

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**SHERRY L. BODNAR, on Behalf of herself
and All Others Similarly Situated,**

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 2:14-cv-03224-EGS

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement” or “Settlement”) is made by and among: (1) Plaintiff Sherry Bodnar, on behalf of herself and the Settlement Class (as defined below); and (2) Bank of America, N.A. (“Bank of America”) (collectively, the “Parties”). Bank of America, Class Counsel (defined below) and Plaintiff hereby agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court (as defined below) of a Final Approval Order (as defined below), all claims of Plaintiff and the Settlement Class Members (as defined below) against Bank of America in the case styled *Bodnar v. Bank of America*, Case No. 2:14-cv-03224 (“Action”), shall be settled, compromised, and released upon the terms and conditions contained herein.

I. Recitals

1. On June 6, 2014, Plaintiff Sherry Bodnar filed a Class Action Complaint in the United States District Court for the Eastern District of Pennsylvania seeking monetary damages, restitution and declaratory relief from Bank of America based on its alleged unfair and misleading

assessment and collection of Overdraft Fees resulting from certain debit card transactions authorized when sufficient funds were available to cover the amount of authorization.

2. On August 1, 2014, Bank of America filed a Motion to Dismiss the Complaint.

3. On August 22, 2014 Plaintiff Bodnar filed her Response to the Motion to Dismiss.

On September 5, 2014, Bank of America filed its Reply in support of its Motion to Dismiss.

4. On September 23, 2014, the Court conducted a lengthy oral argument on the Motion to Dismiss.

5. On October 15, 2014, the Court issued an order denying the Motion to Dismiss.

6. On November 24, 2014, Bank of America filed its Amended Answer and Affirmative Defenses to the Complaint.

7. Over the next nine months, the Parties vigorously litigated the case and engaged in extensive discovery efforts. Plaintiff requested, received, and reviewed over 50,000 pages of documents. Plaintiff deposed five separate Bank of America employees, and issued four third party subpoenas. Defendant deposed Plaintiff Bodnar.

8. On August 24, 2015 Plaintiff filed an Amended Complaint that included allegations based on the extensive information obtained through discovery.

9. On September 30, 2015, Bank of America filed a Motion to Dismiss the Second Amended Complaint.

10. Plaintiff was in the process of briefing its opposition to the Second Motion to Dismiss when the Parties reached an agreement in principle to resolve the Action.

11. Settlement discussions began in early 2015. At that time, Bank of America provided Plaintiff aggregate information regarding its revenue for Overdraft Fees on consumer deposit transactions authorized and approved when sufficient funds were available to cover the amount of

authorization, as well as other information, including account disclosures used by Bank of America during a multi-year period of time.

12. On February 12, 2015, Class Counsel traveled to New York and met with counsel for Bank of America to discuss discovery issues and to begin settlement discussions.

13. On March 16, 2015, the Parties attended a mediation session before the Honorable Carol Sandra Moore Wells of the Eastern District of Pennsylvania in Philadelphia, PA. The mediation did not result in an agreement to settle the action, although Judge Wells remained involved as the Parties continued settlement discussions.

14. On June 15, 2015, with Judge Wells' permission, the Parties attended a second mediation with a nationally respected mediator, Hon. Layn Phillips (Ret.), at his office in California. That mediation did not result in a settlement. However, for the next several months while the litigation advanced, Judge Phillips continued to facilitate discussions between the Parties, in an attempt to resolve the litigation.

15. In October, 2015, and after many months of on-and-off, arms-length, good faith discussions, the Parties reached an agreement on the material terms of a settlement and signed a Binding Term Sheet, which memorialized, subject to negotiation and execution of this Agreement and subject to Preliminary Approval and Final Approval by the Court as required by Rule 23 of the Federal Rules of Civil Procedure, the Parties' good faith intention to fully, finally and forever resolve, discharge and release all rights and claims of Plaintiff and the Settlement Class Members (defined below) in exchange for Bank of America's agreement to pay the sum of Twenty Seven Million Five Hundred Thousand Dollars (\$27,500,000.00) to create a common fund for the benefit of the Settlement Class, as further detailed below.

16. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims (defined below) by the Settlement Class Members. The Parties intend this Agreement, once it is finally approved and becomes effective, to bind Plaintiff, Bank of America and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, Plaintiff and Bank of America agree to the Settlement, subject to approval by the Court, as follows.

II. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement and the attached exhibits:

17. “Account” means any consumer checking account maintained by Bank of America in the United States.

18. “Bank of America’s Counsel” means Morrison Foerster LLP.

19. “Class Counsel” means Tycko & Zavareei LLP, Kopelowitz Ostrow P.A. and Shepherd, Finkelman, Miller & Shah, LLP.

20. “Class Period” means the period from May 25, 2011, through and including the date of Final Approval of the Settlement.

