or other debit, the Bank under its deposit agreement has discretion either to pay the
4 overdraft or return it without any payment. If the Bank chooses to pay the overdraft,
5 the deposit agreement allows the Bank to charge an overdraft fee and requires the
6 customer “to repay [the Bank] immediately, without notice or demand from [the
7 Bank].” Plaintiff’s claims in no way challenge this initial overdraft fee. Plaintiff’s
8 claims exclusively concern the EOBC, which the Bank separately charges if a negative
9 account balance is not cured within 5 business days. The deposit agreement explains
10 the EOBC as follows:

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

19 Plaintiff alleges that the EOBC is a charge for the use of the Bank’s money over
20 time, or interest charged pursuant to an extension of credit. Plaintiff alleges that the
21 EOBC is “interest” under the National Bank Act and its associated regulation (12
22 C.F.R. § 7.4001) because the charge compensates the Bank for continued use of funds
23 it already advanced to a customer when honoring an overdraft transaction.
24 Consequently, Plaintiff alleges that the amount of the EOBC is usurious under the
25 NBA. On December 19, 2016, this Court provisionally agreed with Plaintiff Farrell and
26 denied BANA’s Motion to Dismiss.

27 **C. History of the Litigation**

28 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].

1 Plaintiff Farrell, a customer of the Bank, alleges that EOBCs are not a “fee,” but are
2 actually interest charges for the advancement of funds. Accordingly, they are subject
3 to usury restrictions enacted by the Bank’s home state, North Carolina. Plaintiff Farrell
4 alleges the amount of the EOBC exceeds the 8% usury rate set by North Carolina state
5 law and incorporated by the National Bank Act. *Id*

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

13 On January 3, 2017, the Bank filed an Answer to the Complaint, which the Bank
14 then amended on January 24, 2017. [DE #25, 42]. On January 24 and again on January
15 27, 2017, Plaintiff Farrell moved to strike most of the Bank’s affirmative defenses. [DE
16 #41, 45]. The Bank filed its Response in Opposition to the Motion to Strike on February
17 13, 2017. [DE #53]. Plaintiff Farrell filed a Reply to the Response to Motion to Strike
18 on February 17, 2017. [DE #57].

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

24 Plaintiff Farrell filed her Unopposed Motion to Amend Complaint, to Add Class
25 Representatives, and to Modify Case Style on March 13, 2017, for purposes of adding
26 Ronald Dinkins, Larice Addamo and Tia Little as additional plaintiffs (“Plaintiffs”).
27 [DE #60]. On April 11, 2017, before ruling on the Motion to Amend, the Court granted

1 the Motion to Stay and certifying its order denying BANA's motion to dismiss for
2 interlocutory review. [DE #61].

3 On April 21, 2017, the Bank filed a petition for permission to appeal with United
4 States Court of Appeals for the Ninth Circuit. [DE #62]. On June 14, 2017, the Ninth
5 Circuit granted the Bank's request to appeal and on June 15, 2017, the Bank filed its
6 Notice of Appeal. [DE #63, 64]. A briefing scheduled was set in Ninth Circuit Case
7 No. 17-55847.

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

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

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

21 The parties negotiated and executed a settlement term sheet confirming the
22 material terms of settlement on October 23, 2017. After the Parties executed a
23 Settlement term sheet, Class Counsel performed confirmatory discovery at the Bank's
24 headquarters in Charlotte, North Carolina. *See* Joint Declaration of Class Counsel
25 ("Joint Decl.") ¶ 11, attached as *Exhibit 2*. The Parties then turned to drafting the
26 comprehensive Agreement. On October 31, 2017, the Parties signed the Agreement.
27 *Id.* ¶ 11.

1 Class Counsel led the investigation that resulted in this Action. Indeed, Class
2 Counsel persisted to pursue the usury claim even after three other district courts had
3 rejected it in other cases. *Id.* ¶ 7. So not only were the claims in this litigation untested
4 and novel, but it took Class Counsel a substantial amount of pre-filing work to research
5 and develop the legal arguments and claims to support the finding that EOBCs were
6 interest. *Id.* Class Counsel relied on their unique expertise in consumer banking
7 practices and litigation related thereto. *Id.* Once the Action was on file, Class Counsel
8 then persisted in overcoming the Bank’s vigorous protestations that the case was
9 wrong-headed; and persisted in driving the hard bargain that resulted in this Settlement.
10 *Id.* Not one other firm or governmental entity brought or prosecuted these claims. In
11 short, without Class Counsel’s persistence, hard work, and investment of resources,
12 BANA’s alleged misconduct would have gone without recompense. *Id.*

13 **D. Summary of the Settlement Terms.**

14 The Settlement’s terms are detailed in the Agreement attached as *Exhibit 1*. The
15 following is a summary of the material terms of the Settlement.

16 **1. The Settlement Class.**

17 The Settlement Class is an opt-out class under Rule 23(b)(2) and (3) of the
18 Federal Rule of Civil Procedure. The Settlement Class is defined as:

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

21 Agreement ¶ 2.1. Class Period “means the period from February 24, 2014, through and
22 including December 30, 2017.” *Id.* ¶ 1.11.

23 **2. Relief for the Benefit of the Settlement Class.**

24 **a. Practice Change – Cessation of EOBC**

25 The Bank has agreed to stop assessing the EOBC charge on consumer checking
26 accounts. Agreement ¶ 2.2(a). For a period of five years, from December 31, 2017,
27 though December 31, 2022, the Bank will not implement and/or assess EOBCs, or an

1 equivalent fee, in connection with accounts. *Id.* The Bank's obligation to cease assessing
2 EOBCs or a similar fee shall be lifted only in the event a United States Supreme Court
3 decision expressly holds that EOBCs or equivalent fees are not interest under the
4 National Bank Act. *Id.* Should the Supreme Court so rule, the Bank may begin charging
5 the EOBC or an equivalent fee only after a period of six months has passed from the
6 date such decision is rendered. *Id.*

7 **b. \$66.6 Million Settlement Amount**

8 The Settlement Amount consists of a \$37.5 million cash Settlement Fund and
9 \$29.1 million Debt Reduction Amount for the benefit of Settlement Class Members.
10 Agreement ¶ 2.2(b)(1). The Settlement provides for automatic delivery, without a
11 claims process, to Settlement Class Members of the Settlement benefits. Unlike many
12 class settlements where a large portion of the settlement fund goes unclaimed, here
13 every penny of the \$66.6 million will actually be paid by BANA for the benefit of the
14 Settlement Class Members.

15 The cash Settlement Fund will be used to: (a) pay Settlement Class Members
16 their respective share of the Net Cash Settlement Amount; (b) Class Counsel for any
17 Court awarded attorneys' fees and litigation costs; (c) any Court awarded Service
18 Awards for the Class Representatives; and (d) any Administrator Hourly Charges. *Id.*
19 ¶¶ 2.6, 3.1-3.2, 2.4(a). The Bank is required to establish the Settlement Fund within 30
20 days of Preliminary Approval.

21 Settlement Class Members do not have to submit claims or take any other
22 affirmative step to receive relief under the Settlement or to receive their share of the
23 Net Cash Settlement Amount. Instead, the Bank and the Administrator will
24 automatically distribute the Settlement benefits to Settlement Class Members. *Id.* ¶
25 2.6(a). Payments to Settlement Class Members who are current account holders will be
26 made by the Bank crediting such Settlement Class Members' accounts, and notifying
27 them of the credit. *Id.* ¶ 2.6(b). Past account holders will receive payments from the

1 Settlement Fund by checks mailed by the Administrator. *Id.* ¶ 2.6(c).

2 All Settlement Class Members who are entitled to a payment will receive a *pro*
 3 *rata* distribution from the Net Cash Settlement Amount based upon the number of
 4 EOBCs the Settlement Class Member paid during the Class Period. In addition, the
 5 Bank has agreed to make \$29.1 million dollars in Debt Reduction Payments for money
 6 it claims is owed for outstanding EOBCs assessed against Settlement Class Members
 7 whose accounts have been closed. *Id.* ¶ 2.2(b)(1); Joint Decl. ¶ 14. Settlement Class
 8 Members who incurred an EOBC after February 14, 2014, and had their account closed
 9 by the Bank and still had an uncollected EOBC outstanding, will have their outstanding
 10 balance reduced by an amount of up to \$35. If the account balance is less than \$35, the
 11 Bank will adjust the account to reflect a \$0.00 account balance. *Id.* Further, to the extent
 12 BANA has reported accounts to any credit bureaus, BANA will update the reporting.
 13 *Id.* The Administrator will send notices to recipients of Debt Reduction Payments
 14 alerting them to the amount of the payment and any updates to credit reporting.

15 **c. *Payment of the Costs of Notice and Administration***

16 The settlement Administrator is Epiq Systems (“Administrator”), a leading
 17 administration firm. Administration Costs shall be paid separately by the Bank, with
 18 the exception of any hourly services requested of the Administrator. The Administrator
 19 will oversee the notice program (“Notice Program”) and settlement administration. The
 20 Parties currently estimate that Administration costs to be paid by the Bank will be
 21 approximately \$2 million. *Id.* ¶ 16.

22 **3. Class Release.**

23 In exchange for the benefits conferred by the Settlement, all Settlement Class
 24 Members will be deemed to have released the Bank from claims relating to the subject
 25 matter of the Action. The detailed release language can be found in Section 2.3 of the
 26 Agreement.

27 **4. The Notice and Administration Program.**

1 The Notice Program (Agreement, Section 2.4 and described more fully below)
2 is designed to provide the best notice practicable, and is tailored to take advantage of
3 the information the Bank has available about the Settlement Class. Joint Decl. ¶ 27.

4 **5. Class Representatives Service Awards.**

5 Class Counsel will seek incentive payments for serving as Class Representatives
6 (“Service Awards”) of up to \$5,000 for each of the four named Plaintiffs.² Agreement
7 ¶ 3.1. If approved by the Court, the Service Awards will be paid from the Settlement
8 Fund, and will be in addition to the benefits the Plaintiffs will be entitled to under the
9 terms of the Settlement. *Id.* These awards will compensate the Class Representatives
10 for their time and effort in the Action and for the risks they assumed in prosecuting the
11 Action against the Bank. Joint Decl. ¶ 32. Specifically, Plaintiffs provided assistance
12 that enabled Class Counsel to successfully prosecute the Action and reach the
13 Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and
14 forwarding responsive documents and information; and (3) participating in conferences
15 with Class Counsel. *Id.* In so doing, the Plaintiffs were integral to the case. *Id.*

16 **6. Attorneys’ Fees and Costs.**

17 Class Counsel may request attorneys’ fees of up to 25% of the Settlement Value,
18 as well as reimbursement of litigation costs and expenses incurred in connection with
19 the Action. Agreement ¶ 3.2. The Parties negotiated and reached agreement regarding
20 fees and costs only after agreeing on all material terms of the Settlement. Joint Decl. ¶
21 8.

22 **III. ARGUMENT**

23 **A. The Legal Standard for Preliminary Approval.**

24 The Ninth Circuit maintains a strong judicial policy that favors the settlement of
25 class actions. *Cohorst v. BRE Props.*, No. 3:10-CV-2666-JM-BGS, 2011 U.S. Dist.

26 _____
27 ² Plaintiff Farrell will respectfully request entry of an order granting her Motion to
28 Amend Complaint [DE #60] when she seeks final approval of the settlement.

1 LEXIS 151719, at *33 (S.D. Cal. Nov. 9, 2011) (citing *In re Pacific Enters. Sec. Litig.*,
2 47 F.3d 373, 378 (9th Cir. 1995); *Dyer v. Wells Fargo Bank, N.A.*, No. 13-cv-02859-
3 JST, 2014 WL 1900682, at *5 (N.D. Cal. May 12, 2014) (quoting *Class Plaintiffs v.*
4 *Seattle*, 955 F.2d 1268, 1276 (9th Cir.1992)). “Voluntary conciliation and settlement
5 are the preferred means of dispute resolution in complex class action litigation.”
6 *Dennis v. Kellogg Co.*, 09-CV-1786-L (WMc), 2013 U.S. Dist. LEXIS 64577, at *4
7 (S.D. Cal. May 3, 2013) (Lorenz, J.) (citations omitted) (preliminary approval order).

