

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE is made and entered into on June 4, 2019, by and between Plaintiffs Kenneth D. Owens, Samantha A. Holley, Nicoletta Pantelyat, Kara L. Gariglio, Isabelle Scherer, Jonathan Tule, and Kelsea D. Wiggins, individually and on behalf of the Settlement Class¹ they propose to represent, on the one hand, and Bank of America, N.A. and Bank of America Corporation, on the other hand, by and through their respective authorized signatories in full and complete settlement of the claims advanced in *Owens, et al. v. Bank of America, N.A., et al.*, No. 1:19-cv-20614-MGC (S.D. Fla.).

I. RECITALS

WHEREAS, on February 15, 2019, Plaintiffs filed a Class Action Complaint against Defendants in the United States District Court for the Southern District of Florida, Case No. 1:19-cv-20614-MGC (the “Action”), alleging that Defendants improperly assessed overdraft fees on Plaintiffs’ non-recurring debit card transactions with the following merchants: Lyft, Inc., Grubhub, Inc., Gett, Inc., Eatstreet, Inc., PicMonkey LLC, Neighborfavor, Inc., AMI Entertainment Network, LLC, SeamlessWeb Professional Solutions LLC, Doordash, Inc., Postmates Inc., and Eat24Hours.com, Inc.;

WHEREAS, the Class Action Complaint filed on February 15, 2019 asserted a sole claim for breach of contract against Defendants.

WHEREAS, on March 22, 2019, Defendants filed their Answer, denying all liability;

WHEREAS, before entering into this Settlement Agreement, Plaintiffs, by and through Class Counsel, conducted a thorough examination, investigation, and evaluation of the relevant law, facts, and allegations necessary to analyze the merits of Plaintiffs’ claims and potential claims, the potential remedies available, and the strengths of the defenses thereto;

WHEREAS, this Settlement was reached as a result of extensive arm’s-length

¹ Unless otherwise defined, capitalized words or terms used in this Settlement Agreement and Release shall have the meanings set forth in Section II (titled “Definitions”) below.

negotiations commencing prior to the filing of the Complaint and after two (2) days of in-person mediations under the supervision of a retired United States District Court Magistrate and JAMS mediator, in Los Angeles, California, and numerous other settlement discussions. Before and during these settlement discussions and mediations, the Parties conducted an arm's-length exchange of sufficient information to permit Plaintiffs and Class Counsel to evaluate the claims and potential defenses and to meaningfully conduct informed settlement discussions;

WHEREAS, as a result of extensive arm's-length negotiations, Plaintiffs and Class Counsel, on behalf of the proposed Settlement Class, and Defendants entered into this Settlement Agreement to settle and resolve this Action;

WHEREAS, Defendants deny any and all liability to Plaintiffs and members of the proposed Settlement Class and believe they would ultimately be successful in their defenses to all claims asserted in the Action, but nevertheless desire to settle the Action, and all claims that could have been alleged therein, on the terms set forth in this Agreement solely for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing these proceedings;

WHEREAS, based upon their review, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs and Class Counsel on behalf of the other members of the proposed Settlement Class have agreed to settle the Action pursuant to the provisions of this Agreement, after considering, among other things: (i) the substantial benefits to the proposed Settlement Class Members under the terms of this Settlement; (ii) the risks, costs, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (iii) the desirability of consummating this Settlement as promptly as possible in order to provide effective relief to the proposed Settlement Class Members;

WHEREAS, the undersigned Class Counsel have conducted substantial discovery, have investigated the facts and underlying events relating to the subject matter of the claims, have carefully analyzed the applicable legal principles, and, along with Plaintiffs, have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens and costs

of further prosecution of their claims, and also taking into account the substantial benefits the proposed Settlement Class will receive pursuant to this Agreement as set forth below, that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the proposed Settlement Class and the Plaintiffs;

WHEREAS, the Parties agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any federal or state statute, rule or regulation, or principle of common law or equity, or of any liability or wrongdoing whatsoever, or of the truth of any of the claims asserted in the Action, or of the infirmity of any of the defenses that have been raised or could be raised by Defendants;

NOW THEREFORE, IT IS HEREBY AGREED THAT, in consideration of the covenants and agreements set forth herein, the Action shall be fully and finally settled and released, subject to judicial approval as required under Rule 23 of the Federal Rules of Civil Procedure, under the following terms and conditions:

II. DEFINITIONS

1. “Action” means the putative class action lawsuit entitled *Owens, et al. v. Bank of America, N.A., et al.*, No. 1:19-cv-20614-MGC, pending in the United States District Court, Southern District of Florida.

2. “Administration Expenses” means any and all reasonable fees, costs, and charges incurred, charged, or invoiced by the Settlement Administrator relating to the administration and notice of the Settlement, including but not limited to: (i) the reasonable costs and expenses that are associated with disseminating the notice to the Settlement Class, including, but not limited to, the Class Notice and the performance of the Notice Plan; (ii) the reasonable costs and expenses that are associated with the maintenance of the Settlement Fund as provided in this Agreement; (iii) the payment of Taxes, if any; and (iv) the reasonable costs and expenses of the distribution of the Settlement Fund to Settlement Class Members.

3. “Agreement,” “Settlement,” or “Settlement Agreement” means this Settlement Agreement and Release and the settlement embodied in this Settlement Agreement and Release,

including all attached Exhibits (which are an integral part of this Settlement Agreement and Release and are incorporated in their entirety by reference).

4. “AMI” means: (a) AMI Entertainment Network, LLC; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

5. “Bank of America” or “Defendants” means collectively Bank of America, N.A. and Bank of America Corporation.

6. “CAFA Notice” refers to the notice requirements imposed by 28 U.S.C. § 1715(d).

7. “Class Counsel” means Robert Ahdoot of Ahdoot & Wolfson, PC and Frank Hedin of Hedin Hall LLP.

8. “Complaint” means the Class Action Complaint filed in this Action on February 15, 2019 as Docket Number 1.

9. “Consumer Deposit Account” means any deposit account with Bank of America that is classified as a consumer account.

10. “Class Notice” means the notice, substantially in the form attached as Exhibit A, that will be provided to the Settlement Class pursuant to Paragraphs 68 to 85 of this Agreement.

11. “Closed Consumer Deposit Account” means a Consumer Deposit Account that is not an Open Consumer Deposit Account.

12. “Court” means the United States District Court for the Southern District of Florida, or any subsequent court, where the Action is proceeding.

13. “Defense Counsel” means Goodwin Procter, LLP and Liebler, Gonzalez & Portuondo.

14. “DoorDash” means: (a) DoorDash, Inc.; (b) any agent or entity acting in its name

or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

15. “Eat24” means: (a) Eat24Hours.com, Inc.; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

16. “EatStreet” means: (a) EatStreet, Inc.; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

17. “Effective Date” means the date on which the Final Approval Order becomes “Final.” As used in this Settlement Agreement, “Final” means: three (3) business days after all of the following have occurred:

(i) the Court issues a Final Approval Order and judgment approving the Settlement of the Action and enters a judgment in a manner substantially consistent with the terms and intent of this Agreement; and

(ii) (a) if appellate review is not sought from the Final Approval Order, the

expiration of the time for the filing of a notice of any appeal; or (b) if an appeal 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 *writ of certiorari* to the United States Supreme Court), have been finally resolved in a manner that is substantially consistent with the terms and intent of this Agreement and the deadline for taking any further appeals has expired such that no future appeal is possible; (c) or such date as the Parties otherwise agree to in writing.

Notwithstanding the foregoing, the Final Approval Order may become “Final” on a date otherwise agreed to by the Parties in writing.

18. “Favor” means: (a) NeighborFavor, Inc.; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

19. “Fee and Expense Award” means such funds as may be approved and awarded by the Court to Class Counsel to compensate them for conferring the benefits upon the Settlement Class under this Agreement and for the professional time, fees, costs, advances, and expenses incurred on behalf of the Settlement Class in connection with the Action and the Settlement.

20. “Fee Application” means Class Counsel’s application for the Fee and Expense Award.

21. “Final Approval Hearing” means the hearing at or after which the Court will determine whether to finally approve the Settlement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e). Class Counsel shall request that the Court schedule the Final Approval Hearing for a date that is in compliance with the provisions of 28 U.S.C. § 1715(d).

22. “Final Approval Order” means the proposed final order and final judgment to be submitted to and entered by the Court in connection with the Final Approval Hearing, the

proposed form of which is attached hereto as Exhibit B.