21. “Confidential Information” means all documents, data, and things provided to Class Counsel by Bank of America during the course of the Action, whether by formal discovery or otherwise, that were designated as confidential or highly confidential. Notwithstanding the above, neither documents nor information described in this section that were filed in the public record during the course of this Action, unless currently under seal, shall be Confidential Information.

22. “Court” means the United States District Court for the Eastern District of Pennsylvania.

23. “Current Account Holder” means a Settlement Class Member who continues to have his or her Account as of the date that the Net Settlement Fund is distributed to the Settlement Class Members pursuant to this Agreement.

24. “Debit Card” means a card, sticker, tag or other device issued or provided by Bank of America, including a debit card, check card or automated teller machine (“ATM”) card, that can be used to debit funds from an Account by Point of Sale and ATM transactions.

25. “Effective Date” means the fifth business day after which all of the following events have occurred:

- a. The Court has entered, without material change, the Final Approval Order; and
- b. The time for appeal or petition has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal or certiorari could be taken has finally expired and relief from a failure to file same is not available.

26. “Escrow Account” means the interest bearing account to be established by the Settlement Administrator consistent with the terms and conditions described in Section III below.

27. “Final Approval” means the date that the Court enters the Final Approval Order granting final approval to the Settlement and determines the amount of fees, costs and expenses awarded to Class Counsel and the amount of the Service Award (defined below) to Plaintiff. The

proposed Final Approval Order that will be attached to the motion for final approval of the Settlement shall be in a form agreed upon by Class Counsel and Bank of America's Counsel.

28. "Final Approval Order" means the order and judgment that the Court enters upon finally approving the Settlement.

29. "Net Settlement Fund" means the Settlement Amount, plus any interest earned, minus Court approved attorneys' fees, costs and expenses, Court approved Service Award to Plaintiff, and notice and administration expenses incurred by the Settlement Administrator.

30. "Notice" means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

31. "Notice Program" means the methods provided for in this Agreement for giving the Notice and consists of Emailed Notice, Mailed Notice and Long-form Notice substantially in the forms attached hereto as Exhibits 1, 2 and 3, respectively. A complete description of the contemplated Notice Program is provided in Section VIII, below.

32. "Opt-Out Period" means the period that begins the day after the earliest date on which the Notice is first mailed or published, and that ends no later than 30 days prior to the Final Approval Hearing. The Opt-Out deadline will be specified in the Notice.

33. "Overdraft Fee" means any fee assessed to a holder of an Account for items paid when the Account has insufficient funds at the time of settlement.

34. "Parties" means Plaintiff and Bank of America.

35. "Past Account Holder" means a Settlement Class Member who no longer holds his or her Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

36. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties.

37. “Released Claims” means all claims to be released as specified in Section XIV of this Agreement. The “Releases” means all of the releases contained in Section XIV of this Agreement.

38. “Released Parties” means those persons and entities released in Section XIV below.

39. “Releasing Parties” means Plaintiff and all Settlement Class Members, and each of their respective heirs, assigns, beneficiaries and successors.

40. “Service Award” means any Court ordered payment to Plaintiff in addition to any payment due Plaintiff as a Settlement Class Member.

41. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement and the attached exhibits.

42. “Settlement Administrator” is Epiq Class Action and Mass Tort Solutions.

43. “Settlement Amount” means the sum of \$27,500,000.00 to create a common fund for the benefit of the Settlement Class.

44. “Settlement Class” means all Bank of America consumer checking Account holders in the United States who, from May 25, 2011, through the date of preliminary settlement approval, were charged Overdraft Fees on transactions that were authorized and approved when sufficient funds were available to cover the amount of authorization.

45. “Settlement Class Member” means any person in the Settlement Class who does not opt out of the Settlement.

46. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of

the Notice Program, as a means for persons in the Settlement Class to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long-Form Notice, the order preliminarily approving this Settlement, and such other documents as Class Counsel and Bank of America's Counsel agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website until the Effective Date. The URL of the Settlement Website shall be www.BankofAmericaOverdraftSettlement.com or such other URL as Class Counsel and Bank of America's Counsel may subsequently agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the Bank of America logo or trademarks. Ownership of the Settlement Website URL shall be transferred to Bank of America within 10 days of the date on which operation of the Settlement Website ceases.

III. The Settlement Amount; Establishing and Maintaining the Escrow Account; Costs of Notice and Settlement Administration; Prospective Relief

47. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases set forth in Section XIV and the dismissal of the Action upon Final Approval, Bank of America agrees to pay the Settlement Amount.

48. The Settlement Amount shall be used for the following purposes:

- a. All payments to Settlement Class Members;
- b. Payment of the Court ordered award of Class Counsel's attorneys' fees, costs, and expenses pursuant to Section XV hereof;
- c. Payment of the Court ordered Service Award to Plaintiff pursuant to Section XV hereof;

- d. Payment of any costs incurred by the Settlement Administrator in connection with the Settlement Administrator's duties described in Section VII;
- e. Payment of all taxes as set forth in Paragraph 50; and
- f. Payment of any other fees, costs and expenses not specifically enumerated in Subparagraphs (a) through (e) of this Paragraph, subject to approval of Class Counsel, Bank of America and the Court.