8 “Courts generally employ a two-step process in evaluating a class action
9 settlement. First, courts make a ‘preliminary determination’ concerning the merits of
10 the settlement and, if the class action has settled prior to class certification, the propriety
11 of certifying the class.” *Dyer*, 2014 WL 1900682 at *5 (citing Manual for Complex
12 Litigation, Fourth (“MCL, 4th”) § 21.632 (FJC 2004)). “The initial decision to approve
13 or reject a settlement proposal is committed to the sound discretion of the trial judge.”
14 *Dyer*, 2014 WL 1900682 at *5 (quoting *Class Plaintiffs*, 955 F.2d at 1276). “Where the
15 parties reach a class action settlement prior to class certification, courts apply ‘a higher
16 standard of fairness and a more probing inquiry than may normally be required under
17 Rule 23(e).’” *Dyer*, 2014 WL 1900682 at *5 (quoting *Dennis v. Kellogg Co.*, 697 F.3d
18 858, 864 (9th Cir. 2012)). “Courts ‘must be particularly vigilant not only for explicit
19 collusion, but also for more subtle signs that class counsel have allowed pursuit of their
20 own self-interests and that of certain class members to infect the negotiations.’” *Dyer*,
21 2014 WL 1900682 at *5 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d
22 935, 947 (9th Cir. 2011)).

23 “The Court’s task at the preliminary approval stage is to determine whether the
24 settlement falls ‘within the range of possible approval.’” *Dyer*, 2014 WL 1900682 at
25 *5 (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal.
26 2007) (internal citation omitted)). *See also* MCL, 4th § 21.632 (courts “must make a
27 preliminary determination on the fairness, reasonableness, and adequacy of the

1 settlement terms and must direct the preparation of notice of the certification, proposed
2 settlement, and date of the final fairness hearing.”). “Second, courts must hold a hearing
3 pursuant to Federal Rule of Civil Procedure 23(e)(2) to make a final determination of
4 whether the settlement is ‘fair, reasonable, and adequate.’” *Dyer*, 2014 WL 1900682 at
5 *5. *See also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *Cohorst*,
6 2011 U.S. Dist. LEXIS 151719, at *33-34. This Motion concerns the first step, and the
7 Court need not review the settlement in detail at this juncture. *Dennis*, 2013 U.S. Dist.
8 LEXIS 64577, at *5-6.

9 “Preliminary approval of a settlement is appropriate if ‘the proposed settlement
10 appears to be the product of serious, informed, non-collusive negotiations, has no
11 obvious deficiencies, does not improperly grant preferential treatment to class
12 representatives or segments of the class, and falls within the range of possible
13 approval.’” *Dyer*, 2014 WL 1900682 at *6 (quoting *In re Tableware*, 484 F. Supp. 2d
14 at 1079) (internal citation omitted)). *See also Manual for Complex Litigation*, Second
15 § 30.44 (FJC 1985). “The proposed settlement need not be ideal, but it must be fair and
16 free of collusion, consistent with a plaintiff’s fiduciary obligations to the class.” *Dyer*,
17 2014 WL 1900682 at *6 (citing *Hanlon*, 150 F.3d at 1027 (“Settlement is the offspring
18 of compromise; the question we address is not whether the final product could be
19 prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.”)).

20 The Ninth Circuit has adopted the following eight-factor test for
21 determining whether a settlement is fair, reasonable, and adequate:

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

28 *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). *See also Officers for Justice v. Civil*

1 *Service Com.*, 688 F.2d 615, 625 (9th Cir. 1982); *Dennis*, 2013 U.S. Dist. LEXIS 64577
 2 at *12. “The proposed settlement must be ‘taken as a whole, rather than the individual
 3 component parts’ in the examination for overall fairness.” *Dyer*, 2014 WL 1900682 at
 4 *6 (quoting *Hanlon*, 150 F.3d at 1026). “Courts do not have the ability to ‘delete,
 5 modify, or substitute certain provisions’ because the settlement ‘must stand or fall in
 6 its entirety.’” *Dyer*, 2014 WL 1900682 at *6 (quoting *Hanlon*, 150 F.3d at 1026).

7 But because the Court cannot fully assess many of these factors prior to
 8 notice and an opportunity for objection, the Court need not conduct a full
 9 settlement fairness appraisal before granting preliminary approval;
 10 rather, the proposed settlement need only fall within “the range of
 11 possible approval.” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D.
 12 Cal. 2008). “Essentially, the court is only concerned with whether the
 13 proposed settlement discloses grounds to doubt its fairness or other
 14 obvious deficiencies such as unduly preferential treatment of class
 15 representatives or segments of the class, or excessive compensation of
 16 attorneys.” *Id.*

17 *Dennis*, 2013 U.S. Dist. LEXIS 64577 at *13.

18 **B. This Settlement Satisfies the Criteria for Preliminary Approval.**

19 Each of the relevant factors weighs in favor of preliminary approval of this
 20 Settlement. First, the Settlement was reached in the absence of collusion, and is the
 21 product of good-faith, informed and arm’s length negotiations by competent counsel,
 22 in conjunction with an experienced mediator, Honorable Layn Phillips (Ret.).
 23 Furthermore, a preliminary review of the factors related to the fairness, adequacy and
 24 reasonableness of the Settlement demonstrates that the Settlement warrants Preliminary
 25 Approval.

26 Any settlement requires the parties to balance the merits of the claims and
 27 defenses asserted against the attendant risks of continued litigation and delay. Plaintiffs
 28 believe that the claims asserted are meritorious and that they would prevail if this matter
 proceeded to trial. The Bank argues that Plaintiffs’ claims are unfounded, denies any
 potential liability, and up to the point of settlement has indicated a willingness to litigate
 those claims vigorously. Plaintiffs face the challenge of case law from courts in other

1 federal jurisdictions that rejected their theory of liability, and the potential that the
2 Ninth Circuit would reverse this Court’s order denying the Motion to Dismiss on
3 similar grounds as the other courts.

4 Plaintiffs concluded that the benefits of settlement in this case outweigh the risks
5 and uncertainties of continued litigation, as well as the attendant time and expenses
6 associated with contested class certification proceedings and possible interlocutory
7 appellate review, completing merits discovery, pretrial motion practice, trial, final
8 appellate review. Joint Decl. ¶ 20.

9 **1. This Settlement is the Product of Good Faith, Informed and**
10 **Arm’s Length Negotiations.**

11 The Settlement in this case is the result of intensive, arm’s-length negotiations
12 between experienced attorneys who are familiar with class action litigation and with
13 the legal and factual issues of this Action. Joint Decl. ¶ 9. The Parties engaged in a full
14 day formal mediation before an experienced and respected mediator, Honorable Layn
15 Phillips (Ret.)—and only after receiving data from the Bank to adequately estimate
16 potential damages in the Action. *Id.* Although the Parties did not settle that day, much
17 progress was made laying the foundation to the eventual resolution of this Action. The
18 Parties continued their settlement discussion for many weeks with the assistance of
19 Judge Phillips. *Id.*

20 “The assistance of an experienced mediator in the settlement process confirms
21 that the settlement is non-collusive.” *Adams v. Inter-Con Sec. Sys. Inc.*, No. C-06-5428
22 MHP, 2007 WL 3225466, at *3 (N.D. Cal. Oct. 30, 2007). *See also Cohorst*, 2011 U.S.
23 Dist. LEXIS 151719, at *35 (“voluntary mediation before a retired judge in which the
24 parties ‘reached an agreement-in-principle to settle the claims in the litigation’ are
25 ‘highly indicative of fairness’” “We put a good deal of stock in the product of an
26 arms-length, non-collusive, negotiated resolution.”). Moreover, “[t]here is a
27 presumption of fairness when a proposed class settlement, which was negotiated at

1 arm’s-length by counsel for the class, is presented for Court approval.” *Newberg on*
2 *Class Actions*, § 11.41 (4th Ed. 2007).

3 Furthermore, Class Counsel is particularly experienced in the litigation,
4 certification, trial, and settlement of nationwide class action cases. Joint Decl. ¶ 4. In
5 negotiating this Settlement, Class Counsel had the benefit of years of experience and a
6 familiarity with the facts of this case as well as with cases involving initial overdraft
7 fees, including a previous case against BANA involving a different BANA overdraft
8 fee policy. *Id.* This intimate understanding of the intricacies of consumer banking
9 practices and law provided Class Counsel with needed tools and perspective to achieve
10 the legal victories they did in this Action—and prepared them to fight the Action to its
11 conclusion in the Ninth Circuit and Supreme Court if necessary.

12 Before filing suit, Class Counsel spent many hours investigating the usury claims
13 of several potential plaintiffs against the Bank. Joint Decl. ¶ 5. Class Counsel
14 interviewed a number of customers and potential plaintiffs to gather information about
15 the Bank’s conduct and its impact upon consumers. *Id.* This information was essential
16 to Class Counsel’s ability to understand the nature of the Bank’s conduct, the language
17 of the account agreements at issue, and potential remedies. *Id.* In addition, Class
18 Counsel also expended significant resources researching and developing the legal
19 claims at issue. *Id.*

20 As detailed herein, Class Counsel conducted a thorough investigation and
21 analysis of Plaintiffs’ claims and engaged in extensive briefing on the fundamental
22 legal issue of whether the EOBC is a usurious charge, informal discovery, data analysis
23 with the assistance of Plaintiffs’ expert, and confirmatory discovery with the Bank.
24 Class Counsel’s review enabled it to gain an understanding of the law and evidence
25 related to central questions in the case, and prepared it for well-informed settlement
26 negotiations. *Id.* ¶ 6. Class Counsel was also well-positioned to evaluate the strengths
27 and weaknesses of Plaintiffs’ claims, and the appropriate basis upon which to settle

1 them, as a result of their litigating similar claims in courts across the country. *Id.*

2 **2. The Facts Support a Preliminary Determination that the**
3 **Settlement Is Fair, Adequate and Reasonable.**

4 A preliminary review of the below factors supports a determination that
5 Settlement falls within the “range of reason,” such that notice to the Settlement Class
6 and a Final Approval Hearing as to the fairness, adequacy, and reasonableness of the
7 Settlement are warranted.

8 **a. *The Strength of Plaintiffs’ Case.***

9 Plaintiffs and Class Counsel are confident in the strength of their case, but are
10 also pragmatic in their awareness of the various defenses available to the Bank, and the
11 risks inherent to litigation of this magnitude—which challenges engrained banking
12 industry practice. Joint Decl. ¶ 19. Indeed, previous to this Action, cases brought
13 against financial institutions on a similar legal theory were dismissed, including a case
14 against the Bank. *See McGee v. Bank of Am., N.A.*, 2015 WL 4594582 (S.D. Fla. July
15 30, 2015), *aff’d* 674 Fed. Appx. 958 (11th Cir. Jan. 18, 2017); *Shaw v. BOKF, Nat’l*
16 *Ass’n*, 2015 WL 6142903 (N.D. Okla. Oct. 19, 2015); *In re TD Bank, N.A. Debit Card*
17 *Overdraft Fee Litig.*, 150 F. Supp. 3d 593, 641-642 (D.S.C. 2015).

18 Plaintiffs faced the risk of losing during the pending appeal of the order denying
19 the Motion to Dismiss, at summary judgment, at trial, or on a subsequent appeal based
20 on various theories and defenses advanced by the Bank. Joint Decl. ¶ 19. The success
21 of Plaintiffs’ claims in future litigation turns on these and other questions that are
22 certain to arise in the context of motions for summary judgment and at trial, as they
23 have in other similar cases.

24 Each of these risks, by itself, could have impeded Plaintiffs’ and the Settlement
25 Class’ successful prosecution of these claims at trial and in an eventual appeal—
26 resulting in zero benefit to the Settlement Class. *Dennis v. Kellogg Co.*, 09-CV-1786-
27 L (WMc), 2013 U.S. Dist. LEXIS 163118, at *9 (S.D. Cal. Nov. 14, 2013) (Lorenz, J.)