23. “Gett” means: (a) Gett, Inc.; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

24. “Grubhub” means: (a) Grubhub, Inc.; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

25. “Last Known Address” means the most recently-recorded physical mailing address, as such information is contained and maintained in Bank of America’s electronic records, or as updated by the procedures set forth herein.

26. “Lyft” means: (a) Lyft, Inc.; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

27. “Merchant” or “Merchants” mean Lyft, Grubhub, Gett, Eatstreet, PicMonkey, Neighborfavor, AMI Entertainment Network, Seamless, Doordash, Postmates, and Eat24, individually a “Merchant” or collectively the “Merchants”.

28. “Merchant Overdraft Fee” means any overdraft fee charged (and not refunded or credited) by Bank of America on a debit card transaction made with the Merchants during the

Settlement Class Period that was not a payment for periodic subscription services and was coded (or classified) as a recurring debit card transaction by the Merchants.

29. “Notice Plan” means the method and process of disseminating the Class Notice and notice of the Settlement as described in Paragraphs 68 to 85.

30. “Open Account Settlement Class Members” means those Settlement Class Members who, as of the Effective Date, have an Open Consumer Deposit Account.

31. “Open Consumer Deposit Account” means a consumer deposit account for which there is no closing date in Bank of America’s account servicing system.

32. “Opt-Out and Objection Deadline” means the date that is ninety-five (95) days after the entry of the Preliminary Approval Order, or any other date set by the Court, by which a person in the Settlement Class must opt out of the Settlement or make any objection to the proposed Settlement, the Fee Application, and/or the Service Payment Application, in accordance with the procedures set forth herein and/or in any order of the Court.

33. “Parties” means, collectively, the Plaintiffs and the Defendants in the Action.

34. “PicMonkey” means: (a) PicMonkey, LLC; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

35. “Plaintiffs” means collectively the named Plaintiffs in the Action, Kenneth D. Owens, Samantha A. Holley, Nicoletta Pantelyat, Kara L. Gariglio, Isabelle Scherer, Jonathan Tule, and Kelsea D. Wiggins.

36. “Postmates” means: Postmates Inc.; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors,

accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

37. “Preliminary Approval Date” means the date on which the Preliminary Approval Order, or any other order(s) preliminarily approving the Settlement, is entered by the Court.

38. “Preliminary Approval Hearing” means any hearing at or after which the Court determines whether to preliminarily approve the Settlement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e) and authorizes the mailing of the Class Notice.

39. “Preliminary Approval Order” means the order to be submitted to and entered by the Court preliminarily approving the Settlement, the proposed form of which is attached hereto as Exhibit C.

40. “Released Claims” means the claims and matters released in Paragraphs 111 to 114 of this Settlement Agreement.

41. “Released Parties” means the individuals and entities released in Paragraphs 111 to 114 of this Settlement Agreement.

42. “Seamless” means: (a) SeamlessWeb Professional Solutions LLC; (b) any agent or entity acting in its name or under its authority (alleged or actual), including any third parties used to originate or process debit card transactions; and (c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives and employees of each of the persons or entities in subparagraphs (a) and (b) of this paragraph.

43. “Service Payment(s)” means such funds as may be awarded by the Court to the Plaintiffs in recognition of their time, effort, and service to the Settlement Class, expended in pursuing the Action and in fulfilling their obligations and responsibilities as the Settlement Class Representatives.

44. “Service Payment Application” means Class Counsel’s application for Service Payments to the Settlement Class Representatives.

45. “Settlement Administrator” means a qualified third-party administrator and agent

agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval Order to administer the Settlement, including providing the Class Notice and implementing the Notice Plan pursuant to the terms and conditions of this Agreement. The Parties agree to recommend that the Court appoint Kurtzman Carson Consultants, LLC as the Settlement Administrator, subject to the Court's approval.

46. "Settlement Amount" means Four Million Nine-Hundred Fifty Thousand Dollars and No Cents (\$4,950,000.00) to be paid by Defendants, which shall be inclusive of: (i) all payments to Settlement Class Members; (ii) any Fee and Expense Award; (iii) any Service Payments; and (iv) Administration Expenses.

47. "Settlement Class" means: all holders of consumer deposit accounts with Bank of America, N.A. in the United States who were charged (and not refunded or credited) overdraft fees on debit card transactions made with the Merchants that were not a payment for periodic subscription services and were coded (or classified) as "recurring" transactions by the Merchants, at any time between January 1, 2012 and April 6, 2017. Excluded from the Settlement Class are: (a) all persons who are employees, directors, and officers of Bank of America, N.A. or Bank of America Corporation; (b) Class Counsel; and (c) the Judges presiding over this Action and their Court staff.

48. "Settlement Class Member" means a person on the Settlement Class List who is not a Successful Opt-Out. If a consumer deposit account has more than one account holder, then all authorized account holders shall be treated as one Settlement Class Member for purposes of the Settlement.

49. "Settlement Class Period" means January 1, 2012 through April 6, 2017.

50. "Settlement Class Representatives" means the Plaintiffs (Kenneth D. Owens, Samantha A. Holley, Nicoletta Pantelyat, Kara L. Gariglio, Isabelle Scherer, Jonathan Tule, and Kelsea D. Wiggins).

51. "Settlement Class Member List" means the list of all persons who, according to Defendants' business records, fall within the definition of the Settlement Class, which will be

provided by Defense Counsel to the Settlement Administrator in accordance with the terms and provisions of Paragraphs 72 to 73 hereof.

52. “Settlement Fund” means the Settlement Amount (*i.e.* \$4,950,000.00) and any other funds held in escrow by the Settlement Administrator pursuant to this Settlement Agreement, including accrued interest.

53. “Settlement Fund Balance” means the balance remaining in the Settlement Fund after: (i) the addition of interest accrued on the Escrow Account; and (ii) the deduction of (a) the Administration Expenses, (b) any Service Payments, and (c) any Fee and Expense Award.

54. “Settlement Share” means the payment to a Settlement Class Member from the Settlement Fund. Each Settlement Class Member’s Settlement Share will be calculated consistent with the provisions of Paragraph 95 hereof.

55. “Successful Opt-Out” means any person or persons who timely and validly exercise their right to opt out of the Settlement Class, pursuant and subject to Paragraph 84 hereof, but shall not include, in the discretion of the Parties: (a) persons whose opt-outs are challenged by Bank of America and the challenge is not overruled by the Court or withdrawn by Bank of America; (b) persons whose communications are not treated as an opt-out, as provided in Paragraph 84 hereof; and (c) persons who purport to opt out of the Settlement as a group, aggregate or class.

56. “Taxes” means: (a) all federal, state, or local taxes of any kind on any income earned on the Settlement Fund; and (b) the reasonable expenses and costs incurred by the Settlement Administrator in connection with determining the amount of, and paying, any taxes owed on interest accrued on the Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants).

57. “Uncashed Settlement Checks” means any checks sent to Settlement Class Members that remain uncashed after a period of one hundred and eighty (180) days from the date of the distribution of checks to Settlement Class Members.

Capitalized terms used in this Settlement Agreement but not defined above shall have the

meaning ascribed to them in the provisions herein, including the attached Exhibits.

III. SETTLEMENT PROCEDURES

A. Administration of the Settlement

58. Settlement Administrator. The Parties shall jointly recommend and retain Kurtzman Carson Consultants, LLC (“KCC”) to be the Settlement Administrator. Subject to Court approval, KCC will administer the Settlement. All Administration Expenses shall be paid from the Settlement Fund.

59. Because the Settlement Class Member List will be provided to the Settlement Administrator solely for purposes of providing the Class Notice and Settlement Shares and processing opt out requests, the Settlement Administrator will execute a confidentiality and non-disclosure agreement with Defendants, Defense Counsel, and Class Counsel and will ensure that any information provided to it by Settlement Class Members, Defense Counsel, or Defendants will be secure and used solely for the purpose of effecting this Settlement.

60. In fulfilling its responsibilities in providing Class Notice, the Settlement Administrator shall be responsible for, without limitation, consulting on and designing the Class Notice, and implementing the Notice Plan. In particular, the Settlement Administrator shall be responsible for: (a) arranging for the dissemination of the Class Notice pursuant to the requirements of this Agreement; (b) designing and implementing notice to the Settlement Class pursuant to the requirements of this Agreement; (c) responding to requests from Class Counsel and/or Defense Counsel; and (d) otherwise implementing and/or assisting with the dissemination of the notice of the Settlement pursuant to the requirements of this Agreement.