49. In no event shall Bank of America be required to pay more than the Settlement Amount in connection with this Settlement. No portion of the Settlement Amount shall revert to Bank of America, except where the Settlement is terminated pursuant to Paragraph 85.

50. Within ten calendar days of Preliminary Approval, Bank of America shall deposit the Settlement Amount into the Escrow Account.

51. The funds in the Escrow 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 Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed upon Bank of America, Bank of America's Counsel, Plaintiff and/or Class Counsel with respect to income earned by the Escrow Account for any period during which the Escrow 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 Escrow Account. Bank of America and Bank of America's Counsel and Plaintiff and Class Counsel shall have no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold Bank of America and Bank of America's Counsel and Plaintiff and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

52. In addition to the Settlement Amount, Bank of America agrees that within 90 days of the Effective Date it will distribute a statement insert or similar communication to Current Account Holders that describes the then-current Bank policy with respect to authorization and settlement policies for debit card transactions, and the effect those policies may have on the assessment of Overdraft Fees. While drafting this communication, the Bank will seek input from Class Counsel and Plaintiff and give fair consideration thereto.

IV. Conditional Certification of the Settlement Class

53. For purposes of settlement, Plaintiff shall ask the Court to certify the Settlement Class under Federal Rule of Civil Procedure 23(b)(2) and (b)(3).

54. Bank of America agrees to the certification of the Settlement Class for purposes of this Settlement only. If the Court declines to approve the Settlement, or if the Court changes the Settlement Class composition or the terms of the Settlement in any way not acceptable to Bank of America after reasonable consultation with Class Counsel, or if certification of the Settlement Class or approval of the Settlement is reversed, or if certification of the Settlement Class or approval of the Settlement is changed upon appeal or review in any way not acceptable to Bank of America after reasonable consultation with Class Counsel, Bank of America shall have the right to terminate the Settlement pursuant to Section XVI.

55. If the Settlement is not finally approved by the Court, or the Settlement is terminated, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action. If the Settlement is not finally approved or is terminated, Bank of America shall not be precluded from challenging class certification in further proceedings in the Action or in any other action. No agreements made by or entered into by Bank of America in connection with the Settlement may be used by Plaintiff,

any person in the Settlement Class or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other action.

V. Preliminary Approval

56. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement (“Preliminary Approval Order”). The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Bank of America’s Counsel. The motion for Preliminary Approval shall request that the Court:

- a. Approve the terms of the Settlement as within the range of fair, adequate and reasonable;
- b. Provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only;
- c. Approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement, substantially in the forms attached to this Agreement as Exhibits 1, 2 and 3;
- d. Approve the procedures below for persons in the Settlement Class to exclude themselves from the Settlement or to object to the Settlement;
- e. Stay the Action pending Final Approval of the Settlement; and
- f. Schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel and Bank of America’s Counsel, at which the Court will conduct an inquiry into the fairness, reasonableness and adequacy of the Settlement, and determine whether to approve the Settlement and Class Counsel’s application for

attorneys' fees, costs and expenses and for a Service Award to Plaintiff ("Final Approval Hearing").

57. Bank of America, at its own expense, shall serve or cause to be served a notice of the proposed Settlement, in conformance with the Class Action Fairness Act, 28 U.S.C. § 1715(b).

VI. Discovery

58. Class Counsel and Bank of America already have exchanged significant customer and class-related data and overdraft fee information. In addition, and consistent with its statutory and regulatory obligations to protect its customers' private financial information, Bank of America will provide reasonable assistance in the implementation of this Settlement by providing to the Settlement Administrator the list of names and addresses of identifiable persons in the Settlement Class that will be used in providing the Email and Mailed Notice to the Settlement Class (the "Class List"). Bank of America, Class Counsel (on its own behalf and on behalf of the Class Representative and the Settlement Class), and the Settlement Administrator will agree that the Settlement Administrator will maintain the Class List and other information provided to it by or on behalf of Bank of America, including information derived therefrom, in a confidential manner, and that the Settlement Administrator will not provide such Class List or other information to any other person, including Class Counsel and the Class Representative, without the prior written consent of Bank of America. In generating the Class List, Bank of America will use commercially reasonable procedures to identify each person who, based on available account data, falls within the definition of the Settlement Class. Should Bank of America subsequently decide to remove a member from the Class List, Bank of America shall immediately provide Class Counsel with the reasons for each proposed removal. Settlement Class Counsel shall then have ten (10) days to object to such removal. The parties agree to attempt to resolve any such objections in good faith.