1 (“plainly reasonable for the parties at this stage to agree that the actual recovery realized
2 and risks avoided here outweigh the opportunity to pursue potentially more favorable
3 results through full adjudication”). Under the circumstances, Plaintiffs and Class
4 Counsel appropriately determined that the Settlement reached with the Bank outweighs
5 the gamble of continued litigation. Joint Decl. ¶ 20. Moreover, even if Plaintiffs
6 prevailed at trial, any recovery could be delayed for years by an appeal. *McPhail v.*
7 *First Command Fin. Plan., Inc.*, No. 05cv179-IEG-JMA, 2009 U.S. Dist. LEXIS
8 26544, at *13 (S.D. Cal. Mar. 30, 2009) (likelihood that appellate proceedings could
9 delay class recovery favors settlement approval). This Settlement provides substantial
10 relief to Settlement Class Members without further delay.

11 **b. *The Risk, Expense, Complexity, and Likely Duration of***
12 ***Further Litigation.***

13 The traditional means for handling claims like those at issue here would tax the
14 court system, require a massive expenditure of public and private resources, and—
15 given the relatively small value of the claims of the individual members of the
16 Settlement Class—could be impracticable. Joint Decl. ¶ 21. There is no doubt that
17 continued litigation here would be difficult, expensive, and time consuming. *Id.*
18 Recovery by any means other than settlement would require additional years of
19 litigation in this Court and the Ninth Circuit Court of Appeals. *Id.*; *See McPhail*, 2009
20 U.S. Dist. LEXIS 26544, at *12-13 (noting potential complexity and possible duration
21 of trial weighs in favor of granting final approval, and that post-judgment appeal would
22 require many years to to resolve and delay payment to class members).

23 The Settlement provides immediate and substantial benefits to over 5 million
24 Bank customers. Joint Decl. ¶ 22. The proposed Settlement is the best vehicle for the
25 Settlement Class to receive the relief to which they are entitled in a prompt and efficient
26 manner.

1 **c. *The Risk of Maintaining Class Action Status Throughout***
2 ***Trial.***

3 Whether the Action would have been tried as a class action is also relevant in
4 assessing the fairness of the Settlement. As the Court had not yet certified a class at the
5 time the Agreement was executed, it is unclear whether certification would have been
6 granted. *Id.* ¶ 23. Given the Bank’s vigorous defense of this Action thus far, the Bank
7 would have opposed Plaintiffs’ certification motion, and “would surely [have]
8 challenge[d] class certification on appeal” in the event of an adverse judgment.
9 *Rodriguez v. West Pub. Corp.*, No. CV05-3222, 2007 WL 2827379, at *8 (C.D. Cal.
10 Sept. 10, 2007) (finding that the likelihood that a certification decision would be
11 appealed meant this factor weighed in favor of approval), *rev’d on other grounds*, 563
12 F.3d 948 (9th Cir. 2009). This litigation activity would have required the Parties to
13 expend significant resources. Joint Decl. ¶ 23. Accordingly, this factor weighs in favor
14 of preliminary approval.

15 **d. *The Amount Offered in the Settlement.***

16 The Settlement reached here is squarely within the range of possible approval.
17 As discussed above, the Settlement is the product of arm’s-length negotiations
18 conducted by the Parties’ experienced counsel and initially under the supervision of a
19 reputable and skilled mediator. As a result of these negotiations, the Parties have
20 reached a Settlement that Class Counsel believes to be fair, reasonable, and in the
21 Settlement Class’ best interests. Class Counsel’s assessment in this regard is entitled to
22 considerable deference.

23 The cessation of the practice at the heart of Plaintiffs’ Complaint is a massive
24 benefit for the Settlement Class, and the additional \$66.6 million recovery adds to the
25 outstanding Settlement result. These benefits are especially valuable given the
26 complexity of the litigation and the significant barriers that would loom in the absence
27 of settlement, including motions for summary judgment, trial and appeals after a

1 Plaintiffs' verdict. And this is all against a very stark backdrop: a loss on the legal issue
2 at the center of this case—whether or not EOBCs are interest charges—would
3 extinguish the Settlement Class' ability for any recovery whatsoever.

4 Based on the Bank's data, Class Counsel estimates that the Settlement Class'
5 most likely recoverable damages at trial would have been \$756 million. Joint Decl. ¶
6 24. That figure is dwarfed by the \$1.2 billion that the Settlement Class will save in
7 EOBCs during the five year period during which BANA has agreed to cease charging
8 the fee. *Id.* Even counting *only* the direct financial payments that will be made as a
9 result of the Settlement—\$66.6 million in payments and credits to Settlement Class
10 Members and another approximate \$2 million in notice and administration costs paid
11 by the Bank—Plaintiffs and the Settlement Class are recovering approximately 9% of
12 their most probable damages, without further risks attendant to litigation. *Id.* Even
13 without the massive prospective relief benefit in this case, courts in this Circuit
14 routinely grant final approval to settlements providing between 5-10% of maximum
15 potential damages. “It is well-settled law that a cash settlement amounting to only a
16 fraction of the potential recovery does not per se render the settlement inadequate or
17 unfair.” *Officers for Justice*, 688 F.2d at 628. *See also Bravo v. Gale Triangle, Inc.*,
18 2017 WL 708766, *10 (C.D. Cal. Feb.16, 2017) (approving a settlement where net
19 recovery to class members was approximately 7.5% of the projected maximum
20 recovery amount); *Roberti v. OSI Sys.*, No. CV-13-09174 MWF (MRW), 2015 U.S.
21 Dist. LEXIS 164312, at *12-13 (C.D. Cal. Dec. 8, 2015) (approving settlement of 8.8%
22 of maximum potential recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245,
23 256 (N.D. Cal 2015) (approving a settlement where the gross recovery to the class was
24 approximately 8.5% of the maximum recovery amount); *Custom LED, LLC v. eBay,*
25 *Inc.*, No. 12-cv-00350-JST, 2014 U.S. Dist. LEXIS 87180, at *13-14 (N.D. Cal. June
26 24, 2014) (noting courts have held that recovery of only 3% of the maximum potential
27 recovery is fair and reasonable when the plaintiffs face a real possibility of recovering

1 nothing absent settlement); *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1042 (N.D.
2 Cal. 2007) (approving settlement of 9% of maximum potential recovery).

3 The Settlement is a significant achievement considering the obstacles that
4 Plaintiffs faced in the litigation. *See Jaffe v. Morgan Stanley & Co.*, No. C 06-3903
5 THE, 2008 WL 346417, at *9 (N.D. Cal. Feb. 7, 2008) (“a sizeable discount is to be
6 expected in exchange for avoiding uncertainties, risks, and costs that come with
7 litigation a case to trial. Again, the issue is not whether the settlement “could be better,”
8 but whether it falls within the range of appropriate settlements. *Hanlon*, 150 F.3d at
9 1027.”).

10 The \$66.6 million Settlement Amount, the payment of notice and administration
11 costs, and the near \$1.2 billion dollars in savings related to the practice changes are fair
12 and reasonable in light of the Bank’s defenses, and the challenging and unpredictable
13 path of litigation Plaintiffs would have faced absent a settlement. Joint Decl. ¶ 20.

14 **e. *The Extent of Discovery Completed and the Stage of the***
15 ***Proceedings.***

16 “In regards to class action settlements, ‘formal discovery is not a necessary ticket
17 to the bargaining table where the parties have sufficient information to make an
18 informed decision about settlement.’ *Linney v. Cellular Alaska P’ ship*, 151 F.3d 1234,
19 1239 (9th Cir. 1998) (internal quotation marks omitted).” *Malta v. Fed. Home Loan*
20 *Mortg. Corp.*, No. 10-CV-1290 BEN (NLS), 2013 U.S. Dist. LEXIS 15731, at *14-15
21 (S.D. Cal. Feb. 4, 2013) (noting that parties engaged in the exchange of informal
22 discovery between class counsels’ consultants and Wells Fargo’s IT professionals in
23 addition to some formal written discovery).

24 Plaintiffs settled the Action with the benefit of important informal discovery
25 resulting in an expert analysis of key documentation and data regarding the Bank’s
26 assessment and collection of EOBCs. Joint Decl. ¶ 8. As noted above, the review of
27 this information and data positioned Class Counsel to evaluate with confidence the

1 strengths and weaknesses of Plaintiffs' claims and prospects for success at class
2 certification, summary judgment, and trial. *Id.* Confirmatory discovery done after the
3 Parties executed the Term Sheet further aided Plaintiffs' analysis. *Id.*

4 In addition, the Parties briefed one motion to dismiss, a motion to strike
5 affirmative defenses, an interlocutory appeal motion, extensive mediation briefing, and
6 had begun research and writing in briefing an appeal at the Ninth Circuit. Thus, the
7 Settlement was reached after considerable investigation and careful consideration and
8 discussions. The Parties were thus fully aware of the issues and risks associated with
9 their respective claims and defenses.

10 The record provides sufficient information for this Court to determine that the
11 Settlement is fair. Further, there is no reason to doubt the Settlement's fairness.
12 Plaintiffs have litigated this Action for nearly two years. *Id.* ¶ 2. Plaintiffs' counsel have
13 been involved in other litigation against major American banks for almost a decade. *Id.*
14 The litigation has been hard-fought. Accordingly, this factor also weighs in favor of
15 preliminary approval.

16 **f. *The Experience and Views of Counsel.***

17 Class Counsel's expertise allowed it to build a case no others have. Indeed, it
18 may be that no other firm or group of firms in the country could have succeeded here—
19 even if they had tried (which they have not). Class Counsel has successfully litigated
20 and resolved several other consumer class actions against national banks. Employing
21 this experience and skill, Class Counsel aggressively and swiftly worked to litigate,
22 then resolve, this case in an efficient manner.

23 A great deal of weight is accorded to the recommendation of counsel, who are
24 the most closely acquainted with the facts of the underlying litigation. *In re Immune*
25 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007); *Nat'l Rural*
26 *Telecomm. Coop. v. DirectTV, Inc.*, 221 F.R.D. at 528 (C.D. Cal. Jan. 5, 2004). As
27 stated previously, Class Counsel has significant experience litigating class claims,

1 including numerous claims against national banks, through their active roles similar
2 class actions throughout the country. Joint Decl. ¶ 25, Exhibits 1-4. In litigating these
3 cases, Class Counsel has been at the forefront of litigating NBA usury claims pertaining
4 to continuous (a/k/a sustained) overdraft fees like the EOBCs. *Id.* ¶ 25.

5 Class Counsel possesses extensive knowledge of and experience in prosecuting
6 class actions in courts throughout the United States, and have recovered hundreds of
7 millions of dollars for the classes they represented. *Id.* ¶ 26. In addition, Class Counsel
8 includes firms with appellate expertise, which was used to extensively analyze the
9 chances of success in both in the Ninth Circuit and the U.S. Supreme Court. The
10 experience, resources and knowledge Class Counsel brings to this Action is extensive
11 and formidable. *Id.* Class Counsel is qualified to represent the Settlement Class and
12 will, along with the Class Representatives, vigorously protect the interests of the
13 Settlement Class. *Id.*

14 **g. *The Presence of a Governmental Participant.***

15 No governmental actor participated in this Action, rendering this factor
16 immaterial to the settlement approval process.

17 **h. *The Reaction of the Class Members to the Proposed***
18 ***Settlement.***

19 The Court should wait until the Final Approval Hearing and the expiration of the
20 Opt-Out Period to determine the reaction of the Settlement Class.

21 **C. The Court Should Approve the Proposed Notice Program**

22 The Parties have devised a Notice Plan that will ensure that virtually all
23 Settlement Class members, whether current or former customers of BANA, will receive
24 individual notice within 60 days of this Court's preliminary approval of the Settlement
25 Agreement.