61. The Settlement Administrator also shall be responsible for, without limitation, dissemination of Class Notice as set forth in Paragraphs 68 to 85 of this Agreement and implementing the distribution of the Settlement Fund Balance to the Settlement Class Members pursuant to the requirements of this Agreement, and related administrative activities that include communications with Settlement Class Members concerning the Settlement and their options thereunder.

62. In particular, the Settlement Administrator shall be responsible for: (a) printing, e-mailing, mailing, or otherwise arranging for the mailing of the Class Notice in response to Settlement Class Members' requests; (b) making any mailings required under the terms of this Agreement; (c) establishing a Settlement Website (www.nonrecurringoverdraftsettlement.com) that contains the Class Notice and applicable dates and deadlines; (d) establishing a toll-free voice response unit with message and interactive voice response (IVR) capabilities to which Settlement Class Members may refer for information about the Action and the Settlement; (e) receiving and maintaining any Settlement Class Member correspondence regarding requests for exclusion to the Settlement; (f) promptly forwarding inquiries and correspondence from Settlement Class Members to Class Counsel for a response, if warranted; (g) establishing an e-mail address and post office box for the receipt of exclusion (opt out) requests, and any correspondence; and (h) otherwise implementing and/or assisting with the distribution of the Settlement Fund Balance to Settlement Class Members.

63. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Agreement and, without limiting the foregoing, shall:

(a) Treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity except as provided for in this Agreement or by court order;

(b) Receive requests for exclusion or opt out requests from persons in the Settlement Class and provide to Class Counsel and Defense Counsel a copy thereof within seven (7) days of receipt. If the Settlement Administrator receives any requests for exclusion or opt out requests after the deadline for the submission of such requests, the Settlement Administrator shall promptly provide Class Counsel and Defense Counsel with copies thereof;

(c) Receive and maintain all correspondence from any Settlement Class Member regarding the Settlement; and

(d) Keep a clear and careful record of all communications with Settlement

Class Members, all Administration Expenses, and all tasks performed in administering the Settlement.

64. The Settlement Administrator must consent, in writing, to serve and shall abide by the obligations of this Agreement and the Orders issued by the Court.

65. The Settlement Administrator shall provide a copy of all invoices for any Administration Expenses to Class Counsel and Defense Counsel prior to payment.

66. The Settlement Administrator shall make all reasonable efforts to administer the Settlement efficiently and to avoid unnecessary Administration Expenses. As soon as work commences, the Settlement Administrator shall provide a detailed written accounting of all Administration Expenses on a regular basis to Class Counsel and Defense Counsel, and shall respond promptly to inquiries by Class Counsel and Defense Counsel concerning the administration and notice fees and expenses. The Parties are entitled to observe and monitor the performance of the Settlement Administrator to assure compliance with this Agreement. The Settlement Administrator shall promptly respond to all Settlement Class Member inquiries and provide a complete response and/or any and all materials in its possession following an inquiry and request for information made by Defendants, Defense Counsel, or Class Counsel. In addition, the Settlement Administrator shall have authority to resolve, in good faith, any disputes regarding the validity or timeliness of an opt-out to the Settlement pursuant to the terms set forth in this Agreement.

B. Preliminary Approval

67. As soon as practicable following execution of this Agreement, Class Counsel shall move the Court for entry of the Preliminary Approval Order (substantially in the form of Exhibit C hereto), for the purposes of, among other things: (a) preliminarily approving the Settlement memorialized in this Agreement as being within the range of reasonableness such that the Class Notice should be provided pursuant to this Agreement; (b) finding that the requirements for provisional certification of the Settlement Class have been satisfied; (c) certifying the Settlement Class as defined herein for settlement purposes only; (d) setting a date

for a Final Approval Hearing; (e) approving the proposed Class Notice that is attached hereto as Exhibit A, and authorizing its dissemination to Settlement Class Members in accordance with the terms of this Agreement; (f) determining that the notice of the Settlement and of the Final Approval Hearing, as set forth in this Agreement, complies with all legal requirements, including but not limited to the Due Process Clause of the United States Constitution; (g) providing that any Objection by any Settlement Class Member to the certification of the Class and the proposed Settlement set forth in this Agreement, and/or the entry of the Final Approval Order, shall be heard and any papers submitted in support of said Objection shall be considered by the Court at the Final Approval Hearing only if, on or before the date(s) specified in the Class Notice and Preliminary Approval Order, such objector submits to the Court a written objection, and otherwise complies with the requirements in Paragraph 85 of this Agreement; (h) establishing dates by which Class Counsel shall file and serve all papers in support of the application for final approval of the Settlement, by which Class Counsel shall file and serve all papers in support of the Fee Application and the Service Payment Application, and by which the Parties shall file and serve all papers in response to any valid and timely Objections; (i) providing that all Settlement Class Members will be bound by the Final Approval Order; (j) providing that persons in the Settlement Class wishing to exclude themselves from the Settlement will have until the date specified in the Class Notice and the Preliminary Approval Order to submit a valid written exclusion or opt-out request to the Settlement Administrator; (k) providing a procedure for persons in the Settlement Class to request exclusion or opt out from the Settlement; (l) directing the Parties, pursuant to the terms and conditions of this Agreement, to take all necessary and appropriate steps to establish the means necessary to implement the Settlement; (m) setting deadlines consistent with this Agreement for mailing of the Class Notice, opting out of or objecting to the Settlement, and filing papers in connection with the Final Approval Hearing; (n) appointing Settlement Class Representatives as class representatives and Class Counsel as counsel for the Settlement Class; and (o) approving the appointment of the Settlement Administrator. For purposes of Settlement only, Defendants will not oppose the Preliminary

Approval Order or the certification, pursuant to Fed. R. Civ. P. 23(b)(3), of the Settlement Class.

C. Class Notice

68. Following the entry of the Preliminary Approval Order, the Settlement Administrator shall provide timely Class Notice in the manner and form approved and directed by the Court.

69. Notice of the Settlement to the Settlement Class Members shall comply with the Federal Rules of Civil Procedure and any other applicable statute, law, or rule, including but not limited to, the Due Process Clause of the United States Constitution. Defendants shall provide the CAFA Notice.

70. Following the Court's preliminary approval of the Settlement and the Court's appointment of the proposed Settlement Administrator, the Settlement Administrator shall disseminate the Class Notice, as specified in the Preliminary Approval Order and Paragraphs 68 to 85 herein in compliance with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution.

71. The Class Notice shall be in a form substantially similar to the document attached to this Agreement as Exhibit A and shall comport with the following: (a) the Class Notice shall contain a plain and concise description of the nature of the Action and the proposed Settlement, including information on the definition and composition of the Settlement Class, how the proposed Settlement would provide relief to Settlement Class Members, what claims are released and which entities are released in the proposed Settlement, and other relevant information; (b) the Class Notice shall inform everyone on the Settlement Class Member List that they have the right to opt out of the Settlement, and provide the deadlines and procedures for exercising this right; (c) the Class Notice shall inform Settlement Class Members of their right to object to the proposed Settlement and appear at the Final Approval Hearing, and shall provide the deadlines and procedures for exercising these rights; and (d) the Class Notice shall inform Settlement Class Members that the Administration Expenses will be deducted from the Settlement Fund, the maximum amounts to be sought by Class Counsel for the Fee and Expense Award and Service

Payments to Plaintiffs, and shall explain that the Administration Expenses, any Fee and Expense Award, and any Service Payments will be paid out of the Settlement Fund before Settlement Class Members' Settlement Shares are calculated.

72. Within fourteen (14) days of the Preliminary Approval Date, Defense Counsel shall provide to the Settlement Administrator the Settlement Class Member List. In preparing the Settlement Class Member List, Bank of America shall have no obligation to look beyond information obtainable from Bank of America's readily searchable databases to determine the Last Known Addresses of Settlement Class Members.

73. The Settlement Class Member List shall specify:

- (a) The names of all Settlement Class Members;
- (b) The Last Known Address for each Settlement Class Member; and
- (c) The number of Merchant Overdraft Fees associated with each Settlement Class Member's Consumer Deposit Account.

74. The Settlement Administrator shall utilize current U.S.P.S. software and/or the National Change of Address ("NCOA") database searches to update the address records so that a Settlement Class Member's most recent address will be utilized for mailing purposes.