VII. Settlement Administrator

59. Class Counsel, in consultation with Bank of America, shall select the Settlement Administrator. The Settlement Administrator shall administer various aspects of the Settlement as described in Paragraph 61 below and perform such other functions assigned to the Settlement Administrator elsewhere in this Agreement, including, but not limited to: providing Emailed and Mailed Notice to persons in the Settlement Class; effectuating the Notice Program pursuant to Section VIII below; distributing the Settlement Amount as provided herein; and, in the event of a termination of the Settlement pursuant to Section XVI below, returning the Escrow Account, along with any accrued interest or earnings, less any amounts already paid to Settlement Administrator or committed to pay for expenses and costs associated with investments and/or taxes with respect to the Escrow Account, to Bank of America. Class Counsel, in consultation with Bank of America's Counsel, shall supervise and oversee the Settlement Administrator.

60. Settlement Administrator fees, charges and expenses shall be paid from the Escrow Account within 30 days of Class Counsel's and Bank of America's Counsel's receipt and approval of an invoice from the Settlement Administrator. Since the notice and settlement administration costs are being paid from the Settlement Fund, payments to the Settlement Administrator shall not be conditioned on Final Approval.

61. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, are as follows:

- a. Obtain from Bank of America and Class Counsel name, email, and mailing address information (to the extent it is reasonably available) for persons in the Settlement Class, and, to the extent necessary, verify and update the addresses received through the National Change of Address database for the purpose of mailing

the Mailed Notice, and later mailing distribution checks to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for Bank of America to make the payment by a credit to the Settlement Class Members' Accounts;

b. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;

c. Establish and maintain the Settlement Website;

d. Establish and maintain an automated toll-free telephone line for persons in the Settlement Class to call for information on the Settlement (except that the Settlement Administrator shall not give, and shall not be expected to give, legal advice);

e. Respond to any mailed inquiries from persons in the Settlement Class;

f. Process all requests for exclusion from persons in the Settlement Class;

g. Provide weekly reports and a final report to Class Counsel and Bank of America's Counsel that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date and other pertinent information;

h. At Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each person in the Settlement Class who timely and properly requested exclusion from the Settlement Class;

i. Transfer to Bank of America the amount of the Net Settlement Fund required to make Settlement Payments to Current Account Holders by a credit to those Settlement Class Members' Accounts;

- j. Process and transmit distributions to Settlement Class Members from the Net Settlement Fund;
- k. Perform all tax-related services for the Escrow Account as provided in this Agreement;
- l. Perform any other Settlement-administration-related function at the instruction of Class Counsel and Bank of America's Counsel, including, but not limited to, verifying that Bank of America has correctly made the distributions to Settlement Class Members with current Accounts; and
- m. Pay invoices, expenses and costs upon approval by Class Counsel and Bank of America's Counsel, as provided in this Agreement.

VIII. Providing Notice to the Settlement Class

62. Upon Preliminary Approval of the Settlement, the Settlement Administrator shall implement the Notice Program outlined herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which persons in the Settlement Class may opt-out of the Settlement Class, which shall be 60 days from the time the Notice Plan is completed; a date by which persons in the Settlement Class may object to the Settlement, which shall be 60 days from the time the Notice Plan is complete; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which persons in the Settlement Class may access this Agreement and other related documents and information. Class Counsel and Bank of America's Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices provided under or as part of the Notice Program shall not bear or include the Bank

of America logo or trademarks, the return address of Bank of America, the Bank of America colors, or otherwise be styled so as to appear to originate from Bank of America.

63. The Notice also shall include a procedure for persons in the Settlement Class to opt-out at any time during the Opt-Out Period. A person in the Settlement Class who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

64. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and for Service Awards to Plaintiff. Objections to the Settlement or to the application for attorneys' fees, costs, expenses and Service Awards must be mailed to the Clerk of the Court, Class Counsel and Bank of America's Counsel. For an objection to be considered by the Court, the objection must be postmarked no later than the last day of the Opt-Out Period, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. The name of the Action;
- b. The objector's full name, address and telephone number;
- c. An explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. All grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- e. The number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, 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;

- f. 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;
- g. The number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- h. 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;
- i. The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- j. A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- k. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- l. The objector's signature (an attorney's signature is not sufficient).

65. The Notice Plan has three components: (1) Email Notice for Settlement Class members who are Current Account Holders for whom the Bank does have email addresses; (2) Mailed Notice for: (a) Settlement Class members for whom Email Notice is not sent because email addresses aren't available to the Bank; (b) Settlement Class members for whom Email Notice was

returned or bounced back as undeliverable; and (c) all Former Account Holders; and (3) a “Long-form Notice” with more detail than the Email Notice or Mailed Notice, and which will be available on the Settlement Website.

66. Within 30 days of Preliminary Approval, the Settlement Administrator will dispatch Email Notice to each Current Account Holder for whom Bank of America has an email address. Should the Settlement Administrator learn (through an email bounce-back or otherwise) that the email address in Bank of America’s records is invalid, the Settlement Administrator will send Mailed Notice to that Settlement Class member.

