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11 *Attorneys for Plaintiffs and*
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13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 ANDREA F. DURKEE on Behalf of Herself
 All Others Similarly Situated,

16 Plaintiffs,

17 vs.

18 BANK OF AMERICA, N.A., and Does 1-100,
 19 inclusive,

20 Defendant.

Case No. '20CV0347 JM LL

CLASS ACTION COMPLAINT
[DEMAND FOR JURY TRIAL]

1 CLASS ACTION COMPLAINT

2 Plaintiff Andrea F. Durkee, on behalf of herself and all persons similarly situated,
3 alleges the following based on personal knowledge as to allegations regarding the Plaintiff
4 and on information and belief as to other allegations.

5 INTRODUCTION

6 1. Plaintiff brings this action on behalf of herself and a class of all similarly
7 situated consumers against Defendant Bank of America, N.A. (“BOA” or “Defendant”),
8 arising from its unlawful assessment of inflated International Transaction Fees (“ITF”).

9 2. BoA assesses hidden and inflated ITF to its debit and ATM card holders. For
10 withdrawals made a foreign ATMs, BoA assesses a \$5.00 out-of-network ATM
11 transaction fee as well as an ITF that is supposed to be based on 3% of the transaction
12 amount. These fees by BoA are in addition to the fees charged by the ATM operators. In
13 the case of ATM withdrawals made in a foreign country, BoA is entitled to apply that 3%
14 ITF charge *only* to the amount of the foreign currency that was withdrawn and obtained
15 by the customer. However, BoA unlawfully inflates the ITF by applying the 3% charge
16 not only to the value of the currency that was withdrawn, but also to fees assessed by the
17 foreign ATM operator. Nowhere in any of BoA’s account agreement authorizes BoA to
18 assess a 3% ITF on top of the foreign ATM operator’s fee, and in fact, BoA’s Personal
19 Schedule of Fees (“Schedule”, attached hereto as Exhibit 1) expressly *separates* fees
20 assessed by the ATM operator from being considered part of the funds that the 3% applies
21 to for determining the amount of the ITF.

22 3. In Plaintiff’s case, Plaintiff withdrew pesos in an amount equal to \$5.32 (U.S.
23 dollars) at a Mexican ATM. Based on the Schedule, BoA was only entitled to assess a
24 \$5.00 out-of-network fee and a 3% ITF based on the \$5.32 that was withdrawn, which
25 would have been \$0.16. But instead, BoA also included the fees assessed by the Mexican
26 ATM operator, including a VAT fee and an ATM surcharge fee which totaled \$2.86
27 (U.S.). By combining the withdrawal amount (\$5.32) with the ATM operator fees
28 (\$2.86), and then assessing the 3% to determine the amount of the ITF, BoA assessed

1 \$0.25 in ITF instead of the \$0.16 that it was entitled to under the customer account
2 agreement.

3 4. While international transaction fees appear at first to be a small, negligible
4 amount, hidden and inflated international transaction fees have been the subject of
5 substantial litigation due to the significant harm it causes banking customers, in aggregate,
6 throughout the country. The 1% international transaction fees assessed by VISA
7 International alone resulted in \$424 million in revenue in 2004—which was nearly 30% of
8 its revenue that year. BoA itself has been the subject of such lawsuits relating to
9 international transaction fees for its credit cards, including as a defendant in a multi-
10 district litigation that resulted in a \$336 million class-wide settlement that was paid out to
11 over 10 million banking customers. Defendant is now charging hidden and inflated ITF to
12 its debit and ATM card holders.

13 5. Plaintiff, and other BoA customers, has been injured by BoA’s improper
14 practices which breach BoA’s own customer agreement. On behalf of herself and the
15 proposed Classes (defined below), Plaintiff seeks damages, restitution, and injunctive
16 relief for BoA’s breach of contract and violation of California consumer protection
17 statutes.