75. The Settlement Class Member List and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the Settlement as provided in this Agreement, or provide necessary data and information to the Parties upon request, neither the Settlement Class Member List nor the information contained therein, shall be reproduced, copied, stored, or distributed in any form, electronic or otherwise, and shall be subject to return or destruction pursuant to Paragraph 136 of this Agreement.

76. The Settlement Administrator shall provide notice of this Settlement and the Final Approval Hearing to all Settlement Class Members by mailing a copy of the Class Notice. Unless adjusted by Court order, the mailing of all Class Notices shall be completed within thirty-five (35) days after the entry of the Preliminary Approval Order.

77. Prior to the dissemination and mailing of the Class Notice to any Settlement Class Member, the Settlement Administrator shall establish a Settlement Website, www.nonrecurringoverdraftsettlement.com, which will contain the Class Notice and inform Settlement Class Members of the relevant dates and deadlines and related information. The Settlement Website shall include, in .pdf downloadable format, the following: (i) the Class Notice; (ii) the Preliminary Approval Order; (iii) this Agreement (including all of its Exhibits), (iv) the Complaint; and (v) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide persons in the Settlement Class with the ability to complete and submit a request for exclusion or opt out at all times prior to the Opt-Out and Objection Deadline.

78. Prior to the dissemination and mailing of the Class Notice to any Settlement Class Member, the Settlement Administrator shall establish a toll-free telephone number, through which Settlement Class Members may obtain information about the Action and the Settlement and request a mailed copy of the Class Notice.

79. The Administration Expenses shall be paid solely from the Settlement Fund and Bank of America shall have no additional obligation or liability with respect to such costs or expenses. The Parties, in good faith, will endeavor to minimize these costs to the extent possible or prudent.

80. In the event that a Class Notice is returned to the Settlement Administrator by the U.S.P.S. because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Class Notice to the forwarding address within seven (7) days of receiving the returned Class Notice.

81. In the event that subsequent to the first mailing of a Class Notice, and at least fourteen (14) days prior to the Opt-Out and Objection Deadline, a Class Notice is returned to the Settlement Administrator by the U.S.P.S. because the address of the recipient is no longer valid, *i.e.*, the envelope is marked "Return to Sender" and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the

Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the Class Notice within seven (7) days of receiving such information. If such address cannot be ascertained, the Settlement Administrator will meet and confer with Defendants to determine whether, consistent with their privacy policies and their customers' notification preferences, a current e-mail address is available for the Settlement Class Member, and if available, the Settlement Administrator shall e-mail the Class Notice to said e-mail address(es) in the same or a substantially similar form as set forth above.

82. For a period of three hundred and sixty (360) days after the Preliminary Approval Date, or two hundred and twenty-five (225) days after the Effective Date, whichever is longer, the Settlement Administrator shall maintain, at its expense, a post office box or address, as well as a functioning e-mail address, to receive communications in connection with the Settlement.

83. Confirmation of Class Notice. Prior to the Final Approval Hearing, Class Counsel shall serve and file sworn statements from the Settlement Administrator evidencing compliance with the provisions of the Preliminary Approval Order concerning the mailing of the Class Notice.

84. Opt-Out Rights.

(a) In the event a person in the Settlement Class wishes to be excluded from the Settlement Class and the Settlement, and not to be bound by this Agreement, then that person must, prior to the Opt-Out and Objection Deadline, either: (i) sign and mail a notice of intention to opt out of the Settlement to the Settlement Administrator (in no particular format, but which contains the account holder's name, address, and telephone number and the words "opt out," "exclusion," or words to that effect clearly indicating an intent not to participate in the Settlement); or (ii) complete and electronically submit the opt-out form available on the Settlement Website (www.nonrecurringoverdraftsettlement.com). If there is more than one account holder on a consumer deposit account, then all account holders must execute the notice of intention to opt out for the opt-out to be effective. If necessary, the Parties shall confer as to

whether a communication is a request to opt out, and shall inform the Court of their position at the Final Approval Hearing. In no event shall any notice in which someone purports to opt out any other person (including any group, aggregate, or putative class involving more than one account) be considered a valid opt-out. Individuals are not permitted to exclude other individuals, and each individual must evidence his or her intent by complying with the procedures above. Any opt-out submitted on behalf of a group, aggregate, or putative class shall be deemed valid as to the individual submitting the opt-out only, and shall be invalid as to the group, aggregate, or putative class. The Class Notice shall notify everyone on the Settlement Class Member List as to their right to opt out and the methods to do so. Settlement Class Members will not include any persons who send timely and valid opt-out requests, and Successful Opt-Outs will not release any claims and will not be entitled to any benefit under this Settlement.

(b) The Class Notice shall state that requests to opt out of the Settlement that are submitted by U.S. mail must be mailed to the Settlement Administrator postmarked by the Opt-Out and Objection Deadline, or be forever barred.

(c) The Class Notice shall state that requests to opt out of the Settlement that are submitted on the Settlement Website must be submitted by the Opt-Out and Objection Deadline, or be forever barred.

(d) The Settlement Administrator must send Defense Counsel and Class Counsel copies of any opt-out notices it receives within seven (7) days of receipt. Class Counsel will, at least five (5) court days before the Final Approval Hearing, file copies of all opt-out notices with the Court. Defendants or Class Counsel may dispute an opt-out or purported opt-out, including an attempt to opt out as a group, aggregate or class, within thirty (30) days of the postmarking of the notice of intention to opt out, or by the date of the Final Approval Hearing, whichever occurs later. Any such objection shall be effective to void any opt-out or purported opt-out, unless and until (i) counsel for the other Parties disputes the objection, in good faith and in writing to the objecting counsel, within ten (10) days of the objection, and (ii) promptly seeks

a ruling by the Court and proves that the objection should be rejected or overruled. The Court shall retain jurisdiction to resolve such disputes. Any decision by Defense Counsel not to dispute an opt-out or purported opt-out shall not be a waiver, determination, or preclusive finding against Defendants with respect to any other opt-out notice.

85. Objections to the Settlement.

(a) Subject to the requirements of this Paragraph, any Settlement Class Member may: (i) object to the proposed Settlement and/or to the Fee Application and/or to the Service Payment Application; and (ii) appear at the Final Approval Hearing to object to the proposed Settlement and/or to the Fee Application and/or the Service Payment Application. To do so, the Settlement Class Member must (i) file a written objection (together with any briefs, papers, statements, or other materials that the Settlement Class Member wishes the Court to consider) with the Clerk of the Court, and (ii) comply with all of the requirements set forth in Paragraphs 85(b) to 85(e) below, by the Opt-Out and Objection Deadline. Further, any objecting Settlement Class Member who intends to appear at the Final Approval Hearing must file a Notice of Intention to Appear with the Clerk of the Court and serve the Notice on all Parties. Only a Settlement Class Member may file an Objection; any purported objection filed by an individual who is not a Settlement Class Member shall not qualify as an “Objection” as defined herein.

(b) Any Settlement Class Member who wishes to object must make his or her objection in writing and file it with the Clerk of the Court by the Opt-Out and Objection Deadline, and serve the objection on Class Counsel and Defense Counsel at the addresses specified in the Class Notice, postmarked no later than the Opt-Out and Objection Deadline.

(c) To be valid, an objection must: (i) attach documents establishing, or provide information sufficient to allow the Parties to confirm, that the objector is a Settlement Class Member; (ii) include a detailed statement of such Settlement Class Member’s specific objections; (iii) state the grounds for such objections; (iv) identify all documents which the Settlement Class Member asks the Court to consider; and (v) identify each instance in which the

Settlement Class Member or his/her counsel has objected to a class action settlement in the past five (5) years.

(d) Settlement Class Representatives and Bank of America may file responses to any objections within seven (7) days prior the Final Approval Hearing.

(e) Any Settlement Class Member who does not submit a timely-filed Objection (i.e., on or before the Opt-Out and Objection Deadline), in writing and otherwise in accordance with the requirements of this Paragraph, shall be deemed to have waived any right or ability to object to, and shall forever be foreclosed from making any objection to, the fairness, reasonableness, or adequacy of the proposed Settlement, the Fee Application, the Fee and Expense Award, Service Payment Application, or the Service Payments.