67. For each Settlement Class member for whom an attempted Emailed Notice is returned or bounces back as undeliverable, and for all Former Account Holders, the Settlement Administrator will mail, via first-class mail postcard, Mailed Notice to each Settlement Class Member at the address identified in the Bank’s records. The Settlement Administrator will request that Bank of America provide all necessary contact information necessary to facilitate the Mailed Notice program, including the most recent mailing addresses on file. Before mailing postcards, the Settlement Administrator will verify and update the mailing addresses received through the United States Postal Service’s National Change of Address database to maximize address accuracy.

68. Next, the Settlement Administrator will perform reasonable address traces for all postcards that are returned as undeliverable and will promptly re-mail Mailed Notice postcards to those Class members whose original mailed postcards were returned as undeliverable and whose new addresses were identified as of that time through address traces (“the Notice Re-mailing Process”).

69. A detailed, Long-form Notice will be available on the Settlement Website. The Long-form Notice will provide more detailed information about the settlement and the process for objecting than the Emailed Notice and Mailed Notice.

70. The Notice Plan (which is comprised of the Emailed Notice, Mailed Notice, and the Notice Re-mailing Process) shall be completed no later than sixty (60) days after Preliminary Approval. Within seven (7) days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator shall provide Class Counsel and Bank of America's Counsel an affidavit that confirms that the Notice Plan was completed in a timely manner. Class Counsel shall file that affidavit with the Court as an exhibit to or in conjunction with Plaintiff's motion for Final Approval of the Settlement.

IX. Final Approval Order and Judgment

71. Plaintiff's motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiff shall file her motion for Final Approval of the Settlement and their application for attorneys' fees, costs and expenses and for Service Awards for Plaintiff no later than thirty (30) days prior to the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiff's motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs and expenses and for a Service Award for Plaintiff. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the fee, cost, expense or Service Award application, provided the objectors filed timely objections that meet all of the requirements listed in Paragraph 63 above.

72. The Court at the Final Approval Hearing will determine whether to enter the Final Approval Order granting Final Approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and a Service Award. The proposed Final Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Bank of America's Counsel. Such Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, reasonable and adequate;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies due process requirements;
- d. Dismiss the Action with prejudice and without costs;
- e. Bar and enjoin Plaintiff and all Settlement Class Members from asserting any of the Released Claims, as set forth in Section XIV, including during any appeal from the Final Approval Order;
- f. Release Bank of America and the Released Parties from the Released Claims, as set forth in Section XIV; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Plaintiff, Bank of America and all Settlement Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

X. Allocation of Net Settlement Fund Among Settlement Class Members

73. No later than thirty days after the execution of this Agreement, consistent with its statutory and regulatory obligations to protect its customers' private financial information, Bank of America shall make available to Class Counsel and to Plaintiff's expert data sufficient to determine

and implement the allocation of the Net Settlement Fund as provided for in this Section of the Agreement.

74. Class Counsel and Bank of America will use the following methodology to determine the amount of the distribution from the Net Settlement Fund to which each Settlement Class Member that can be identified from the data will be entitled:

- a. All Accounts held by Settlement Class Members will be identified in which, on one or more calendar days during the Class Period, Bank of America assessed Overdraft Fees on debit card transactions that were initially authorized when sufficient funds were available to cover the amount of authorization (“Relevant Overdraft Fees”).
- b. Relevant Overdraft Fees will be totaled for each Account.
- c. The Net Settlement Fund will be allocated *pro rata* to the Settlement Class Members based on their relative number of Relevant Overdraft Fees, except that no Settlement Class Member will receive an allocation less than \$5.
- d. The Parties agree that the foregoing allocation formula is exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, subject to Section XI below, the amount of any distribution each Settlement Class Member should receive from the Net Settlement Fund. The fact that this allocation formula is used herein is not intended and shall not be used for any other purpose or objective whatsoever.

XI. Distribution of Net Settlement Fund to Settlement Class Members

75. Within a reasonable period of time after the Effective Date, Bank of America and the Settlement Administrator will distribute the Net Settlement Fund to the Settlement Class Members.

Each Settlement Class Member who had Relevant Overdraft Fees shall receive a distribution in the amount of a pro rata share of the Net Settlement Fund, consistent with Paragraph 74, *supra*.

76. The Settlement Administrator shall divide the total amount of the Net Settlement Fund by the total number of all Settlement Class Members' Relevant Overdraft Fees, which yields the "Per Fee Percentage."

77. The Settlement Administrator shall multiply each Settlement Class Member's total number of Relevant Overdraft Fees by the Per Fee Percentage, which yields each Settlement Class Member's Pro Rata Percentage.

78. Each Settlement Class Member's Pro Rata Percentage will be multiplied by the amount of the Net Settlement Fund, which yields a Pre-Adjustment Payment Amount for each Settlement Class Member.