18 JURISDICTION AND VENUE

19 6. This Court has original jurisdiction of this action under the Class Action
20 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original
21 jurisdiction because the aggregate claims of the putative class members exceed \$5 million,
22 exclusive of interest and costs, and at least one of the members of the proposed classes is
23 a citizen of a different state than BoA.

24 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because BoA is
25 subject to personal jurisdiction here and regularly conducts business in this District, and
26 because the Plaintiff resides in this District.

27 PARTIES

28 8. Plaintiff is a citizen of San Diego, California.

1 9. Defendant BoA regularly and systematically operates retail banking branch
2 locations throughout the State of California, including in this judicial District, and
3 provides banking services to its customers, including members of the putative Class.

4 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

5 **I. Prior Extensive Litigation Regarding Foreign Transaction Fees**

6 10. Expensive and undisclosed foreign transaction fees have resulted in
7 tremendous harm to consumers throughout the country. In fact, in 2001, a multidistrict
8 litigation was established in the Southern District of New York, entitled *In Re: Currency*
9 *Conversion Fee Antitrust Litigation*, MDL No. 1401. The plaintiffs alleged that credit
10 cards agreements and statements poorly disclosed international transaction fees and that
11 credit card companies colluded in fixing the fees at an inflated amount. Specifically, the
12 complaints alleged that VISA and MasterCard charged a collusively set base international
13 transaction fee equal to 1% of the amount of the foreign currency transaction. In addition,
14 the MDL defendant banks tacked on an additional collusively set international transaction
15 fee of their own, generally 2%. The plaintiffs alleged that VISA and MasterCard
16 networks actively colluded with their member banks and assisted in implementing and
17 facilitating these “second tier” foreign transaction fees by amending their rules and
18 procedures to accommodate these fees, and by colluding with the MDL defendant banks
19 to charge these fees. (*See Ross v. American Express Company*, Case No. 1:04CV05723,
20 2010 WL 6500949 (S.D.N.Y.) (the first amended class action complaint).)

21 11. Though the 1-3% amount is seemingly a small amount, the fees add up for
22 the credit card companies. The 1% currency exchange fees gave VISA International
23 \$424 million in revenue in 2004, one of the years covered in the lawsuit. That was nearly
24 30% of its revenue that year.¹ Many banks charged an even higher percent on top of
25 VISA’s 1% fee. Ultimately, the MDL resulted in a class-wide settlement of \$336 million
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¹ <https://www.latimes.com/archives/la-xpm-2008-jan-06-tr-insider6-story.html>

1 in 2006. In 2012, the settlement checks were disseminated to over 10 million banking
 2 customers.²

3 12. The banks that were defendants in the MDL and part of the settlement
 4 included BoA, Citibank, Diners Club, Discover, HSBC, MBNA, Providian, and
 5 Defendant BoA.

6 13. This action, unlike *In Re: Currency Conversion Fee Antitrust Litigation*, does
 7 not concern the assessment of international transaction fees on credit card holders, but
 8 instead concerns an equally pernicious and pervasive practice by BoA: the assessment of
 9 hidden and inflated ITF on debit and ATM card holders such as Plaintiff.

10 **II. The Terms of BoA’s Personal Schedule of Fees**

11 14. On page 9 of BoA’s Personal Schedule of Fees, BoA sets forth the terms of
 12 the ITF:

International Transaction Fee	3% of the U.S. dollar amount of the transaction	<ul style="list-style-type: none"> • Fee applies if you use your card to purchase goods or services in a foreign currency or in U.S. dollars with a foreign merchant (a "Foreign Transaction"). Foreign Transactions include internet transactions made in the U.S. but with a merchant who processes the transaction in a foreign country. • Fee also applies if you use your card to obtain foreign currency from an ATM. Visa® or Mastercard® converts the transaction into a U.S. dollar amount, and the International Transaction Fee applies to that converted U.S. dollar amount. ATM fees may also apply to ATM transactions. See ATM Fees section. • See disclosure information that accompanied your card for more information about this fee.
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 18 15. It is evident from the express terms of this provision, as well as throughout
 19 the rest of the agreement, that the “transaction” to which the 3% is to be applied is the
 20 withdrawal of foreign currency at foreign ATM machines, and the “amount of the
 21 transaction” refers to the amount/value of the foreign currency that was withdrawn from
 22 the foreign ATM machine. In the description of the fee itself, “transaction” refers to
 23 “obtaining foreign currency from an ATM”. This means that “amount of the transaction”
 24 refers to the foreign currency that the customer actually “obtained” and walked away with
 25 from the ATM machine. Nowhere does the disclosure state that ATM fees may also be
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 28 ² <https://topclassactions.com/lawsuit-settlements/lawsuit-news/1468-credit-card-foreign-transaction-fee-settlement-checks-arrive/>; <https://www.bigclassaction.com/settlement/currency-conversion-fee-settlement.php?ref=rss>

1 included along with the withdrawal amount to apply the 3% to determine the amount of
 2 the ITF.

3 16. The same provision also states that “ATM fees may also apply to ATM
 4 transactions”, while directing the customer to view the subsequent section on “ATM
 5 Fees”. In so doing, BoA is specifically separating out any type of ATM fees from
 6 consideration of being part of the “transaction” to which the 3% ITF applies. Stated
 7 inversely, if BoA wanted to include any type of ATM fees as being a part of the total
 8 transaction amount for which the 3% ITF would apply, it would have specifically and
 9 expressly stated so, instead of actually stating that ATM fees would be determined and
 10 applied separately from the 3% ITF.

11 17. Indeed, these other ATM fees are entirely accounted for in the separate
 12 section on page 10 of the agreement, entitled “ATM Fees”, where BOA specifically and
 13 separately and apart from any mention of the ITF the very fees which were assessed to
 14 Plaintiff by the ATM operator (in relevant part):

15 **Other Account Fees and Services (cont.)**

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Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Fees <i>Bank of America ATM – an ATM that prominently displays the Bank of America name and logo on the ATM</i> <i>Non-Bank of America ATM – an ATM that does not prominently display the Bank of America name and logo on the ATM</i>	Withdrawals, deposits, transfers, payments and balance inquiries at a Bank of America ATM	No ATM fee	<ul style="list-style-type: none"> • Deposits and payments may not be available at some ATMs. Transaction fees may apply to some accounts. See account descriptions in this schedule.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in the U.S.	\$2.50 each	<ul style="list-style-type: none"> • When you use a non-Bank of America ATM, you may also be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer. • The non-Bank of America ATM fees do not apply at some ATMs located outside the United States. Call us before you travel internationally for current information about banks participating in the program. • Non-Bank of America ATM fees are in addition to other account fees that may apply to the transaction, such as a Withdrawal Limit Fee for savings. • Preferred Rewards Platinum customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S., and receive a refund of the ATM operator fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S. • Preferred Rewards Platinum Honors customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S., and receive a refund of the ATM operator fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S. • See the disclosure information that accompanied your card for other fees that may apply.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in a foreign country	\$5.00 each	

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25 18. In the section of the agreement which covers the other fees assessed by BoA
 26 for the ATM withdrawal – including the Non-Bank of America ATM Fee of \$5.00 each—
 27 BoA specifically mentions that the customer may also be charged additional fees by the
 28 ATM operator. There is no mention of the 3% ITF in this entire section. There is no

1 indication that BoA will apply the 3% ITF to the other fees—thereby charging a fee on
 2 top of other fees. Furthermore, just as BoA did not deem it appropriate under the contract
 3 to apply the 3% ITF to any other fees listed in this section that it charges, including the
 4 \$5.00 Non-Bank of America ATM Fee, BoA was likewise prohibited from applying the
 5 3% to the fees charged by the ATM operator.