26 **1. The Notice Program**

27 Here, the Notice Program is reasonably calculated under the circumstances to

1 apprise members of the Settlement Class of the following: a description of the material
2 terms of the Settlement; a date by which persons in the Settlement Class may exclude
3 themselves from or opt-out of the Settlement Class; a date by which members of the
4 Settlement Class may object to the Settlement; the date upon which the Final Approval
5 Hearing will occur; and the address of the Settlement Website at which persons in the
6 Settlement Class may access the Agreement and other related documents and
7 information. Agreement ¶ 2.4 and Exhibits B-D thereto. The Class Notice and Notice
8 Program constitute sufficient notice to all persons entitled to notice. Joint Decl. ¶ 28.
9 The Notice Program satisfies all applicable requirements of law, including, but not
10 limited to, Federal Rule of Civil Procedure 23 and constitutional due process. *Id.*

11 The Notice Program is comprised of three parts: (1) email notice (“Email
12 Notice”); (2) direct mail postcard notice (“Postcard Notice”) to all other members of
13 the Settlement Class to those Settlement Class members that the Bank maintains email
14 addresses for; and (3) Long Form notice containing more detail than the Postcard
15 Notice and Published Notice, that will be available on the Settlement website and via
16 U.S. mail upon request. Agreement ¶ 2.4 and Exhibits B-D thereto.

17 Among the additional information provided, the Long Form notice will describe
18 the procedure that members of the Settlement Class must follow to opt-out of the
19 Settlement or to object to the Settlement, and/or to Class Counsel’s application for
20 attorneys’ fees, costs and expenses and for the Service Awards to the Plaintiffs. *Id.*
21 Specifically, all opt-outs must be postmarked within 60 days after Notice is complete,
22 and any objections must be postmarked by the same time. Agreement ¶ 2.5. For an
23 objection to be valid, it must include: the name of the Action; the objector’s name,
24 address, and telephone number; an explanation of how the objector is a member of the
25 Settlement Class; the basis for the objection; a description of the number of times the
26 objector or the objector’s counsel has objected to a class settlement in the last five
27 years, the names of any such cases, and any relevant orders issued in response to such

1 past objections; a statement confirming whether the objector will appear at the Final
2 Approval Hearing and a description of counsel or witnesses who will appear on behalf
3 of the objector at the Final Approval Hearing; and the objector’s signature. *Id.* ¶ 2.5(b).

4 The Notice Program shall be completed no later than 60 days after Preliminary
5 Approval. Agreement ¶ 4.1. These actions will ensure virtually all Class Members will
6 receive individualized notice and sufficient time to decide whether to opt-out or object.
7 Courts routinely approve notice regimes involving either only email or combinations
8 of email or First-Class mail. *E.g.*, *Berkson v. Gogo LLC*, 147 F. Supp. 3d 123, 133, 135,
9 139 (E.D.N.Y. Dec. 4, 2015) (approving email-only notice); *Kolinek v. Walgreen Co.*,
10 311 F.R.D. 483, 499 (N.D. Ill. 2015) (rejecting objector’s argument that email notice
11 is insufficient); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 605 (N.D. Cal. 2015) (approving
12 email notice with mailed notice to persons with emails returned as undeliverable); *In*
13 *re TD Ameritrade Account Holder Litig.*, No. C 07–2852 SBA, 2011 WL 4079226, at
14 *10 (N.D. Cal. Sept. 13, 2011) (approving email notice even where class members did
15 not receive mailed notice “in cases where the delivery via email failed,” as “there is no
16 requirement that notice be perfect”); *Lane v. Facebook, Inc.*, No. C 08-3845 RS, 2010
17 WL 9013059, at *2 (N.D. Cal. Mar. 17, 2010) (even though some e-mail filtered
18 through a SPAM e-mail filter and not all class members saw it, the notice was
19 adequate); *Guy v. Casal Institute of Nevada, LLC*, No. 13-cv-02263, 2014 WL
20 1899006, at *7 (D. Nev. May 12, 2014) (“The Court in *Phelps* stated that there was no
21 indication that service by first class mail or email would be ineffective or inadequate.”).

22 The Settlement Website (which will include hyperlinks to the Settlement, the
23 Long Form Notice, the Preliminary Approval Order and such other documents as Class
24 Counsel and the Bank’s Counsel agree to post or that the Court orders posted on the
25 Settlement Website) will be established following Preliminary Approval and prior to
26 the commencement of the Notice Program. Agreement ¶ 2.4(c).

27 Settlement Class members will be provided with at least 60 days to submit any

1 objections—and some Settlement Class members will be provided significantly more
2 time. That is more than sufficient under applicable case law. *See Maywalt v. Parker*
3 *and Parsley Petroleum Co.*, 67 F.3d at 1079; *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d
4 1370, 1374-75 (9th Cir. 1993), *cert. denied sub nom.*; *Reilly v. Tucson Elec. Power*
5 *Co.*, 512 U.S. 1220 (1994).

6 Upon preliminary approval, the Administrator will obtain from the Bank and
7 Class Counsel the name and address physical and email address information (to the
8 extent it is reasonably available) for members of the Settlement Class, and, to, the
9 extent necessary, verify and update the addresses received through the National Change
10 of Address database, for the purpose of mailing the Mailed Notice, and later mailing
11 distribution checks to past account holders, and to current account holders where it is
12 not feasible or reasonable for the Bank to make the payment by a direct credit to the
13 Settlement Class Members' accounts. The Administrator will also establish and
14 maintain an automated toll-free telephone line for members of the Settlement Class to
15 call with Settlement-related inquiries, answer the questions of members of the
16 Settlement who call with or otherwise communicate such inquiries, and to accept
17 requests for Long Form Notices to be sent in the mail.

18 **2. The Court Should Direct That Notice Be Given**

19 “Rule 23(e)(1)(B) requires the court to direct notice in a reasonable manner to
20 all class members who would be bound by a proposed settlement, voluntary dismissal,
21 or compromise regardless of whether the class was certified under Rule 23(b)(1),
22 (b)(2), or (b)(3).” *Manual for Compl. Lit.* § 21.312 (internal quotation marks omitted).
23 The best practicable notice is that which is “reasonably calculated, under all the
24 circumstances, to apprise interested parties of the pendency of the action and afford
25 them an opportunity to present their objections.” *Mullane v. Central Hanover Bank &*
26 *Trust Co.*, 339 U.S. 306, 314 (1950). “Rule 23 . . . requires that individual notice in
27 [opt-out] actions be given to class members who can be identified through reasonable

1 efforts. Those who cannot be readily identified must be given the best notice practicable
2 under the circumstances.” *Manual for Compl. Litig.*, § 21.311. In this Circuit, it has
3 long been the case that a notice of settlement will be adjudged satisfactory if it
4 “generally describes the terms of the settlement in sufficient detail to alert those with
5 adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill.,*
6 *L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir. 2004) (citing *Mendoza v. Tucson Sch. Dist.*
7 *No.1*, 623 F.3d 1338, 1352 (9th Cir. 1980)).

8 The proposed Notice Program satisfies these content requirements. The Class
9 Notices will properly inform members of the Settlement Class of the substantive terms
10 of the Settlement. It will advise members of the Settlement Class of their options for
11 opting-out of or objecting to the Settlement, and how to obtain additional information
12 about the Settlement. The Notice Program is designed to reach a high percentage of the
13 Settlement Class and exceeds the requirements of constitutional due process. Joint
14 Decl. ¶ 29. Here, the Settlement benefits from the fact that the Bank maintains reliable
15 mailing and email address information for both its current and former account holders.
16 Therefore, the Court should approve the Notice Program and the form and content of
17 the Class Notices attached to the Agreement as Exhibits B-D.

18 **D. Notice Pursuant to the Class Action Fairness Act (CAFA)**

19 CAFA requires that settling defendants give notice of a proposed class action
20 settlement to appropriate state and federal officials. 28 U.S.C. § 1715(b). The CAFA
21 Notice of Proposed Settlement must supply all of the information and documents set
22 forth in 28 U.S.C. § 1715(b)(1)-(8). The Administrator will serve the CAFA Notice,
23 along with a CD containing the documents described in Section 1715(b), within ten
24 days of the Court’s granting of Preliminary Approval.

25 **E. Certification of the Settlement Class Is Appropriate**

26 For settlement purposes, Plaintiffs respectfully requests that the Court certify the
27 Settlement Class defined above, and in paragraph 2.1 of the Agreement. “Confronted

1 with a request for settlement-only class certification, a district court need not inquire
2 whether the case, if tried, would present intractable management problems . . . for the
3 proposal is that there be no trial.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591,
4 620 (1997). *See also Dandan Pan v. Qualcomm Inc.*, No. 16-cv-01885-JLS-DHB, 2017
5 U.S. Dist. LEXIS 120150, at *17-18 (S.D. Cal. July 31, 2017) (citing *Anchem*).

6 Certification of the proposed Settlement Class will allow notice of the proposed
7 Settlement to issue to the class to inform the Settlement Class of the existence and terms
8 of the proposed Settlement, of their right to be heard on its fairness, of their right to
9 opt-out, and of the date, time and place of the Final Approval Hearing. *See Manual for*
10 *Compl. Lit.*, §§ 21.632, 21.633. For purposes of this Settlement only, the Bank does not
11 oppose class certification. For the reasons set forth below, certification is appropriate
12 under Rule 23(a), (b)(2) and (b)(3).

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

22 The numerosity requirement of Rule 23(a) is satisfied because the Settlement
23 Class consists of nearly six million Bank customers, and joinder of all such persons is
24 impracticable. Joint Decl. ¶ 30. *See* Fed. R. Civ. P. 23(a)(1). *See Gutierrez-Rodriguez*,
25 2017 U.S. Dist. LEXIS 170982 at *10 (noting damages settlement class containing
26 61,939 satisfies numerosity); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923
27 WHA, 2008 WL 4279550, *14 (N.D. Cal. Sept. 11, 2008) (“Given the large number of

1 checking account customers at Wells Fargo, the numerosity requirement is met.”); *See*
2 *also* 1 Newberg on Class Actions 3.05, at 3-25 (3d ed. 1992) (suggesting that any class
3 consisting of more than forty members “should raise a presumption that joinder is
4 impracticable”).

5 “Commonality requires the plaintiff to demonstrate that the class members ‘have
6 suffered the same injury,’” and the plaintiff’s common contention “must be of such a
7 nature that it is capable of classwide resolution – which means that determination of its
8 truth or falsity will resolve an issue that is central to the validity of each one of the
9 claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-350 (2011)
10 (citation omitted). “All questions of fact and law need to be common to satisfy the
11 rule.” *Hanlon*, 150 F.3d 1019. However, “[t]he existence of shared legal issues with
12 divergent factual predicates is sufficient’ to meet the requirements of Rule 23(a)(2).”
13 *Gutierrez*, 2008 WL 4279550 at *14 (quoting *Hanlon*, 150 F.3d at 1019). Here, the
14 commonality requirement is readily satisfied. There are multiple questions of law and
15 fact – centering on BANA Bank’s systematic practice of assessing EBOCs – that are
16 common to the Settlement Class, that are alleged to have injured all Settlement Class
17 members in the same way, and that would generate common answers central to the
18 viability of the claims were the Action to proceed to trial.

19 For similar reasons, Plaintiffs’ claims are reasonably coextensive with those of
20 the absent members of the Settlement Class, such that the Rule 23(a)(3) typicality
21 requirement is satisfied. *See Gutierrez*, 2008 WL 4279550 at *15. The Ninth Circuit
22 interprets typicality permissively. *Hanlon*, 150 F.3d at 1020. It is sufficient for the
23 named plaintiff’s claims to arise from the same remedial and legal theories as the class
24 claims. *Malta*, 2013 U.S. Dist. LEXIS 15731, at *7; *Arnold v. United Artists Theater,*
25 *Inc.*, 158 F.R.D. 439, 449 (N.D. Cal. 1994). Plaintiffs are typical of absent members of
26 the Settlement Class because they were subjected to the same Bank practices and claim
27 to have suffered from the same injuries, and because they will benefit equally from the

1 relief provided by the Settlement.