79. If any Settlement Class Member's Pre-Adjustment Payment Amount is less than \$5.00, the Settlement Class Member's Payment Amount shall be adjusted to \$5.00. The remainder of the Net Settlement Fund shall then be apportioned pro rata to all other Settlement Class Members by multiplying those Settlement Class Members' Pro Rata Percentages by the remaining amount of the Net Settlement Fund.

80. Settlement Payments to Current Account Holders will be made by a credit to those Settlement Class Members' Accounts by Bank of America. Such credit shall be accompanied by a description on the Account statement of "Credit—Fees Charged" or another description determined by Bank of America. Bank of America shall provide the notice of account credit described in this Paragraph in or with the account statement on which the credit is reflected. Bank of America will bear any costs associated with implementing the account credits and notification discussed in this Paragraph.

81. Any account credits paid pursuant to Paragraph 80 shall be paid from the Net Settlement Fund. For each Current Account Holder entitled to a Settlement Payment, the Settlement Administrator shall provide Bank of America with the account holder's name, account number, and the amount of account credit to which he or she is entitled. The Settlement Administrator shall also transfer to Bank of America from the Escrow Account the sum of the total Settlement Payments to be credited to the accounts of all Current Account Holders ("Current Account Holder Credit Amount"). Within 3 days of the Effective Date, Bank of America will distribute those funds by crediting the Accounts of the Current Account Holders, following which it will provide written verification to Class Counsel and the Settlement Administrator of the amount of account credits that were given. To the extent any funds transferred from the Escrow Account to Bank of America are not successfully delivered to a Current Account Holder, those funds shall be returned by Bank of America to the Escrow Account. Under no circumstances shall Bank of America be required to credit the Accounts of the Current Account Holders pursuant to this paragraph in an aggregate amount that exceeds the Current Account Holder Credit Amount.

82. Settlement Class Member Payments to Past Account Holders will be made by check with an appropriate legend, in a form approved by Class Counsel and Bank of America's Counsel, to indicate that it is from the Settlement. Checks will be cut and mailed by the Settlement Administrator, and will be sent to the addresses that the Settlement Administrator identifies as valid Settlement Class Member addresses. Checks shall be valid for one hundred eighty (180) days. The Settlement Administrator will make reasonable efforts to locate the proper address for any Settlement Class Member whose check is returned by the Postal Service as undeliverable, and will re-mail it once to the updated address.

XII. Disposition of Residual Funds After Distribution to Settlement Class Members

83. Within thirty (30) days after the latest issued check is no longer valid pursuant to Paragraph 82 of the Settlement Agreement, any funds remaining in the Escrow Account resulting from uncashed settlement checks shall be disposed of in the following manner:

- a. To the extent necessary to compensate the Settlement Administrator for costs and expenses associated with notice and administration that have not already been paid;
- b. At the election and complete discretion of Class Counsel and counsel for Bank of America, the funds may be distributed to Settlement Class Members who received Settlement Class Member Payments on a pro rata basis, to the extent feasible and practical in light of the costs of administering such subsequent payments (all such costs to prepare and transmit such additional payments to be paid by the Settlement Fund); or
- c. At the election of Class Counsel and counsel for Bank of America, the funds may be distributed through a residual *cy pres* program. The residual *cy pres* recipient(s) shall be agreed upon by Bank of America and Class Counsel, and approved by the Court. Any residual *cy pres* distribution shall be paid as soon as reasonably possible following the completion of distribution of funds to the Settlement Class Members.
- d. If the Class Counsel and counsel for Bank of America are unable to agree on a distribution plan ((a) or (b)) or on the recipient(s), they shall bring the matter, together with supporting materials and argument, to the Court for determination.

e. In the event no money remains in the Settlement Fund, the Parties shall have no obligation whatsoever to make any distribution as contemplated by subparagraphs (a) or (b) above of this paragraph.

XIII. Effect of a Termination

84. The grounds upon which this Agreement may be terminated are set forth in Paragraphs 94 and 95. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of Bank of America's obligations under the Settlement shall cease to be of any force and effect; the amounts in the Escrow Account shall be returned to Bank of America less any amounts paid to the Settlement Administrator; and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

85. In the event of a termination, any funds remaining in the Escrow Account shall be returned to Bank of America within seven days of termination, less any money that the Escrow Account has incurred an obligation to pay for administration related costs and expenses. In the event of a termination, Plaintiff shall have no liability for administration related costs and expenses paid to the Settlement Administrator.