6 19. Indeed, BoA is consistent throughout the agreement in what it means when it
 7 uses the term “transaction”, and in every such instance, the “transaction” refers to
 8 withdrawals, deposits, transfers, payments *e.g.*:

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Fees Bank of America ATM – an ATM that	Withdrawals, deposits, transfers, payments and balance inquiries at a Bank of America ATM	No ATM fee	* Deposits and payments may not be available at some ATMs. Transaction fees may apply to some accounts. See account descriptions in this schedule.

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 12 (Schedule, at p. 9.) Meanwhile, when BoA intends to refer to fees, it clearly and
 13 expressly uses the term “transaction fees”, *e.g.*:

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Fees Bank of America ATM – an ATM that	Withdrawals, deposits, transfers, payments and balance inquiries at a Bank of America ATM	No ATM fee	* Deposits and payments may not be available at some ATMs. Transaction fees may apply to some accounts. See account descriptions in this schedule.

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 17 (Schedule, at p. 10.)

18 20. Therefore, in order for BoA to have been entitled to include the ATM
 19 owner’s fees in applying the 3% for determining the amount of the ITF, it was required to
 20 state that “The **International Transaction Fee** would be based on 3% of the U.S. dollar
 21 amount of the withdrawal transaction and transaction fees assessed by the ATM operator.”
 22 Instead, BoA explicitly separated out ATM transaction fees as “also applying” separately
 23 from the 3% ITF. In applying 3% to both the withdrawal amount and the ATM fees to
 24 determine the amount of the ITF, BoA unlawfully assesses inflated ITF to customers’
 25 accounts.

26 **III. Plaintiff’s Experience**

27 21. On November 25, 2019, Plaintiff was traveling out of the country in Cabo
 28 San Lucas, Mexico when she attempted to withdraw \$100.00 U.S. at a local ATM

1 machine. Instead, she mistakenly withdrew \$100.00 in pesos, which is approximately
2 \$5.32 in U.S. dollars.³ The Mexican ATM machine assessed her a \$50.00 (pesos) Value
3 Added Tax (“VAT”) and a \$8.00 (pesos) withdrawal fee, for withdrawing \$100.00 (pesos)
4 from the ATM machine. On top of the fees assessed by the Mexican ATM operator,
5 Plaintiff was also assessed additional fees by BoA, including a \$5.00 (U.S.) “Non-Bank of
6 America ATM Fee” and a \$0.25 (U.S.) “International Transaction Fee”, which is
7 supposed to be based on 3% of the dollar amount that was withdrawn at a foreign ATM.

8 22. The result is that in withdrawing a value of \$5.32 (U.S.), Plaintiff was
9 assessed \$2.86 (U.S.) worth of fees by the Mexican ATM operator and an additional
10 \$5.25 (U.S.) worth of fees by BoA. In other words, Plaintiff was charged \$8.11 (U.S.) in
11 fees for the privilege of withdrawing \$5.32 (U.S.) worth of pesos.

12 23. While being assessed over 150% of a withdrawal amount by the various
13 financial institutions involved is unconscionably exorbitant and morally questionable, the
14 focus of this lawsuit arises from the plain meaning of BoA’s customer account contracts
15 which sets forth the amount of fees that BoA is permitted and not permitted to charge.
16 Specifically, under the terms of its Personal Schedule of Fees, BoA was only entitled to
17 assess the International Transaction Fee by applying the 3% to the U.S. dollar amount that
18 Plaintiff withdrew from the Mexican ATM, but instead, BoA applied the 3% to the
19 amount of the withdrawal plus the amount of the VAT and withdrawal surcharge fee
20 assessed by the Mexican ATM owner. Essentially charging a fee on top of two other fees.

21 24. If BoA had applied the 3% to the amount of the \$5.32 (U.S.) ATM
22 withdrawal transaction amount, then the amount of the ITF would have been \$0.16 (U.S.),
23 but instead, by applying the 3% to the ATM withdrawal transaction amount plus the VAT
24 and withdrawal fees assessed by the Mexican ATM owner, BOA applied 3% to
25 \$8.18 (U.S.) in deriving the \$0.25 (U.S.) ITF fee that it actually assessed to Plaintiff. In
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28 ³ The current exchange of 18.77 pesos to a U.S. dollar (<https://www.bloomberg.com/quote/USDMXN:CUR>) appears to be the same at the time of the incident.