2 Plaintiffs and Class Counsel satisfy the adequacy of representation requirement
3 of Rule 23(a)(4), which “serves to uncover conflicts of the interest between named
4 parties and the class they seek to represent.” *Gutierrez*, 2008 WL 4279550 at *15. *See*
5 *also Gutierrez-Rodriguez*, 2017 U.S. Dist. LEXIS 170982 at *12-13 (noting no conflict
6 of interest between plaintiff and the purported class members, and plaintiff and class
7 counsel’s vigorous prosecution of the class’s interests). Adequacy of representation
8 requires that the class representatives do not have conflicts of interest with other class
9 members and that the named plaintiffs and their counsel will prosecute the action
10 vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs’ interests
11 are coextensive with, not antagonistic to, the interests of the Settlement Class, because
12 Plaintiffs and the absent members of the Settlement Class have the same interest in the
13 relief afforded by the Settlement, and the absent members of Settlement Class have no
14 diverging interests. Further, Plaintiffs are represented by qualified and competent
15 counsel who has extensive experience and expertise prosecuting complex class actions,
16 including consumer actions similar to the instant case. Joint Decl. ¶ 26. Class Counsel
17 has devoted substantial time and resources to this Action and will vigorously protect
18 the interests of the Settlement Class. *Id.*

19 Certification of the Settlement Class is further appropriate because the questions
20 of law or fact common to members of the Settlement Class predominate over any
21 questions affecting only individual members, and a class action is superior to other
22 available methods for the fair and efficient adjudication of the Action. *See Fed. R. Civ.*
23 *P. 23(b)(3)*. For purposes of satisfying Rule 23(b)(3), the “predominance inquiry tests
24 whether proposed class members are sufficiently cohesive to warrant adjudication by
25 representation.” *Hanlon*, 150 F.3d at 1022 (quoting *Amchem*, 521 U.S. at 623). *See also*
26 *Gutierrez*, 2008 WL 4279550 at *14 (predominance satisfied “when common questions
27 present a significant portion of the case and can be resolved for all members of the class

1 in a single adjudication”). Plaintiffs readily satisfy the Rule 23(b)(3) predominance
2 requirement because liability questions common to all members of the Settlement Class
3 substantially outweigh any possible issues that are individual to each member of the
4 Settlement Class. Joint Decl. ¶ 31. For example, each Settlement Class member’s
5 relationship with the Bank arises from an account agreement that is the same or
6 substantially similar in all relevant respects to other Settlement Class members’ account
7 agreements. *Id.* Most importantly, each was subjected to the same EOBC policy. *Id.*

8 Conditional certification pursuant to Rule 23(b)(2) is also warranted.
9 Certification under that rule is appropriate where the defendant has “acted or refused
10 to act on grounds that apply generally to the class, so that final injunctive relief or
11 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R.
12 Civ. P. 23(b)(2). “In other words, Rule 23(b)(2) applies only when a single injunction
13 or declaratory judgment would provide relief to each member of the class.” *Wal-Mart*,
14 564 U.S. at 360. “These requirements are unquestionably satisfied when members of a
15 putative class seek uniform injunctive or declaratory relief from policies or practices
16 that are generally applicable to the class as a whole. . . . That inquiry does not require
17 an examination of the viability or bases of the class members’ claims for relief, does
18 not require that the issues common to the class satisfy a Rule 23(b)(3)-like
19 predominance test, and does not require a finding that all members of the class have
20 suffered identical injuries.” *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014) (citing
21 *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010)).

22 Here, BANA’s EOBC policy has been applied and continues to be applied
23 uniformly to all Settlement Class members. BANA has agreed, subject to Final
24 Approval of the Settlement, to change its business practices beginning on or before
25 December 31, 2017, agreeing not to implement or assess EOBCs, or any equivalent
26 fee, in connection with BANA consumer checking accounts, for a period of five years,
27 or until December 31, 2022.

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

4 **IV. CONCLUSION**

5 Based on the foregoing, Plaintiff Farrell respectfully requests that the Court:
6 (1) grant Preliminary Approval to the Settlement; (2) certify for settlement purposes
7 the proposed Settlement Class, pursuant to Rule 23(b)(3) and (e) of the Federal Rules
8 of Civil Procedure; (3) appoint Joanne Farrell, Ronald Dinkins, Larice Addamo, and
9 Tia Little as Class Representatives; (4) approve the Notice Program set forth in the
10 Agreement and approve the form and content of the Class Notices, attached to the
11 Agreement as Exhibits B-D; (5) approve and order the opt-out and objection procedures
12 set forth in the Agreement; (6) stay the Action against the Bank pending Final Approval
13 of the Settlement; (7) appoint as Class Counsel the law firms listed in Section 1 of the
14 Agreement; and (8) schedule a Final Approval Hearing. For the Court's convenience,
15 a [Proposed] Order Preliminarily Approving Class Settlement and Certifying
16 Settlement Class ("Proposed Order") and setting forth the various deadlines referenced
17 herein and outlined in the Agreement, and a [Proposed] Order and Judgment Granting
18 Final Approval of Class Settlement are attached as exhibits to the Settlement
19 Agreement.

20 Pursuant to the Settlement Agreement and the Proposed Order, Plaintiffs and
21 Class Counsel will file their motion and memorandum for Final Approval, Fee
22 Application and request for Service Awards for Plaintiffs no later than 150 days after
23 Preliminary Approval, unless otherwise ordered by the Court.

1 Dated: October 31, 2017

Respectfully submitted,

2 /s/ Jeffrey Kaniel
3 JEFFREY KALIEL (CA 238293)
4 **TYCKO & ZAVAREEI LLP**
5 1828 L Street, NW, Suite 1000
6 Washington, DC 20036
7 Telephone: (202) 973-0900
8 Facsimile: (202) 973-0950
9 *jkaliel@tzlegal.com*

10 JEFF OSTROW (*pro hac vice*)
11 **KOPELOWITZ OSTROW**
12 **FERGUSON WEISELBERG GILBERT**
13 One West Las Olas Blvd., Suite 500
14 Fort Lauderdale, FL 33301
15 Telephone: (954) 525-4100
16 Facsimile: (954) 525-4300
17 *ostrow@kolawyers.com*

18 BRYAN GOWDY (*pro hac vice*)
19 **CREED AND GOWDY, P.A.**
20 865 May Street
21 Jacksonville, FL 32204
22 Telephone: 904-350-0075
23 Facsimile: 904-503-0441
24 *bgowdy@appellate-firm.com*

25 JOHN JOSEPH UUSTAL (*pro hac vice*)
26 CRISTINA MARIA PIERSON (*pro hac vice*)
27 JOHN R. HARGROVE (*pro hac vice*)
28 **KELLEY UUSTAL PC**
500 North Federal Highway, Suite 200
Fort Lauderdale, FL 33301
Telephone: 954-522-6601
jju@kulaw.com
cnp@kulaw.com
jhr@hargrovelawgroup.com

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WALTER W. NOSS (CA 277580)
SCOTT + SCOTT LLP
707 Broadway, 10th Floor
San Diego, CA 92101
Telephone: (619) 233-4565
Facsimile: (619) 233-0508
w noss@scott-scott.com

Counsel for Plaintiff

EXHIBIT 1

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 B, 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 C, to all Class Members for whom BANA has not provided an email address and to all Class Members to whom the Administrator sent Exhibit B via email but for whom the Administrator receives notice

of an undeliverable email. Exhibit C 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 D, 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-1 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.

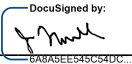

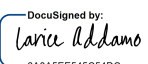

5.7 No Third-Party Beneficiaries. This Agreement shall not inure to the benefit of any third party.

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:

 <small>DocuSigned by: BABA5EE545C54DC...</small> <hr/> Joanne Farrell	10/30/2017 <hr/> Date
 <small>DocuSigned by: BABA5EE545C54DC...</small> <hr/> Ronald Dinkins	10/30/2017 <hr/> Date
 <small>DocuSigned by: BABA5EE546G54DG...</small> <hr/> Larice Addamo	10/30/2017 <hr/> Date
 <small>DocuSigned by: BABA5EE545C54DC...</small> <hr/> Tia Little	10/30/2017 <hr/> Date

Tia Little

Date



10/31/17

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

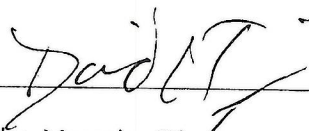
Jeff Ostrow
Kopelowitz Ostrow P.A.
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale, FL 33301

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

1 JEFFREY D. KALIEL (CA 238293)
2 **TYCKO & ZAVAREEI LLP**
3 1828 L Street, N.W., Suite 1000
4 Washington, DC 20036
5 Telephone: (202) 973-0900
6 Facsimile: (202) 973-0950
7 *jkaliel@tzlegal.com*

8 *Counsel for Plaintiffs*

9 MATTHEW W. CLOSE (S.B. #188570)
10 DANIELLE N. OAKLEY (S.B. #246295)
11 **O'MELVENY & MYERS LLP**
12 400 South Hope Street
13 Los Angeles, California 90071-2899
14 Telephone: (213) 430-6000
15 Facsimile: (213) 430-6407
16 *mclose@omm.com*

17 *Counsel for Defendant*
18 *Bank of America, N.A.*

19 UNITED STATES DISTRICT COURT
20 SOUTHERN DISTRICT OF CALIFORNIA

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

23 Plaintiff,

24 v.

25 BANK OF AMERICA, N.A.,

26 Defendant.

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

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

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

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

13 IT IS HEREBY ORDERED THAT:

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

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

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

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

8 4. The Court conditionally finds, for settlement purposes only and
9 conditioned upon the entry of this Order and the Final Approval Order, that the
10 prerequisites for a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of
11 Civil Procedure have been satisfied in that: (a) the number of Settlement Class members is
12 so numerous that joinder of all members thereof is impracticable; (b) there are questions of
13 law and fact common to the Settlement Class; (c) the claims of the Plaintiffs are typical of
14 the claims of the Settlement Class they seek to represent for purposes of settlement; (d)
15 Plaintiffs have fairly and adequately represented the interests of the Settlement Class and
16 will continue to do so, and Plaintiffs have retained experienced counsel to represent them;
17 (e) for purposes of settlement, the questions of law and fact common to the Settlement
18 Class members predominate over any questions affecting any individual Settlement Class
19 member; and (f) for purposes of settlement, a class action is superior to the other available
20 methods for the fair and efficient adjudication of the controversy. The Court also concludes
21 that, because this Action is being settled rather than litigated, the Court need not consider
22 manageability issues that might be presented by the trial of a nationwide class action
23 involving the issues in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620
24 (1997). Additionally, for the purposes of settlement only, the Court finds that BANA has
25 acted on grounds that apply generally to the Settlement Class, so that the final injunctive
26 relief to which the Parties have agreed is appropriate respecting the Settlement Class as a
27 whole. In making these findings, the Court has exercised its discretion in conditionally

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

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

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

26 7. The Class Notices will identify the opt-out and objection deadline of 120 days
27 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

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

12 11. Plaintiffs and BANA may file responses to any objections that are
13 submitted. Any Settlement Class Member who timely files and serves an objection in
14 accordance with this order may appear at the Final Approval Hearing, either in person or
15 through an attorney, if the Settlement Class Member files a notice indicating that he/she
16 wishes to appear at the Final Approval Hearing with the Clerk of Court no later than twenty
17 20 calendar days before the Final Approval Hearing. A Class Member who wishes to
18 appear at the Final Approval Hearing must also send a copy of the notice indicating that
19 he/she wishes to appear to BANA's counsel and to Class Counsel 20 calendar days before
20 the Final Approval Hearing. Failure to adhere to the requirements of this paragraph will
21 bar a Settlement Class Member from being heard at the Final Approval Hearing, either
22 individually or through an attorney, unless the Court otherwise orders.

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

25 13. The Court designates Epiq Systems as Administrator.

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

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

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

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

15 18. The Final Approval Hearing will be conducted in Courtroom 5B, Suite
16 5145, of the U.S. District Court for the Southern District of California, located at 221 West
17 Broadway, San Diego, CA 92101 on [date], at [time].

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

23 IT IS SO ORDERED.

24
25 Date: _____

26 _____
27 United States District Judge

EXHIBIT B

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

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

FIRST-CLASS MAIL
U.S. POSTAGE
PAID
Portland, OR
PERMIT NO. 2882

Legal Notice about a Class Action Settlement

EXHIBIT C

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- [REDACTED] or visit www.EOBCsettlement.com

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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.