86. This Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of Paragraphs 94 and 95.

87. In the event the Settlement is terminated in accordance with the provisions of Paragraphs 94 and 95, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose, without prejudice to Plaintiff' right to seek discovery and class certification, and

Bank of America's right to oppose class certification. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XIV. Releases

88. As of the Effective Date, Plaintiff and all Settlement Class Members (who do not timely opt-out of the Settlement) (collectively, "Releasors"), and each of their respective, executors, representatives, heirs, successors, bankruptcy trustees, guardians, wards, agents and assigns, and all those who claim through them or who assert claims on their behalf shall automatically be deemed to have fully and irrevocably released and forever discharged Bank of America and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them (collectively, "Releasees"), of and from any claim, right, demand, charge, complaint, action, cause of action, obligation, or liability for any type of relief and statutory or punitive damages predicated on any claim and for actual or statutory damages, punitive damages, restitution or other monetary relief of any and every kind, including, without limitation, those based on any federal, state, or local law, statute, regulation, or common law, including all claims for declaratory or injunctive relief, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, which the Class Representative or any Settlement Class Member ever had, now has or may have in the future resulting from, arising out of or in any way, directly or indirectly, relating to (a) any claims that were or could have been alleged in the Complaint or Amended Complaint; or (b) any conduct prior to the date of final settlement approval that was or could have been alleged in the Complaint or

Amended Complaint. For the avoidance of doubt, the Released Claims include, and each Releasor expressly waives and fully, finally and forever settles any claims it may have against Releasees or any of them under California Business and Professions Code § 17200 *et seq.* and similar state laws, which claims are included in and expressly incorporated into this Paragraph.

89. Plaintiff and each Settlement Class Member waive and release any and all provisions, rights, and benefits conferred either (a) by section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, with respect to the claims released pursuant to Paragraph 88 hereto. Section 1542 of the California Civil Code reads:

Section 1542. General Release, extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Plaintiff and each Settlement Class Member may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of Paragraph 88 hereof, but each of those individuals expressly agrees that, upon entry of the Final Judgment, he or she shall have waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the claims released pursuant to Paragraph 88 hereof, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts.

90. Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and

irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters and conduct described in or subsumed by this Paragraph and Paragraph 88. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases contained in this Paragraph and in Paragraph 88, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement or never receives a distribution of funds or credits from the Settlement.

XV. Payment of Attorneys' Fees, Costs and Incentive Awards

A. Class Counsel Fees and Costs

91. Any award of attorneys' fees, costs and expenses to Class Counsel shall be payable solely from the Escrow Account and taken from the Settlement Fund, and is subject to Court approval. The determination of Class Counsel's request for attorneys' fees shall be based on controlling Third Circuit precedent involving the award of fees in common fund class actions. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, any award of attorneys' fees, costs and expenses to Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs and expenses to Class Counsel in the amounts sought by Class Counsel, or at all, the remaining provisions of this Agreement shall remain in full force and effect. The Parties negotiated and reached this Agreement only after reaching agreement on all other material terms of this Settlement.

B. Payment of Attorneys' Fees and Costs

92. Within 10 days of the Court's entering of the Final Approval Order, the Settlement Administrator shall pay from the Escrow Account to Class Counsel all Court approved attorneys' fees, costs and expenses. Class Counsel shall furnish to the Settlement Administrator any required tax information or forms before the payment is made.

C. Class Representative Service Awards

93. Any Service Award is to be paid solely from the Escrow Account and taken from the Settlement Amount. Any Service Award shall be paid to Plaintiff in addition to any payments Plaintiff is entitled to receive as a Settlement Class Member. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, the Service Award sought by Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination. In the event the Court declines to approve, in whole or in part, a Service Award in the amount set forth above, or at all, the remaining provisions of this Agreement shall remain in full force and effect.

The Parties negotiated and reached this agreement regarding a Service Award only after reaching agreement on all other material terms of this Settlement.

XVI. Termination of Settlement

94. This Settlement may be terminated by either Bank of America or Class Counsel by serving on counsel for the opposing Party and filing with the Court a written notice of termination within fourteen days after any of the following occurrences:

- a. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- b. An appellate court reverses the Final Approval Order, and the Settlement is not reinstated without material change by the Court on remand;

- c. Any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Bank of America or Class Counsel seeking to terminate the Settlement reasonably considers material;
- d. The Effective Date does not occur; or
- e. Any other ground for termination provided for elsewhere in this Agreement.

95. Bank of America also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within fourteen days of its receipt from the Settlement Administrator of the final opt-out report, if the number of persons in the Settlement Class who timely request exclusion from the Settlement Class equals or exceeds 2.5% of the Settlement Class.

96. In the event of a termination of the Settlement, any amounts remaining in the Escrow Account shall be remitted to Bank of America. Bank of America shall have no right to seek reimbursement from Plaintiff or Class Counsel for any funds disbursed from the Escrow Account.

97. In the event of a termination of the Settlement pursuant to this Section, the Parties retain all of their pre-Settlement litigation rights and defenses, including Plaintiff' right to seek class certification and Bank of America's right to oppose class certification.

XVII. Parties' Positions on the Action and Settlement

98. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or

an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.