D. Final Approval

86. At the time designated by the Court, Plaintiffs shall move the Court for an order, substantially in the form of Exhibit B hereto, which shall specifically include provisions that: (a) find that the Court has personal jurisdiction over all Settlement Class Members, that the Court has subject matter jurisdiction over the claims asserted in the Action, and that venue is proper; (b) finally approve the Settlement pursuant to Rule 23 of the Federal Rules of Procedure; (c) find that the Class Notice as distributed was the best notice practicable under the circumstances and fully satisfied the requirements of due process and Federal Rule of Civil Procedure 23; (d) find that the notice provided to government entities under the Class Action Fairness Act complied with 28 U.S.C. § 1715; (e) approve the plan of distribution of the Settlement Amount and interest accrued thereon and authorize the Parties to implement the terms of the Settlement; (f) finally certify the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3); (g) confirm that Plaintiffs and the Settlement Class Members have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims against the Released Parties; (h) retain jurisdiction relating to the administration, consummation, validity, enforcement, and interpretation of this Agreement, the Final Approval Order, any final order approving the Fee and Expense Award and Service Payments, and for any other necessary

purpose; and (i) enter a judgment that dismisses the Action with prejudice, without costs to any Party, except as provided in the Agreement, and subject to the Court's continuing jurisdiction over the Parties and the Settlement Fund for the purpose of enforcement of the terms of the Settlement Agreement.

87. At the Final Approval Hearing, Settlement Class Representatives and Class Counsel shall make a good faith effort to present sufficient evidence to support the entry of the Final Approval Order, and shall present such evidence as they deem appropriate to support any award of attorneys' fees and expenses. Settlement Class Members who do not object to the Settlement may appear and address the Court at the Final Approval Hearing.

IV. SETTLEMENT CONSIDERATION

A. Monetary Consideration

88. Settlement Amount. In exchange for the releases described below and dismissal of the Action with prejudice, Bank of America agrees to pay the total sum of Four Million Nine Hundred Fifty Thousand Dollars and No Cents (\$4,950,000.00) (as defined above, the Settlement Amount) to create the Settlement Fund, in full settlement of the Action. The Parties agree that the Settlement Amount and the Defendants' payment of Four Million Nine Hundred Fifty Thousand Dollars and No Cents (\$4,950,000.00) is the full extent of Defendants' payment obligation under this Agreement. In no event shall Defendants be liable for payment of any costs, expenses, or claims beyond their deposit or payment of the Settlement Fund into the Escrow Account (the term "Escrow Account" is defined below). No portion of the Settlement Amount shall revert back to or be refunded to the Defendants after the Settlement becomes Final, as defined in Paragraph 17.

89. Settlement Amount Deposit, Escrow Account, and Settlement Fund.

(a) Bank of America shall deposit the Settlement Amount within ten (10) business days after the entry of the Preliminary Approval Order into an escrow bank account (the "Escrow Account"), to be created and administered by the Settlement Administrator pursuant to the terms of this Agreement. The Escrow Account shall be held in a Qualified Settlement Fund

(defined below) in interest-bearing bank account deposits with commercial banks (other than Bank of America) with excess capital exceeding One Hundred Million Dollars and No Cents (\$100,000,000.00), with a rating of “A” or higher by S&P and in an account that is fully insured by the United States Government or the FDIC.

(b) All interest on the funds in the Escrow 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 Settlement Administrator. The Administrator is responsible for the payment of all Taxes.

(c) The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1 at all times after the creation of the Escrow Account. All Taxes shall be paid out of the Escrow Account. Bank of America, Defense Counsel, Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes. The Escrow Account shall indemnify and hold Bank of America, Defense Counsel, Plaintiffs, and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

(d) For the purpose of the Internal Revenue Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the “administrator” of the Settlement Fund. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in the previous paragraph) shall be consistent with this paragraph and in all events shall reflect that all taxes (including the Taxes, any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(e) The Settlement Administrator shall not disburse any portion of the Settlement Fund except as provided in this Agreement and with the written agreement of Class Counsel and Defense Counsel or by order of the Court.

(f) All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement or further order of the Court.

90. Refund Upon Termination. In the event that the Settlement is not approved, or is terminated, canceled, or fails to become effective for any reason, the remaining Settlement Fund (including accrued interest), less (i) any Administration Expenses incurred, and (ii) any amounts and Taxes incurred or due and owing and payable from the Settlement Fund in accordance with this Agreement, shall be refunded to Bank of America.

91. Defendants' Internal Costs. Notwithstanding the foregoing, Defendants agree to and shall pay any internal costs and expenses incurred by them in carrying out the terms of the Settlement separately and not from the Settlement Fund, including preparing the Settlement Class Member List, calculating any amounts required under this Agreement, distribution of any portion of the Settlement Fund, and fulfilling any of Bank of America's obligations herein.

V. DISTRIBUTION OF THE SETTLEMENT FUND.

A. Distribution Plan

92. Subject to the terms and conditions of this Agreement, the Settlement Fund shall be used for the payment of: (a) the Administration Expenses; (b) the Settlement Shares to Settlement Class Members; (c) the distribution of the Residual Funds (the term "Residual Funds" is defined below), if any, pursuant to this Agreement; (d) any Service Payments to the Plaintiffs as approved by the Court; (e) any Fee and Expense Award as approved by the Court; and (f) any Taxes. The Parties must approve any payment of costs or expenses under subsection (a) of this paragraph, and such approval shall not be unreasonably withheld.

93. All Settlement Class Members are eligible for relief from the Settlement Fund. The Settlement Fund Balance shall be allocated as Settlement Shares to each Settlement Class Member in accordance with Paragraph 95 herein. Each Settlement Class Member who paid at least one Merchant Overdraft Fee shall be entitled to receive a Settlement Share.

94. Distribution Prior to the Effective Date: The Settlement Administrator may apply to Defense Counsel and Class Counsel for the payment from the Settlement Fund of Administration Expenses incurred to date and any Taxes due and Class Counsel and Defense Counsel shall not unreasonably withhold consent for such payment.

95. Upon the Effective Date, the Settlement Administrator will calculate each Settlement Class Member's Settlement Share as follows:

(a) *First*, the Settlement Administrator will determine the total amount of Administration Expenses ("Total Administration Expenses") to be deducted from the Settlement Fund by calculating the sum of the following: (i) the Administration Expenses incurred by the Settlement Administrator as of the Effective Date; and (ii) all Administration Expenses to be incurred by the Settlement Administrator related to this Settlement.

(b) *Second*, the Settlement Administrator shall calculate the amount of the Settlement Fund Balance by subtracting from the Settlement Fund the sum of the following amounts: (i) Total Administration Expenses, (ii) any Service Payments, (iii) any Fee and Expense Award, and (iv) any Taxes.

(c) *Third*, the Settlement Fund Balance will be divided by the total number of all Merchant Overdraft Fees paid by Settlement Class Members, to yield a "Per Merchant Overdraft Fee Amount." Each Settlement Class Member's Settlement Share shall equal the "Per Merchant Overdraft Fee Amount" multiplied by the number of Merchant Overdraft Fee(s) paid by that Settlement Class Member.²

² For example, and for illustrative purposes only, in the event the (i) interest accrued on the Settlement Fund less Taxes is \$0.00, (ii) the Total Administration Expenses equals \$110,709, (iii) the total Service Payments equals \$17,500, (iv) the total Fee and Expense Award equals \$1,650,000, and (v) the total number of Merchant Overdraft Fees paid by all Settlement Class Members is 179,496, the Per Merchant Overdraft Fee Amount will equal to \$17.67 [calculated as follows: $(\$4,950,000 - (\$110,709 + \$17,500 + \$1,650,000)) / 179,496$]. Thus, under this example, a Settlement Class Member who was charged 1 Merchant Overdraft Fee will have a Settlement Share that equals \$17.67, and a Settlement Class Member who was charged 2 Merchant Overdraft Fees will have a Settlement Share of \$35.34, *etc.*

96. Distribution After the Effective Date:

(a) Within three (3) business days after the Effective Date, any Service Payments and Fee and Expense Award shall be paid by the Settlement Administrator, out of the Escrow Account, to Class Counsel.

(b) Within (15) fifteen business days after the Effective Date, Bank of America will identify to the Settlement Administrator the identity of all Settlement Class Members with Open Consumer Deposit Accounts as of the Effective Date.