Questions? Call 1  or visit www.EOBCSettlement.com

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

Questions? Call 1  or visit www.EOBCSettlement.com

who does not exclude himself or herself from the Settlement Class will also be bound by all of the decisions by the Court. Section [REDACTED] 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 [REDACTED], 2018, to:

EOBC Litigation Exclusions
P.O. Box [REDACTED]
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 Kaniel 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
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Questions? Call 1 [REDACTED] or visit www.EOBCSettlement.com

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

Questions? Call 1 or visit www.EOBCSettlement.com

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 [REDACTED], 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 [REDACTED] 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 [REDACTED], 2018 at [REDACTED], 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.

Questions? Call 1 [REDACTED] or visit www.EOBCSettlement.com

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 [REDACTED], 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 [REDACTED], Portland, OR 97208-4178, or call the toll-free number, 1-[REDACTED]. Do not contact BANA or the Court for information.

Questions? Call 1-[REDACTED] or visit www.EOBCSettlement.com

EXHIBIT D

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.

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.

For more information, visit www.EOBCsettlement.com or call 1- .

EXHIBIT E

1 JEFFREY D. KALIEL (CA 238293)
2 **TYCKO & ZAVAREEI LLP**
3 1828 L Street, N.W., Suite 1000
4 Washington, DC 20036
5 Telephone: (202) 973-0900
6 Facsimile: (202) 973-0950
7 *jkaliel@tzlegal.com*

8 *Counsel for Plaintiffs*

9 MATTHEW W. CLOSE (S.B. #188570)
10 DANIELLE N. OAKLEY (S.B. #246295)
11 **O'MELVENY & MYERS LLP**
12 400 South Hope Street
13 Los Angeles, California 90071-2899
14 Telephone: (213) 430-6000
15 Facsimile: (213) 430-6407
16 *mclose@omm.com*

17 *Counsel for Defendant*
18 *Bank of America, N.A.*

19 UNITED STATES DISTRICT COURT
20 SOUTHERN DISTRICT OF CALIFORNIA

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

23 Plaintiff,

24 v.

25 BANK OF AMERICA, N.A.,

26 Defendant.

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

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

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

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

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

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

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

1 IT IS HEREBY ORDERED THAT:

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

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

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

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

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

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

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

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

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

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

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

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

- 11 a. The Settlement provides substantial benefits for Settlement Class Members,
12 including but not limited to, a five-year cessation of the fee at issue in the
13 litigation under specific terms and limitations set forth in the Agreement, the
14 Cash Settlement Fund, Debt Reduction Payments, and the payment of
15 Administration Costs.
- 16 b. The requested award of attorneys’ fees, a sub-set of the requested Fee & Expense
17 Award, constitutes [X]% of the Settlement Value.
- 18 c. The quality of legal services provided by Class Counsel has been outstanding, in
19 light of the Settlement itself, the complexity of the litigation, and the efficient
20 litigation and settlement by attorneys with experience in litigating class actions
21 relating to fees charged by national banks.
- 22 d. Class Counsel has taken considerable risks in pursuing this litigation.
- 23 e. By receiving payment from the Settlement Amount, Class Counsel’s interests
24 were fully aligned, during the settlement negotiation process, with those
25 members of the Settlement Class, such that Class Counsel had appropriate
26 incentives to maximize the size of the Settlement Amount.

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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.

Bank of America, N.A. Member FDIC. ©2017 Bank of America Corporation.
91-11-3000B 07/2017
00-14-9299


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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.

Investment products are provided by Merrill Lynch, Pierce, Fenner & Smith Incorporated and:

Are Not FDIC Insured	Are Not Bank Guaranteed	May Lose Value
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Merrill Lynch, Pierce, Fenner & Smith Incorporated is a registered broker-dealer, Member SIPC, and a wholly owned subsidiary of Bank of America Corporation.

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.

Merrill Edge® and Merrill Lynch® are registered trademarks of Bank of America.

Personal Checking Accounts

Account	Monthly Maintenance Fee for Checking Account and How to Avoid It	Other Important Account Information
<p>Bank of America Core Checking®</p> <ul style="list-style-type: none"> • Use direct deposit • Non-interest bearing account • Minimum to open - \$25.00 	<p>Monthly maintenance fee for Bank of America Core Checking - \$12.00</p> <p>To avoid the monthly maintenance fee, meet one of the following requirements during each statement cycle:</p> <ul style="list-style-type: none"> • 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). 	<p>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:</p> <ul style="list-style-type: none"> • The student is enrolled in a high school or a college, university or vocational program, and • The student is under 24 years old. <p>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.</p> <p>For information about direct deposits, see page 13.</p> <p>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.</p>

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
<p>Bank of America Interest Checking®</p> <ul style="list-style-type: none"> • Interest bearing account • Variable rate • Minimum to open - \$100.00 	<p>Monthly maintenance fee for Bank of America Interest Checking - \$25.00</p> <p>To avoid the monthly maintenance fee, maintain a combined balance of \$10,000 or more during each statement cycle.</p> <p>For each statement cycle, we add the following balances together to determine your combined balance:</p> <ul style="list-style-type: none"> • 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). 	<p>You can also get the following services with this account:</p> <ul style="list-style-type: none"> • 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. <p><i>Additional accounts.</i> 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 <i>Frequently Asked Questions About Accounts</i> section on page 14.</p> <p><i>Linking accounts.</i> 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.</p> <p>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 <i>Frequently Asked Questions About Accounts</i> section on page 14.</p>

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
<p>Regular Savings</p> <ul style="list-style-type: none"> • Basic account to build a savings program • Interest bearing account • Variable interest rate • Minimum amount to open - \$25.00 	<p>Monthly maintenance fee - \$5.00</p> <p>To avoid the monthly maintenance fee, meet one of the following requirements during each statement cycle:</p> <ul style="list-style-type: none"> • 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). <p>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.</p> <p><i>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.</i></p>	<ul style="list-style-type: none"> • 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 <i>Frequently Asked Questions About Accounts</i> 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
<p>Minor Savings Accounts (Under 18)</p> <ul style="list-style-type: none"> • Under 18 years old, beginning a savings program • Interest bearing account • Variable interest rate • Minimum amount to open - \$25.00 <p>(Use Regular Savings or Rewards Money Market Savings for custodial ownership, such as UTMA/UGMA)</p>	<p>No monthly maintenance fee</p>	<ul style="list-style-type: none"> • 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 <i>Frequently Asked Questions About Accounts</i> section below. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.
<p>Rewards Money Market Savings</p> <ul style="list-style-type: none"> • Variable interest rate • Potential for Preferred Rewards interest rate booster feature • Minimum amount to open - \$25.00 	<p>Monthly maintenance fee - \$12.00</p> <p>To avoid the monthly maintenance fee, meet one of the following requirements during each statement cycle:</p> <ul style="list-style-type: none"> • 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). 	<ul style="list-style-type: none"> • 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 <i>Frequently Asked Questions About Accounts</i> 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	<ul style="list-style-type: none"> • Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. 	<ul style="list-style-type: none"> • A penalty is imposed for early withdrawal.
Fixed Term CD Terms of 28 Days—10 Years	\$1,000	<ul style="list-style-type: none"> • Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. 	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. • See deposit rate sheet for available terms. 	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. 	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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.

Please also review the *Deposit Agreement and Disclosures*.

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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<p><i>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.</i></p> <p><i>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.</i></p>
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	<ul style="list-style-type: none"> 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.	<ul style="list-style-type: none"> 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.	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> Fee for transferring funds to another institution.
Overdraft Protection Service <i>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.</i>	Overdraft Protection Transfer Fee - transfer from a linked Bank of America savings or secondary checking account	\$12.00 each transfer	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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.

Please also review the *Deposit Agreement and Disclosures*.

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	<ul style="list-style-type: none"> 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 <i>Deposit Agreement and Disclosures</i> 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.
NSF: Returned Items (a returned item)	NSF: Returned Item Fee	\$35.00 each item	<ul style="list-style-type: none"> 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 <i>Deposit Agreement and Disclosures</i> and our <i>What You Need to Know about Overdrafts and Overdraft Fees</i> notice.
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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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)	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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.

¹If 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
<ul style="list-style-type: none"> • Accounts on which you are an owner or co-owner, including - <ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • 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.



bankofamerica.com

Applies in all states.

Bank of America, N.A. Member FDIC. ©2017 Bank of America Corporation.
95-11-32008 05/2017
00-14-9317



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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
<p>SafeBalance Banking®</p> <ul style="list-style-type: none"> • Non-interest bearing account • Minimum to open - \$25.00 	<p>\$4.95</p> <p>We do not waive the monthly fee.</p>	<ul style="list-style-type: none"> • 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 	<p>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.</p> <p>The following features are not available with your SafeBalance Banking account:</p> <ul style="list-style-type: none"> • Checks. Paper checks written by you or others on the account will not be paid. <ul style="list-style-type: none"> - 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. <p>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.</p> <p>Affinity Banking is not available to be added to your SafeBalance Banking account or debit card.</p>

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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	

Please also review the *Deposit Agreement and Disclosures*.

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.
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.	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.
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.	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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)	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> 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.

Please also review the *Deposit Agreement and Disclosures*.

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.

¹If 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 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

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

**JOINT DECLARATION OF CLASS
COUNSEL**

Jeffrey D. Kaliel, Jeff Ostrow, Bryan Gowdy, and Cristina M. Pierson hereby declare
as follows:

1. We are Class Counsel under the Settlement with BANA being presented to
the court for Preliminary Approval. We submit this declaration in support of Plaintiff’s
Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of
Settlement Class (“Motion”).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.

¹ 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

1
2 **Background and Procedural History**

3 2. This Action seeking relief under National Bank Act usury provisions has been
4 litigated for nearly two years. Class Counsel have been involved in other litigation against
5 major U.S. banks for almost a decade.

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

10 4. Class Counsel is particularly experienced in the litigation, certification, trial,
11 and settlement of nationwide class action cases. In negotiating this Settlement, Class
12 Counsel had the benefit of years of experience litigating against national banks, including
13 with cases involving initial overdraft fees, including a previous case against BANA
14 involving a different BANA overdraft fee policy.

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

22 6. Class Counsel conducted a thorough investigation and analysis of Plaintiffs'
23 claims and engaged in extensive briefing on the fundamental legal issue of whether the
24 EOBC is a usurious charge, informal discovery, data analysis with the assistance of
25 Plaintiffs' expert, and confirmatory discovery with the Bank. Class Counsel's review

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28 though fully set forth in this Declaration, and shall have the same meanings attributed to
them in those documents.

1 enabled it to gain an understanding of the law and evidence related to central questions in
2 the case, and prepared it for well-informed settlement negotiations. Class Counsel was
3 also well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, and the
4 appropriate basis upon which to settle them, as a result of their litigating similar claims in
5 courts across the country.

6 7. Class Counsel led the investigation that resulted in this Action. Indeed, Class
7 Counsel persisted to pursue the usury claim even after three other district courts had
8 rejected it in other cases. So not only were the claims in this litigation untested and novel,
9 but it took Class Counsel a substantial amount of pre-filing work to research and develop
10 the legal arguments and claims to support the finding that EOBCs were interest. Class
11 Counsel called on their unique expertise in consumer banking practices and litigation
12 related thereto. Once the Action was on file, Class Counsel then persisted in overcoming
13 the Bank's vigorous protestations that the case was wrong-headed; and persisted in driving
14 the hard bargain that resulted in this Settlement. Not one other firm or governmental entity
15 brought or prosecuted these claims. In short, without Class Counsel's persistence, hard
16 work, and investment of resources, BANA's alleged misconduct would have gone without
17 recompense.

18 **The Settlement**

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

26 9. The Settlement in this case is the result of intensive, arm's-length negotiations
27 between experienced attorneys who are familiar with class action litigation and with the
28 legal and factual issues of this Action. The Parties engaged in a full day formal mediation

1 before an experienced and respected mediator, Honorable Layn Phillips (Ret.)—and only
2 after receiving data from the Bank to adequately estimate potential damages in the Action.
3 Although the Parties did not settle that day, much progress was made laying the foundation
4 to the eventual resolution of this Action. The Parties continued their settlement discussion
5 for many weeks with the assistance of Judge Phillips.