99. Class Counsel and Plaintiff believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have fully investigated the facts and law relevant to the merits of the claims, have conducted extensive formal and informal discovery, and have conducted independent investigation of the challenged practices. Class Counsel and Plaintiff have concluded that the proposed Settlement set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

100. Bank of America disputes the claims alleged in the Action and does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Bank of America has agreed to enter into this Agreement to avoid the further expense, inconvenience and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

101. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.

102. In addition to any other defenses Bank of America may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

XVIII. Miscellaneous Provisions

103. Gender and Plurals. As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

104. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

105. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect regardless of events that may occur, or court decisions that may be issued, in any other case in any court.

106. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

107. Return of Confidential Information and Other Discovery. Class Counsel, on behalf of themselves and their expert witnesses and consultants as well as others retained by them, acknowledge that during the course of this Action, they have received Confidential Information. No

later than thirty (30) days after the Effective Date, Class Counsel will return to Bank of America all Confidential Information and will certify under oath that they and their expert witnesses and consultants do not retain any copies or summaries or compilations or indices of such information. Within the same time period, Class Counsel will identify for Bank of America the expert witnesses, outside consultants, and any other individuals or entities to whom Confidential Information was given, and will advise those persons of this requirement and will ensure their compliance with it. This provision is not intended to cover work product of Class Counsel but is intended to cover Confidential Information that might simply be attached to any work product. Class Counsel also will not use any of the Confidential Information learned or obtained in this Action for any purpose after the date of Effective Date.

108. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter herein. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

109. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

110. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

111. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement and performance of this Agreement, which shall be construed in accordance with, and

be governed by, the laws of the State of Pennsylvania. The Court shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of their respective agreements to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

112. Notices. All notices to counsel provided for herein shall be sent by email and facsimile with a hard copy sent by overnight mail to:

As to Plaintiff and the Settlement Class:

Hassan Zavareei
hzavareei@tzlegal.com
TYCKO & ZAVAREEI LLP
1828 L Street, NW, Ste. 1000
Washington, DC 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950

As to Bank of America:

Michael B. Miller
mbmiller@mofo.com
MORRISON & FOERSTER LLP
250 W. 55th Street
New York, NY 10019
Telephone: (212) 468.8009
Facsimile: (212) 903.3720 |

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

113. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by the Parties and their respective counsel and approved by the Court.

114. No Waiver. The waiver by any party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

115. Authority. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

116. Agreement Mutually Prepared. Neither Bank of America nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

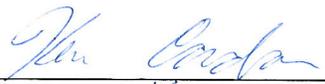
117. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that: (a) they have performed an independent investigation of the allegations of fact and law made in connection with the Action; and (b) even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Bank of America has provided and is providing information that Plaintiff reasonably request to identify persons in the Settlement Class and the alleged Overdraft Fees they incurred. It is the Parties' intention to resolve their disputes in connection with the Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

118. Receipt of Advice of Counsel. Each Party acknowledges, agrees and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Section XIV above, received independent legal advice with respect to the advisability of entering this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

PLAINTIFF

Sherry Bodnar

BANK OF AMERICA, N.A.


Print Name: KEVIN CONDON
Capacity: SENIOR VICE PRESIDENT,
CHECKING + DEBIT PRODUCT EXECUTIVE

CLASS COUNSEL

Hassan Zavareei

Jeffrey Ostrow

James Shah

118. Receipt of Advice of Counsel. Each Party acknowledges, agrees and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Section XIV above, received independent legal advice with respect to the advisability of entering this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

PLAINTIFF


Sherry Bodnar

BANK OF AMERICA, N.A.

Print Name:
Capacity:

CLASS COUNSEL

Hassan Zavareei

Jeffrey Ostrow

James Shah

118. Receipt of Advice of Counsel. Each Party acknowledges, agrees and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Section XIV above, received independent legal advice with respect to the advisability of entering this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

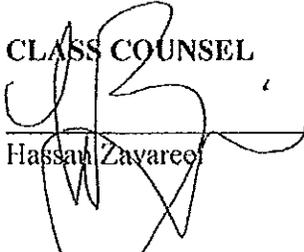
PLAINTIFF

Sherry Bodnar

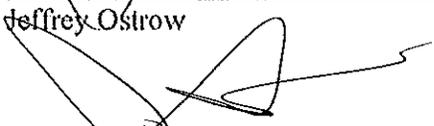
BANK OF AMERICA, N.A.

Print Name:
Capacity:

CLASS COUNSEL



Hassan Zavaree



Jeffrey Ostrow



James Shah

118. Receipt of Advice of Counsel. Each Party acknowledges, agrees and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained in Section XIV above, received independent legal advice with respect to the advisability of entering this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

PLAINTIFF

Sherry Bodnar

BANK OF AMERICA, N.A.

Print Name:
Capacity:

CLASS COUNSEL



Hassan Zavareei



Jeffrey Ostrow

James Shah