(c) Settlement Class Members with Open Consumer Deposit Accounts. Within twenty-five (25) days after the Effective Date, the Settlement Administrator will wire to Bank of America, from the Escrow Account, an amount equal to the aggregate Settlement Shares of all Settlement Class Members with Open Consumer Deposit Accounts. Bank of America shall then directly deposit the applicable Settlement Shares into such Settlement Class Members' Consumer Deposit Accounts, within sixty (60) days of the Effective Date. If any of the Settlement Class Members, who were identified by Defendants pursuant to Paragraph 96 (b), close their respective Consumer Deposit Accounts before Bank of America can deposit their Settlement Share, then within seventy (70) days after the Effective Date, Bank of America shall deposit those Settlement Shares back into the Settlement Fund, and those Settlement Class Members shall be paid by check from the Settlement Administrator in accordance with Paragraph 97 below. The checks shall have the same expiration date as the checks sent to Settlement Class Members with closed accounts, as outlined in Paragraph 97 below.

97. Settlement Class Members with Closed Consumer Deposit Accounts. For Settlement Class Members with Closed Consumer Deposit Accounts, the Settlement Administrator shall mail each such Settlement Class Member a check in the amount of each applicable Settlement Share within sixty (60) days of the Effective Date. The checks shall indicate that they expire one hundred and eighty (180) days after the date on which the check is issued.

98. Deceased Settlement Class Members. Deceased Settlement Class Members'

Settlement Shares shall be paid by check made out to the estate of the deceased Settlement Class Member, provided that, prior to the Effective Date, the Settlement Class Member's estate informs the Settlement Administrator of the Settlement Class Member's death and provides a death certificate confirming that the Settlement Class Member is deceased.

99. Redistribution of Uncashed Settlement Checks. Within fifteen (15) days from the date of expiration of the Settlement checks (one hundred and ninety-five (195) days from the date that the Settlement Administrator issues the Settlement checks to Settlement Class Members), the Settlement Administrator shall redistribute any funds remaining as a result of Uncashed Settlement Checks (less the cost of redistribution) in equal amounts to Settlement Class Members whose Settlement checks were cashed and Settlement Class Members whose Settlement payments were directly deposited into their deposit accounts ("Eligible Settlement Class Members"), by mailing checks to those Settlement Class Members. The Settlement Administrator will continue to redistribute funds from Uncashed Settlement Checks until (i) the amount of the redistribution for a Per Merchant Overdraft Fee due to each Settlement Class Member falls below One Dollar (\$1.00), net of the costs of redistribution; or (ii) such a redistribution process is otherwise infeasible.

100. The Settlement Administrator shall utilize current U.S.P.S. Software and/or the NCOA database searches to update the Settlement Class Members' address records prior to the mailing of any check. In the event a check is returned to the Settlement Administrator by the U.S.P.S. because the address of the recipient is no longer valid, *i.e.*, the envelope is marked "Return to Sender" and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the check as soon as possible thereafter.

101. *Cy Pres* Recipient. In the event that the amount of any redistribution per Paragraph 99 above would total less than One Dollar (\$1.00) for each Per Merchant Overdraft

Fee due to each Settlement Class Member, then the remainder of the Settlement Fund (less costs of settlement administration) will be paid to the Center for Responsible Lending (a 26 U.S.C. § 501(c)(3) non-profit organization), subject to Court approval, or to another *cy pres* recipient that the Court orders shall receive such funds. Plaintiffs and Defendants agree that the Center for Responsible Lending's purpose coincides, or at least overlaps, with the interests of the Settlement Class, which this Action sought to advance, and therefore agree that the Center for Responsible Lending is an appropriate recipient of any residual award that may result from the Settlement. Under no circumstances shall the remainder in the Settlement Fund revert back to Defendants.

102. Tax Obligations. The Parties shall have no responsibility or liability for any federal, state, or other taxes owed by Settlement Class Members as a result of, or that arise from, any Settlement payments to Settlement Class Members or any other term or condition of this Agreement.

B. Attorneys' Fees and Service Payments

103. Service Payments. In recognition of the time and effort the representative Plaintiffs expended in pursuing this Action and in fulfilling their obligations and responsibilities as Settlement Class Representatives, and of the benefits conferred on all Settlement Class Members by the Settlement, Class Counsel may ask the Court for the payment of a Service Payment from the Settlement Fund to each of the representative Plaintiffs. On or before twenty-one (21) days prior to the Opt-Out and Objection Deadline, Class Counsel may apply to the Court for a Service Payment to each Settlement Class Representative of no more than Two Thousand Five Hundred Dollars and No Cents (\$2,500.00). Defendants shall not oppose or appeal such application that does not exceed Two Thousand Five Hundred Dollars and No Cents (\$2,500.00) per Settlement Class Representative. The Court shall determine the amount of any Service Payments that are awarded to the Settlement Class Representatives. Any Service Payments shall be paid from the Settlement Fund and out of the Escrow Account by the Settlement Administrator within three (3) business days after the Effective Date.

104. Fee and Expense Award. On or before twenty-one (21) days prior to the Opt-Out and Objection Deadline, Class Counsel shall be entitled to apply to the Court for an award from the Settlement Fund, not to exceed one-third (1/3) of the Settlement Amount (*i.e.* One Million Six Hundred and Fifty Thousand Dollars and No Cents (\$1,650,000)), to reimburse Class Counsel for attorneys' fees resulting from the substantial time and resources invested in researching, preparing, prosecuting, litigating, and resolving this Action, as well as for reimbursement of the reasonable costs and expenses incurred in connection therewith. The Court shall determine the amount of any Fee and Expense Award that is awarded to Class Counsel. Defendants agree not to oppose the application if it does not exceed one-third (1/3) of the Settlement Amount (*i.e.* One Million Six Hundred and Fifty Thousand Dollars and No Cents (\$1,650,000)) plus reimbursement for reasonable costs and expenses incurred by Class Counsel in the Action. The Settlement Administrator shall pay the Fee & Expense Award to Class Counsel from the Settlement Fund and out of the Escrow Account within three (3) business days after the Effective Date.

105. Class Counsel expressly disclaim any and all right to collect attorneys' fees and expenses in excess of the amount awarded by the Court from any person or entity, and agree, upon demand, to execute a release of any person's or entity's obligation to pay such sums. Defendants shall not be liable for any claims ensuing from the distribution of attorneys' fees and expenses.

106. Defendants shall have no obligation to pay any attorneys' fees or expenses to Class Counsel, or any Service Payment to the Settlement Class Representatives, except as part of the Settlement Amount.

107. The Parties intend to and do hereby demarcate clearly between the proceeds from the Settlement in which Settlement Class Members have an interest, which may be subject to tax liability, and the Fee and Expense Award. Accordingly, the amount paid separately to Class Counsel for the Fee and Expense Award is independent of and apart from the amount paid to Settlement Class Members, and Settlement Class Members shall at no time have any interest in

the Fee and Expense Award. The Parties make no representation regarding and shall have no responsibility for the tax treatment of the Fee and Expense Award, or any other payment paid to Class Counsel or the tax treatment of any amounts paid under this Agreement.

108. Class Counsel shall have the sole and absolute discretion to allocate the Fee and Expense Award amongst Class Counsel. Defendants shall have no liability or other responsibility for allocation of any such Fee and Expense Award, and, in the event that any dispute arises relating to the allocation of fees, Class Counsel agree to hold Defendants harmless from any and all such liabilities, costs, and expenses of such dispute.

109. The Parties negotiated the attorneys' fees and expenses to be sought by Class Counsel only after reaching an agreement upon the relief provided to the Settlement Class.

110. The Settlement is not conditioned upon the Court's approval of the fees or expenses sought by Class Counsel or the Service Payments sought by Plaintiffs. Any appellate proceedings relating solely to the award of attorneys' fees and expenses and/or the Service Payments shall not delay the effectuation of the Releases contained herein.

VI. RELEASES

A. Plaintiffs and the Settlement Class Members provide the following releases:

111. Upon Final Approval, and in consideration of the promises and covenants set forth in this Settlement Agreement, Settlement Class Representatives and each Settlement Class Member, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf, will be deemed to have completely released and forever discharged Bank of America Corporation, Bank of America, N.A., the Merchants, and each of their parents, subsidiaries, affiliates, officers, directors, employees, attorneys, shareholders, agents, assigns, and third party suppliers and vendors (collectively, the "Released Parties"), from any claim, right, demand, charge, complaint, action, cause of action, obligation, or liability of any and every kind, including without limitation those known or unknown, from the beginning of the world

until today, that arises out of common law, state law, or federal law, whether by Constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated (collectively, “Claims”), as of the date of the Preliminary Approval Order that: (a) was or could have been asserted in the Complaint; and (b) arises out of, or relates to, or is in connection with Defendants’ assessment of overdraft fees on one-time, non-recurring debit card transactions with any of the Merchants; or (c) arises out of or relates to the administration of the Settlement (the “Released Claims”). Notwithstanding any language herein, the Released Claims do not include any Claims that arise out of the assessment of an overdraft fee by Defendants on any transaction other than a non-recurring debit card transaction with any of the Merchants.