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

8 11. After the Parties executed the term sheet, Class Counsel performed
9 confirmatory discovery at the Bank’s headquarters in Charlotte, North Carolina.

10 12. The Parties then turned to drafting a settlement agreement. On October 31,
11 2017, the Parties signed the Agreement.

12 **Terms of the Settlement**

13 13. Under the terms of the Agreement, the Bank has agreed to stop assessing the
14 EOBC on consumer checking accounts. For a period of five years, from December 31,
15 2017, though December 31, 2022, the Bank will not implement and/or assess EOBCs, or
16 an equivalent fee, in connection with accounts.

17 14. The Bank has agreed to make \$29.1 million dollars in Debt Reduction
18 Payments for money it claims is owed for outstanding EOBCs assessed against Settlement
19 Class members (“Settlement Class Members”) whose accounts have been closed.
20 Settlement Class Members who incurred an EOBC after February 14, 2014, and had their
21 accounts closed by the Bank and still had an uncollected EOBC outstanding, will have their
22 outstanding balance reduced by an amount of up to \$35. If the account balance is less than
23 \$35, the Bank will adjust the account to reflect a \$0.00 account balance. Further, to the
24 extent BANA has reported the accounts to any credit bureaus, BANA will update the
25 reporting.

26 15. In addition to the \$29.1 million of Debt Reduction Payments, the total
27 Settlement Amount of \$66.6 million includes a \$37.5 million cash Settlement Fund. The
28

1 Settlement provides for automatic delivery, without a claims process, to Settlement Class
2 Members of the Settlement benefits.

3 16. Administrative Costs shall be paid separately by the Bank, except for any
4 hourly services requested of the Administrator. The Parties currently estimate the
5 Administrative Costs to be paid by the Bank at approximately \$2 million.

6 17. Class Counsel may request attorneys' fees of up to 25% of the Settlement
7 Value, as well as reimbursement of litigation costs and expenses incurred in connection
8 with the Action. The Parties negotiated and reached agreement regarding attorneys' fees
9 and costs only after agreeing on all material terms of the Settlement.

10 18. The benefits of settlement in this case outweigh the risks and uncertainties of
11 continued litigation, as well as the attendant time and expenses associated with contested
12 class certification proceedings and possible interlocutory appellate review, completing
13 merits discovery, pretrial motion practice, trial, final appellate review.

14 **Risks of Continued Litigation**

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

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

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

26 22. The Settlement provides immediate and substantial benefits to over 5 million
27 Bank customers. The proposed Settlement is the best vehicle for the Settlement Class to
28 receive the relief to which they are entitled in a prompt and efficient manner.

1 23. Whether the Action would have been tried as a class action is also relevant in
2 assessing the fairness of the Settlement. As the Court had not yet certified a class at the
3 time the Agreement was executed, it is unclear whether certification would have been
4 granted. This litigation activity would have required the Parties to expend significant
5 resources.

6 24. Based on the Bank's data, Class Counsel estimates that the Settlement Class'
7 most likely recoverable damages at trial would have been \$756 million. That figure is
8 dwarfed by the \$1.2 billion that the Settlement Class will save in EOBCs during the five
9 year period during which BANA has agreed to cease charging the fee. Even counting *only*
10 the direct financial payments that will be made as a result of the Settlement—\$66.6 million
11 in payments and account credits to Settlement Class Members and another approximately
12 \$2 million in Administration Costs paid by the Bank—Plaintiffs and Settlement Class
13 Members are recovering approximately 9% of their most probable damages, without
14 further risks attendant to litigation.

15 **Class Treatment is Appropriate**

16 25. As stated previously, Class Counsel has significant experience litigating class
17 claims, including numerous claims against national banks, through their active roles similar
18 class actions throughout the country. *See also* Firm Resumes of Class Counsel, attached
19 hereto as Exhibits 1-4. In litigating these cases, Class Counsel has been at the forefront of
20 litigating NBA usury claims pertaining to continuous (a/k/a sustained) overdraft fees like
21 the EOBC.

22 26. Class Counsel possesses extensive knowledge of and experience in
23 prosecuting class actions in courts throughout the United States, and have recovered
24 hundreds of millions of dollars for the classes they represented. In addition, Class Counsel
25 includes firms with appellate expertise, which was used to extensively analyze the chances
26 of success in both in the Ninth Circuit and the U.S. Supreme Court. The experience,
27 resources, and knowledge Class Counsel brings to this Action is extensive and formidable.
28

1 Class Counsel is qualified to represent the Settlement Class and will, along with the class
2 representatives, vigorously protect the interests of the Settlement Class.

3 27. The Administrator will oversee the Notice Program. The Notice Program is
4 designed to provide the best notice practicable, and is tailored to take advantage of the
5 information the Bank has available about the Settlement Class.

6 28. The Notice Program constitutes sufficient notice to all persons entitled to
7 notice. The Notice Program satisfies all applicable requirements of law, including, but not
8 limited to, Federal Rule of Civil Procedure 23 and constitutional due process.

9 29. The Notice will properly inform members of the Settlement Class of the
10 substantive terms of the Settlement. It will advise members of the Settlement Class of their
11 options for opting-out of or objecting to the Settlement, and how to obtain additional
12 information about the Settlement. The Notice Program is designed to reach a high
13 percentage of the Settlement Class and exceeds the requirements of constitutional due
14 process.

15 30. The numerosity requirement of Rule 23(a) is satisfied because the Settlement
16 Class consists of nearly six million Bank customers, and joinder of all such persons is
17 impracticable.

18 31. Liability questions common to all members of the Settlement Class
19 substantially outweigh any possible issues that are individual to each member of the
20 Settlement Class. For example, each Settlement Class member's relationship with the Bank
21 arises from an account agreement that is the same or substantially similar in all relevant
22 respects to other Settlement Class members' account agreements and each was subjected
23 to the same EOBC policy.

24 32. Plaintiffs provided assistance that enabled Class Counsel to successfully
25 prosecute the Action and reach the Settlement, including: (1) submitting to interviews with
26 Class Counsel; (2) locating and forwarding responsive documents and information; and (3)
27 participating in conferences with Class Counsel. In so doing, the Plaintiffs were integral to
28 the case.

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We declare under penalty of perjury that the foregoing is true and correct.

Executed on October 31, 2017



JEFFREY KALIEL
TYCKO & ZAVAREEI LLP



JEFF OSTROW
KOPELOWITZ OSTROW P.A.



BRYAN GOWDY
CREED & GOWDY, P.A.

CRISTINA M. PIERSON
KELLEY UUSTAL PC

1 We declare under penalty of perjury that the foregoing is true and correct.

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3 Executed on October 31, 2017

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5 _____
6 JEFFREY KALIEL
7 TYCKO & ZAVAREEI LLP

8
9 _____
10 JEFF OSTROW
11 KOPELOWITZ OSTROW P.A.

12 _____
13 BRYAN GOWDY
14 CREED & GOWDY, P.A.

15 _____
16 CRISTINA M. PIERSON
17 KELLEY UUSTAL PC
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EXHIBIT 1



TYCKO & ZAVAREEI LLP

HISTORY

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

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

EXPERIENCE

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

PRACTICE AREAS

CONSUMER CLASS ACTIONS

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

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

EMPLOYMENT LITIGATION

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

APPELLATE

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

QUI TAM AND FALSE CLAIMS ACT

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

INTELLECTUAL PROPERTY

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

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

FIRST AMENDMENT

Partner Hassan Zavareei represented the plaintiff in one of the most important cases of media defamation handled recently by the courts, namely, the case brought by Dr. Steven Hatfill

against Condé Nast Publications (the publisher of Vanity Fair magazine) and Reader's Digest for articles that falsely accused Dr. Hatfill of perpetrating the Anthrax murders that occurred in the fall of 2001.

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

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

BUSINESS DISPUTES

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

JONATHAN K. TYCKO
PARTNER

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

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

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

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

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

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

HASSAN A. ZAVAREEI
PARTNER

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

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

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

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

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

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

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

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

ANDREA R. GOLD
PARTNER

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

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

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

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

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

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

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

LORENZO B. CELLINI
PARTNER

Lorenzo Cellini graduated magna cum laude from the University of Arizona, James E. Rogers College of Law in 2004. In law school he was a member of the moot court board, a legal writing fellow and the recipient of the E. Thomas Sullivan Antitrust Award. He also received his B.A. from the University of Arizona, graduating magna cum laude and as a member of Phi Beta Kappa.

Before joining Tycko & Zavareei LLP, Mr. Cellini practiced law in Tucson, Arizona. He specialized in commercial litigation, with an emphasis on contract disputes, real estate, intellectual property and bankruptcy. Additional practice areas included real estate and business transactions, appellate, employment and civil rights law. Representative clients included large biomedical engineering, technology and real estate development firms, as well as local restaurants, banks and individuals.

Mr. Cellini also has substantial experience in antitrust law. While in law school, he served as a law clerk in the Antitrust Division of the U.S. Department of Justice, where he assisted in investigations of anticompetitive conduct and proposed mergers. Before attending law school, he worked in the Federal Trade Commission's Bureau of Competition.

Other legal experience includes externships with the University of Arizona Student Legal Services and Judge Raner Collins of the U.S. District Court for the District of Arizona.

Mr. Cellini is a member of the District of Columbia Bar, and also is admitted to practice before the Supreme Court of Arizona, U.S. District Court for the Districts of Arizona and Maryland and the U.S. Court of Appeals for the Federal Circuit.

JEFFREY D. KALIEL
PARTNER

Jeffrey Kaniel earned his law degree from Yale Law School in 2005. Mr. Kaniel graduated from Amherst College summa cum laude in 2000 with a degree in Political Science. He spent one year studying Philosophy at Robinson College, Cambridge University, England.

Mr. Kaniel has substantial class action experience. He has been appointed Class Counsel in numerous actions and has served as co-counsel in numerous other class actions. In those cases, Mr. Kaniel has defended several dispositive motions, engaged in data-intensive discovery and worked extensively with economics and information technology experts. Mr. Kaniel has also successfully resolved numerous class actions by settlement, resulting in relief for millions of class members. Mr. Kaniel is actively litigating several national class action cases, including several actions against financial services entities.

Prior to joining Tycko & Zavareei, Mr. Kaniel was in the Honors Program at the Department of Homeland Security, where he worked on some of the Department's appellate litigation. Mr. Kaniel also helped investigate the DHS response to Hurricane Katrina in preparation for a Congressional inquiry.

Mr. Kaniel has also served as a Special Assistant US Attorney in the Southern District of California, prosecuting drug and border crimes.

In 2008, Mr. Kaniel worked in Namibia with Lawyers Without Borders on the observation of a 400-defendant treason trial arising from a 1998 armed rebellion.

Mr. Kaniel is a former Staff Sergeant in the Army Reserve and a veteran of the second Iraq war, having served in Iraq in 2003. His publications include contributions to Homeland Security Today and American Bar Association's Homeland Security Handbook.

Mr. Kaniel is admitted to practice in California and Washington, DC. He is also admitted to the U.S. District Court for the District of Columbia, the Southern, Central, and Northern Districts of California, and the Northern District of Illinois.

KRISTEN L. SAGAFI
PARTNER

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

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

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

ANNA C. HAAC
PARTNER

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

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

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

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

ANDREW J. SILVER
ASSOCIATE

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

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

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

Prior to law school, Mr. Silver worked as a correspondent and desk assistant at The Boston Globe's Sports Department and additionally served as Managing Editor of The Tufts Daily, a daily student newspaper. He also worked as an administrator at Camp Bauercrest, a nonprofit residential camp in Massachusetts.

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

ANNICK M. PERSINGER
ASSOCIATE

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

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

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

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

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

SOPHIA J. GOREN
ASSOCIATE

Sophia Goren graduated from the University of California, Berkeley, School of Law in 2015. While in law school, Sophia was involved in the Berkeley Mock Trial Team and placed 1st in the prestigious Bales Mock Trial Competition. Sophia also participated in the California Asylum Representation Clinic and served as the student chair of the Faculty Appointments Committee. She received the Jurisprudence Award for Conflict of Laws.