112. Without limiting the foregoing, the Released Claims specifically extend to claims that arise out of or relate to the assessment of overdraft fees on one-time, non-recurring debit card transactions with any of the Merchants that the Settlement Class Representatives and the Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement, and the releases therein, becomes effective. This paragraph constitutes a waiver by the Settlement Class Representatives, and shall be deemed to be a waiver by all Settlement Class Members, of California Civil Code Section 1542 and any other similar statutes, laws, or legal principles of any state. California Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

113. Settlement Class Representatives understand and acknowledge, and all Settlement Class Members shall be deemed to understand and acknowledge, the significance of the waiver of California Civil Code Section 1542 and any other applicable law relating to the limitations on releases. In connection with such waiver and relinquishment, Settlement Class Representatives

acknowledge, on behalf of themselves and all Settlement Class Members, that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, and finally, and forever, all Released Claims, and in furtherance of such intention, the release of the Released Claims provided to the Released Parties will be and remain in effect notwithstanding the discovery or existence of any additional or different facts. 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.

114. Settlement Class Representatives and the Settlement Class Members covenant not to sue, institute, cause to be instituted, permit to be instituted on their behalf, or assist in instituting or prosecuting any proceeding, or otherwise assert any Released Claims against any Released Parties.

B. Judgment

115. If the Settlement Agreement is finally approved, the Parties agree that Plaintiffs will cause the Court to enter a judgment dismissing the claims in the Action, with all parties to bear costs not otherwise awarded, and as set forth in the Final Approval Order.

VII. REPRESENTATIONS AND WARRANTIES

116. Plaintiffs and Class Counsel represent and warrant that all persons (natural or legal) that have worked on behalf of the Plaintiffs in connection with the Action, including independent contractors, of-counsel and consulting attorneys, shall be compensated solely from the Fee and Expense Award for the work they performed in this Action. Plaintiffs and Class Counsel warrant that any Fee Application they file shall include within its scope all law firms who they, in good faith, believe to have a financial interest in any such award. Class Counsel

shall have the sole and absolute discretion to allocate the Fee and Expenses Award amongst Class Counsel. Defendants shall have no liability or other responsibility for allocation of any Fee and Expense Award, and, in the event that any dispute arises relating to the allocation of fees and/or expenses, Class Counsel agree to indemnify and hold Defendants harmless from any and all such liabilities, costs, and expenses of such dispute.

117. Class Counsel shall take all necessary actions to accomplish approval of the Settlement, the Class Notice, and dismissal of the Action. The Parties (including their counsel, successors, and assigns) agree to cooperate fully and in good faith with one another and to use their best efforts to effectuate the Settlement, including without limitation in seeking preliminary and final Court approval of this Agreement and the Settlement embodied herein, carrying out the terms of this Settlement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. In the event that the Court fails to approve the Settlement or fails to issue the Final Approval Order, the Parties agree to use all reasonable efforts, consistent with this Agreement and subject to Paragraphs 125 to 131, to cure any defect identified by the Court.

118. Each Party will cooperate with the other Party in connection with effectuating the Settlement or the administration of claims thereunder. Any requests for cooperation shall be narrowly tailored and reasonably necessary for the requesting Party to recommend the Settlement to the Court, and to carry out its terms.

119. Settlement Class Member List and Settlement Class Member Information. Defendants represent that they will conduct a reasonable and good faith search of their business records to identify Settlement Class Members and prepare the Settlement Class Member List.

120. Parties Authorized to Enter into Settlement Agreement. Any individual executing this Settlement Agreement on behalf of a Party represents and warrants that he or she is fully authorized to execute this Settlement Agreement on such Party's behalf and to carry out the obligations provided for therein. Each individual executing this Agreement on behalf of a Party covenants, warrants, and represents that he or she is and has been fully authorized to do so by

such Party. Each Party represents and warrants that he, she, or it intends to be bound fully by the terms of this Settlement Agreement.

121. Breach of Representations and Warranties. If any person, legal or natural, breaches the terms of any of the representations and warranties in this section, he, she, or it shall be fully liable for all damages (subject to the applicable law) he, she, or it causes to any adversely affected Party. Any adversely affected Party may institute a proceeding before the Court to recover all reasonable sums due and owing under this paragraph, and to seek additional equitable relief as the Court deems proper and just, and the Court shall retain jurisdiction over this matter to entertain such proceedings.

122. Advice of Counsel. Each Party to this Settlement Agreement warrants that he, she, or it is acting upon his, her or its independent judgment and upon the advice of his, her, or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Settlement Agreement.

123. Agreement Review. This Settlement Agreement has been carefully read by each of the Parties, or the responsible officers thereof, and its contents are known and understood by each of the Parties. This Settlement Agreement is signed freely by each Party executing it based on the legal advice of their respective attorneys.

124. No Assignment, Transfer, Grant. No Party to this Settlement Agreement has heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, or cause or causes of action disposed of by this Settlement Agreement.

VIII. MODIFICATION OR TERMINATION OF THE SETTLEMENT

125. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Final Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the

Court if such changes are consistent with the Court's Final Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

126. Notwithstanding any other provision of this Agreement, if more than one percent (1%) of the Settlement Class opts out of the Settlement, Defendants, in their sole discretion, may rescind and revoke the entire Settlement and this Agreement, thereby rendering the Settlement null and void in its entirety (with the exception of Paragraphs 90, 129, 130, and 131 herein), by sending written notice that Defendants revoke the settlement pursuant to this paragraph to Class Counsel within ten (10) business days following the date the Settlement Administrator informs the Defendants of the number of persons in the Settlement Class who have requested to opt out of the Settlement pursuant to the provisions set forth above.

127. Terms and Intent of Agreement. This Agreement is entered into only for purposes of settlement. In the event that the Court enters an order preliminarily or finally approving the Settlement of the Action in a manner that is materially inconsistent with the terms and intent of this Agreement, the Parties shall meet and confer in good faith regarding any modifications made to the proposed order. If, after meeting and conferring in good faith, Defendants or Plaintiffs determine that the modifications materially alter the terms and intent of this Agreement, including but not limited to, because the modifications may materially increase Defendants' liability, decrease the benefits to the Settlement Class, or reduce or expand the scope of the releases of the Settlement Class, or if the Court refuses to grant Final Approval of this Agreement or the Effective Date does not come to pass, then either Party shall have the option to terminate this Agreement. Each Party reserves the right to prosecute or defend this Action in the event that this Agreement does not become final and binding.

128. In the event the terms or conditions of this Agreement, other than those pertaining to the Fee and Expense Award and/or Service Payments, are materially modified by any court, then either Party in its sole discretion may declare this Agreement null and void (with the exception of Paragraphs 90, 129, 130, and 131 herein) within ten (10) business days from the occurrence of any such material modification.

129. In the event that a party exercises his/her/its option to withdraw from, rescind, revoke, and/or terminate this Agreement pursuant to any provision herein, then the Settlement proposed herein shall become null and void (with the exception of Paragraphs 90 this Paragraph, and Paragraphs 130 and 131 herein) and shall have no legal effect and may never be mentioned at trial or in dispositive or class motions or motion papers (except as necessary to explain the timing of the procedural history of the Action), and the Parties will return to their respective positions existing immediately before the execution of this Agreement.

130. Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any Administration Expenses, Taxes, or any expenses, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs and Defendants' future payment obligations shall cease.

131. Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, then Defendants shall have no further obligations to pay the Settlement Fund and shall be responsible for only the Administration Expenses and Taxes actually incurred, which will be paid out of the Escrow Account, and for which Plaintiffs and Class Counsel are not liable.

IX. MISCELLANEOUS PROVISIONS

132. Settlement Conditioned Upon Approval. In addition to the provisions hereof, this Settlement Agreement shall be subject to the ordinary and customary judicial approval procedures under Fed. R. Civ. P. 23. If the Settlement is not finally approved, certification of the Settlement Class will be void, no doctrine of waiver, estoppel, or preclusion shall be asserted in any litigated class certification proceedings in the Action or any other action relating to the subject matter of this Settlement, and this Agreement and its existence shall be inadmissible to

establish any fact relevant to class certification or any alleged liability of Bank of America for the matters alleged in the Action or for any other purpose. In the event that the Settlement is not approved as presented, or Bank of America terminates the Settlement as permitted herein, the Parties agree that neither the terms of this Agreement, the definition of the Settlement Class herein, the Parties' settlement negotiations, nor any publicly disseminated information regarding the Settlement, including, without limitation, the Class Notice, court filings, orders, or public statements, may be used as evidence for any purpose whatsoever. In addition, neither the fact of, nor any documents relating to, Bank of America's termination of the Settlement, any failure of the Court to approve the Settlement, or any objections or interventions may be used as evidence for any purpose whatsoever.

133. No Admissions. Bank of America expressly disclaims and denies any wrongdoing or liability whatsoever. This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with this Settlement, shall not be construed or deemed to be evidence of an admission or concession by Bank of America of any liability or wrongdoing by Bank of America or any of its affiliates, agents, representatives, vendors, or any other person or entity acting on its behalf with respect to the assessment of overdraft fees or that the case was properly brought as a class action, and shall not be construed or deemed to be evidence of an admission or concession that any person suffered compensable harm or is entitled to any relief with respect to Bank of America's assessment of overdraft fees. Bank of America may file this Agreement in any action or proceeding that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

134. Stay and Bar of Other Proceedings. Pending determination of whether the Settlement should be granted Final Approval, the Parties agree not to pursue any claims or defenses otherwise available to them in the Action, and no Settlement Class Member, either directly, on a representative basis, or in any other capacity, will commence or prosecute any

action or proceeding against any of the Released Parties asserting any of the Released Claims, pending final approval of the Settlement.

135. Fairness. The Parties believe that this Agreement is a fair, adequate, and reasonable settlement of the Action, and they have arrived at this Settlement through arms'-length negotiations, taking into account all relevant factors, present and potential.

136. Confidentiality.

(a) It is agreed that until the filing of the Preliminary Approval Motion, the Settlement Agreement and its terms and Settlement Class Member List shall be confidential and shall not be disclosed to any person unless required by applicable disclosure laws, required to be disclosed to auditors or attorneys, or as agreed to by the Parties.

(b) All agreements made and orders entered during the course of the litigation of the Action relating to the confidentiality of information shall survive this Agreement.

(c) Pursuant to the Stipulated Protective Order entered in the Action, within sixty (60) days after the Effective Date, any person in possession of Confidential or Highly Confidential Exchanged Material (as defined in the Stipulated Protective Order) must "either return such materials and copies thereof to the Disclosing Party or destroy such materials and certify that fact." Counsel for each Party may, however, maintain in its files copies of all pleadings, motion papers, legal memoranda, correspondence, attorney work product, and consultation and expert work product even if such materials contain Confidential or Highly Confidential Exchanged Material. In that case, counsel for each Party shall continue to treat the Confidential or Highly Confidential Exchanged Material in accordance with the Stipulated Protective Order.

137. Publicity. The Parties shall not issue press releases or similar public statements regarding this Settlement, except that Class Counsel may make public statements regarding the Settlement on any resume, future pleadings relating to Class Counsel's experience and results, and Class Counsel's websites, for any purpose. Nothing herein shall bar or otherwise limit Class Counsel's communications with the Plaintiffs, any Settlement Class Member, or any individual

requesting information about the Settlement.

138. Notices. Any notice sent in connection with this Agreement shall be transmitted by U.S Mail or Federal Express or an equivalent overnight delivery service as follows:

To Plaintiffs and Class Counsel:

Robert Ahdoot
AHDOOT & WOLFSON, PC
10728 Lindbrook Drive
Los Angeles, CA 90024

Frank S. Hedin
HEDIN HALL LLP
1395 Brickell Avenue, Suite 900
Miami, FL 333131

To Defendants and Defendants' Counsel:

David L. Permut
GOODWIN PROCTER LLP
901 New York Avenue, NW
Washington, DC 20001

139. Time Periods. The time periods and dates described in this Settlement Agreement with respect to the giving of Class Notice and hearings will be subject to Court approval and modification by the Court with the consent of the Parties.

140. Governing Law. The Settlement Agreement is governed by the laws of the State of Florida, without reference to choice of law principles.

141. No Construction Against Drafter. The Settlement Agreement was, and is deemed to have been, drafted by all Parties, and any rule that a document shall be interpreted against the drafter will not apply to this Settlement Agreement.

142. Agreement Binding on Successors in Interest. This Agreement is binding on and shall inure to the benefit of the respective heirs, successors, and assigns of the Parties.

143. Execution. The Parties and their counsel may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts

shall have the same force and effect as if all Parties had signed the same instrument. This Agreement may be executed with electronic, digital or facsimile signatures. The date of execution shall be the latest date on which any Party signs this Agreement.

144. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Settlement Agreement. This Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives.

145. Exhibits. Each and every exhibit to this Agreement is incorporated herein by this reference as though fully set forth herein.

146. Headings. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this document.

147. No Waiver. The provisions of this Agreement may be waived only in a writing executed by the waiving Party. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver, by that Party or by any other Party, of any other prior or subsequent breach of this Settlement Agreement.

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

149. Error Limitations. The obligations of Bank of America with respect to Paragraph 96 of this Agreement relating to the deposit of moneys in Settlement Class Members' Consumer Deposit Accounts shall be performed reasonably and in good faith, subject to the further provision that the terms of the Settlement and any Court orders shall control. So long as Bank of America abides by the terms of the Settlement, Bank of America shall not be liable for erroneous, improper, or inaccurate actions, omissions, crediting or payment, and the releases and any judgment shall be effective as of Final Approval as to every Settlement Class Member notwithstanding any error or dispute and regardless of whether such error or dispute is corrected or addressed only thereafter. Bank of America shall employ its best efforts to cure any

erroneous, improper or inaccurate actions, omissions, crediting, or payment within a reasonable time after notice of same.

150. No Alteration of Accounts or Release of Debt. Under no circumstances shall the Settlement Agreement be deemed to alter, amend, or change the terms and conditions of any credit card, debit card, consumer account, or debt as to which any Settlement Class Member is or was a party, or to provide a defense to any such debtor relationship. Settlement Class Representatives and Settlement Class Members expressly covenant and agree, as a material inducement to Defendants, and recognizing the practical difficulties faced by Defendants in ongoing or future matters, that each of them waive and forever relinquish any claim to have Defendants or the Released Parties amend, alter or revise rights, demands, suits, or other claims made (or to be made) in order to reflect the Settlement Fund provided or to be provided or to reflect the other terms of this Agreement and the Settlement.

151. Retention of Jurisdiction. Although the Court shall enter a judgment, the Court shall retain jurisdiction over the interpretation, effectuation, enforcement, administration, and implementation of this Settlement Agreement. The Court has jurisdiction over the Parties to this Agreement, and the Settlement Class. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the Court in which this Action is pending

152. Severability. The provisions of this Agreement, except for the provisions in Paragraphs 88 to 91 and 111 to 114, are severable insofar as the partial or complete invalidity, illegality or legal ineffectiveness of any term in the Agreement shall not affect the validity, legality, or legal effectiveness of the remainder of such term or of any other terms therein.

153. 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. All reference to “days” in this Agreement shall refer to calendar days, unless otherwise specified. The Parties reserve the right, subject to the Court’s approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed:

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**SETTLEMENT CLASS
REPRESENTATIVES:**

KENNETH D. OWENS

Kenneth D. Owens

Date: June __, 2019

SAMANTHA A. HOLLEY

Samantha A. Holley

Date: June __, 2019

NICOLETTA PANTELYAT

Nicoletta Pantelyat

Date: June __, 2019

KARA GARIGLIO

Kara Gariglio

Date: June __, 2019

ISABELLE SCHERER

Isabelle Scherer

Date: June __, 2019

CLASS COUNSEL (AS TO FORM):

AHDOOT & WOLFSON, PC

Robert Ahdoot

Date: June __, 2019

HEDIN HALL LLP

Frank S. Hedin

Date: June __, 2019

ATTORNEYS FOR PLAINTIFFS

KELSEA D. WIGGINS

Kelsea D. Wiggins

Date: June __, 2019

JONATHAN TULE

Jonathan Tule

Date: June __, 2019

DEFENDANTS:

**BANK OF AMERICA, N.A.
BANK OF AMERICA CORPORATION**

DEFENSE COUNSEL (AS TO FORM):

GOODWIN PROCTER LLP

By:
Title:

Date: June __, 2019

David L. Permut

Date: June __, 2019

ATTORNEYS FOR DEFENDANTS