Sophia spent her first summer in law school representing workers exposed to asbestos. In her second summer, Sophia was selected by the San Francisco Trial Lawyers' Association for the Trial Advocacy Fellowship, through which she split her summer between three San Francisco plaintiff-side firms.

Sophia graduated summa cum laude from Wake Forest University with a degree in Political Science.

DAVID W. LAWLER
OF COUNSEL

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

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

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

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

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

EXHIBIT 2



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

TELEPHONE: 954.525.4100
FACSIMILE: 954.525.4300

OUR FIRM

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

Who We Are

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

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

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

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

Class Actions – Plaintiff

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

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

factory stores.

Class Action - Defense

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

Mass Tort Litigation

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

Other Areas of Practice

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

More about KO

To learn more about KO, or any of the other firm's attorneys, please visit www.kolawyers.com.

CLASS COUNSEL APPOINTMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



JEFFREY OSTROW
Managing Partner

11 West Las Olas, Suite 500
Fort Lauderdale, FL 33301
Main: 954-525-4100
Direct: 954-332-4200
Fax: 954-525-4300
Email: ostrow@kolawyers.com

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

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

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

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

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

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

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

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

Primary Practice Area

Class Action Litigation

Secondary Practice Area

Business & Sports Agency Law

Bar Admissions

Florida Bar

Court Admissions

U.S. Court of Appeals for the Eleventh Circuit

U.S. District Ct, Southern District of Florida

U.S. District Ct, Middle District of Florida

U.S. District Ct, Northern District of Florida

U.S. District Ct, Northern District of Illinois

U.S. District Ct, Eastern District of Michigan

U.S. District Ct, Western District of Tennessee

U.S. District Ct, Western District of Wisconsin

Education

Nova Southeastern University – 1997

University of Florida - 1994

EXHIBIT 3

BRYAN S. GOWDY

Curriculum Vitae

Contact Information

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

Professional Employment

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

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

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

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

Education

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

Order of the Coif

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

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

International Economics

Dean's List (four semesters)

Notable Cases

Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2111 (2010) (represented juvenile defendant before the U.S. Supreme Court, which categorically applied the Eighth Amendment for the first time in a non-capital case and ruled that life-without-parole sentences were unconstitutional for juvenile offenders who have not committed a homicide; the Court's decision invalidates the sentencing laws of 37 states, the federal government, and the District of Columbia).

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

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

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

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

Professional Qualifications and Awards

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

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

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

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

Florida Justice Association, Bronze Eagle Award (2012)

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

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

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

Jacksonville Area Legal Aid Pro Bono Award (2010)

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

Professional Memberships and Community Service

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

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

Leadership Jacksonville, Class of 2012

Leadership Jacksonville Development Team (2016-present)

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

The Florida Bar Criminal Law Section (2009-13)

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

The Florida Bar Trial Lawyers Section (2016-2017)

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

Federal Bar Association (2006 to present)

Florida Association of Criminal Defense Lawyers (2009-present)

Florida Justice Association (2010-present)

Chair of the Appellate Section (2011 – 2012)

Vice Chair of the Appellate Section (2010-2011)

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

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

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

Westside Soccer Club, Volunteer Coach (2007-13)

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

Assumption Catholic School Soccer League, Volunteer Coach (2017)

Military Service

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

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

Awarded Navy Commendation Medal for fighting major engine room fire.

Served in Persian Gulf operations.

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

Publications

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

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

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

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

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

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

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

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

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

Recent Lectures, Seminars, and Panel Discussions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Selected Cases

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 4

Kelley Uustal

CATASTROPHIC INJURY & WRONGFUL DEATH

Cristina M. Pierson



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

BOARD CERTIFIED BUSINESS LITIGATOR

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

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

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

BACKGROUND

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



Areas of Practice:

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

Bar Admissions:

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

Education:

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

Professional Associations:

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

Kelley Uustal

CATASTROPHIC INJURY & WRONGFUL DEATH

John J. Uustal



The day after John Uustal started law school, Hurricane Andrew tore through the University of Miami, destroyed parts of the city, and shut down the school. Once the campus and surrounding areas reopened, he was forced to complete a full year of law school in much less time. For months he studied law at a ridiculous pace under tremendous pressure while living without electricity or phone service and at the same time struggling to help those still in need.

All of the students in the incoming class faced the same difficulties, but some excelled **because** of the impossible demands and incredible responsibility. At the end of the year, Mr. Uustal not only ranked first in the entire student body, he also earned the Book Award for the highest grade in the class in every single class that year. He turned his attention to trial skills and was prosecuting criminals in Miami courtrooms even before he graduated.

After graduation he earned what was reportedly the highest score in the entire state on the Florida Bar Examination. In his first few years of practice he obtained a \$51 million verdict trying a car crash case himself, helped make national news when he discovered a massive corporate scheme to cover-up the real reason that people were burning alive in General Motors vehicles, and tried cases across the country. Ten years after graduation he and partner Bob Kelley founded the powerhouse trial firm of Kelley/Uustal.

Mr. Uustal now handles incredibly complex and difficult cases against the best defense attorneys in the world. His successes have resulted in **safer fuel tanks, safer seatbelts, safer medical care, and safer equipment for firefighters and paramedics.**

That success has also earned him some powerful enemies. A car company promised to bankrupt him, he was attacked and maligned by Big Tobacco, and he was threatened in Argentina after antagonizing government officials who had been complicit in Argentina's dirty war. When facing such intimidation, he likes to quote Clarence Darrow: "I have lived my life, and I have fought my battles, against power. I have asked no odds from them, and I never will."

Mr. Uustal realizes that he is at his best in the most difficult cases, especially when working for a family who is desperate for help. He limits his practice to representing families who have suffered catastrophic injuries or wrongful death, even when other attorneys say the case can't be won. With truly devastating injuries, he can profoundly change lives for the better – the difference between a good recovery and a great recovery may be all the difference in the world to a truly desperate family. He excels in these cases **because** of the impossible demands and the incredible responsibility, just as he did when struggling in the aftermath of Hurricane Andrew.

Clients have called him "the real deal"; "an old-school fighter" who "cared about us as people first." After he won a case for a little girl who suffered brain damage when she was hit by a car, her mother wrote: "John Uustal is a true genius, and he has a heart of gold. I truly believe he's doing what he's supposed to be doing. This is something I try to tell people."

COACH AND TEACHER

John Uustal grew up in Fort Lauderdale. His mother was a teacher, his father was a coach, and he saw the real impact they each had on so many young lives. He loves kids, and he dedicates himself to coaching competitive soccer for Fort Lauderdale Select. He played soccer locally at St. Thomas Aquinas High School, and later he was one of the few Americans chosen to play for the Italian Embassy Soccer Team in Washington, D.C.

He finds opportunities to coach in the law as well. Because he only accepts a small handful of cases, he believes that it is important to freely give his time advising, assisting and teaching other attorneys who ask for help. He gives lectures across the country and teaches trial skills.

Recent Cases

- **\$51 Million Verdict For Defective Seatbelt**
- **\$11.65 Million Verdict For Fraud And Conspiracy**
- **\$30.235 Million Verdict Against Big Tobacco**
- **\$2 Million Verdict For Pedestrian Death**
- **\$3.47 Million For Nissan Rollover**
- **\$60 Million For Exploding Fuel Tank**

Education:

- **B.S., Georgetown University's School of Foreign Service**
- **J.D., *Summa Cum Laude*, University of Miami**

Areas of Practice:

- **Catastrophic Injury**
- **Wrongful Death**
- **Qui Tam**

Awards and Honors:

- **Best Lawyers in America (2008-2015)**
- **Florida *Super Lawyers*® (2009- 2015)**
- **Florida *Risings Stars* (2009)**
- **AVVO Rated Lawyer- Superb (perfect rating)**
- **AV® Rated by Martindale-Hubbell® (highest rank awarded)**

Professional Associations & Activities:

- **Summit Council**
- **Board of Directors- Florida Justices Association**
- **Appellate Section Chair- Broward County Bar Association**
- **Martindale-Hubbell®' s Register of Preeminent Lawyers**
- **Trial Section Chair- Broward County Bar Association**
- **Board Certified Civil Trial Specialist**

Kelley Uustal

CATASTROPHIC INJURY & WRONGFUL DEATH

John R. Hargrove



AN UNYIELDING COMMITMENT TO EXCELLENCE

John R. Hargrove is a skilled civil litigator at Kelley/Uustal. He has been involved in several noteworthy cases throughout the country during the course of his career, involving corporate derivative suits, antitrust matters, probate and trust litigation, nationwide class actions, First Amendment disputes, and related appeals. He was also one of the attorneys who represented the estate of Doctor Sam Sheppard in the late 1990s in the courts of Ohio in an effort to clear his name through the use of cutting-edge DNA evidence.

Combining his legal background with a dedication to the rights of the underprivileged, John's most gratifying professional efforts have been representing seniors who have suffered financial exploitation. His leadership in this field, which has involved nationwide class action lawsuits, has served to vindicate the financial rights of tens of thousands of senior citizens.

John earned his Juris Doctorate from the Indiana University School of Law, where he graduated *magna cum laude*. He was named by the law school faculty as the most outstanding student in his graduating class. While in school, he served as a member of the law school's Board of Visitors. After graduation, he served a two-year judicial clerkship in a U.S. Court of Appeals.

John also holds a master's degree in public administration from Harvard University, where he now gives lectures on negotiations. He is also a lecturer at The George Washington University on law office management. Additionally, he has been a guest speaker on leadership at The United States Military Academy at West Point, New York.

COMMUNITY & PHILANTHROPIC INVOLVEMENT

Committed to helping others, John has long been involved in the not-for-profit sector. He has been honored by S.O.S. Children's Village International for his dedication to philanthropy. He is also a director of Hospice of Broward County and a past trustee of the Fort Lauderdale Museum of Discovery and Science. Additionally, John has served as board chair and Director Emeritus of the United Way of Broward County and as president of the Fort Lauderdale chapter of the Federal Bar Association.

As a graduate of Butler University, he served as a member of the board of trustees for several years and was board chair between 2008 and 2011. He was later named Butler's first Board of Trustees Chair Emeritus in 2014.

John has been listed in the Florida *Super Lawyers*® list every year since the inception of that publication. In addition, he has for many years been listed in *The Best Lawyers in America*© in the categories of commercial litigation, appeals, trust and estate litigation, and First Amendment law. He was named Florida's "First Amendment Lawyer of the Year" in the 2015 edition.

Reflecting their dedication to providing educational opportunities to the underprivileged, John and his wife, Mary Cheryl, support two family scholarships – one at George Washington University and one at Butler University.

Education

- **J.D., Magna cum Laude, Indiana University School of Law**
- **M.A. Public Administration, Harvard University**

Areas of Practice

- **Appeals**
- **Alternative dispute resolution**
- **Annuity and insurance litigation**
- **Class actions**
- **Commercial disputes**
- **General civil litigation**
- **Media and telecommunications law**
- **Professional/Directors and Officers liability**
- **Will and trust contests and other fiduciary litigation**

1 JEFFREY KALIEL (CA 238293)
2 **TYCKO & ZAVAREEI LLP**
3 1828 L Street, N.W., Suite 1000
4 Washington, DC 20036
5 Telephone: (202) 973-0900
6 Facsimile: (202) 973-0950
7 *jkaliel@tzlegal.com*

8 *Counsel for Plaintiff*

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

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

13 Plaintiff,

14 vs.

15 BANK OF AMERICA, N.A.,

16 Defendant.

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

CERTIFICATE OF SERVICE

17 I, Jeffrey D. Kaliel, on this 31st day of October, 2017, hereby certify that Plaintiff's
18 Unopposed Motion for Preliminary Approval of Class Settlement and for Certification of
19 Settlement Class was filed via the Court's CM ECF system, thereby causing a true and
20 correct copy to be sent to all ECF-registered counsel of record.

21 Dated: October 31, 2017

s/ Jeffrey Kaliel

22 **JEFFREY KALIEL (CA 238293)**
23 **TYCKO & ZAVAREEI LLP**
24 1828 L Street, NW, Suite 1000
25 Washington, DC 20036
26 Telephone: (202) 973-0900
27 Facsimile: (202) 973-0950
28 *jkaliel@tzlegal.com*