1 short, BOA included what BOA contractually considers separate fees from the ITF in
2 order to artificially and unlawfully inflate the amount of the ITF.

3 **CLASS ALLEGATIONS**

4 25. Plaintiff brings this action on behalf of herself and all others similarly
5 situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies
6 the numerosity, commonality, typicality, adequacy, predominance, and superiority
7 requirements of Rule 23.

8 26. The proposed Classes are defined as:

- 9 • All Bank of America checking accountholders, who, within the applicable statute of
10 limitations were assessed an International Transaction Fee for the withdrawal of
11 foreign currency at a foreign ATM machine. (The “National Class”).
12 • All California Bank of America checking accountholders, who, within the
13 applicable statute of limitations were assessed an International Transaction Fee for
14 the withdrawal of foreign currency at a foreign ATM machine. (The “California
15 Subclass”).

16 27. Plaintiff reserves the right to modify or amend the definition of the proposed
17 Classes before the Court determines whether certification is appropriate.

18 28. Excluded from the Classes are BoA, its parents, subsidiaries, affiliates,
19 officers, and directors; any entity in which BoA has a controlling interest; all customers
20 who make a timely election to be excluded; governmental entities; and all judges assigned
21 to hear any aspect of this litigation, as well as their immediate family members.

22 29. The members of the Classes are so numerous that joinder is impractical. The
23 Classes consist of thousands of members, the identity of whom is within the knowledge of
24 and can be ascertained only by resort to BoA’s records.

25 30. The claims of the representative Plaintiff are typical of the claims of the
26 Class in that the representative Plaintiff, like all Class members, was charged hidden and
27 inflated ITF’s as a result of BoA’s unlawful practice. The representative Plaintiff, like all
28 Class members, has been damaged by BoA’s misconduct in that she was assessed unfair

1 and unconscionable fees. Furthermore, the factual basis of BoA’s misconduct is common
2 to all Class members, and represents a common thread of unfair and unconscionable
3 conduct resulting in injury to all members of the Class.

4 31. There are numerous questions of law and fact common to the Class and those
5 common questions predominate over any questions affecting only individual Class
6 members.

- 7 32. Among the questions of law and fact common to the Class are whether BoA:
- 8 a. deceived consumers;
 - 9 b. breached its contract;
 - 10 c. breached its covenant of good faith and fair dealing with Plaintiff and
11 other members of the Class through its ITF policies and practices;
 - 12 d. converted money belonging to Plaintiff and other members of the
13 Class through its ITF policies and practices;
 - 14 e. was unjustly enriched through its ITF policies and practices; and
 - 15 f. violated the consumer protection acts of certain states through its ITF
16 policies and practices.

17 33. Other questions of law and fact common to the Class include:

- 18 a. the proper method or methods by which to measure damages, and
- 19 b. the declaratory relief to which the Classes are entitled.

20 34. Plaintiff’s claims are typical of the claims of other Class members, in that
21 they arise out of the same wrongful ITF policies and practices and breaches of BoA’s
22 Personal Schedule of Fees and other related documents. Plaintiff has suffered the harm
23 alleged and has no interests antagonistic to the interests of any other Class member.

24 35. Plaintiff is committed to the vigorous prosecution of this action and has
25 retained competent counsel experienced in the prosecution of class actions and, in
26 particular, class actions on behalf of consumers and against financial institutions.
27 Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect
28 the interests of the Class.

1 36. A class action is superior to other available methods for the fair and efficient
2 adjudication of this controversy. Since the amount of each individual Class member's
3 claim is small relative to the complexity of the litigation, and due to the financial
4 resources of BoA, no Class member could afford to seek legal redress individually for the
5 claims alleged herein. Therefore, absent a class action, the Class members will continue
6 to suffer losses and BoA's misconduct will proceed without remedy.

7 37. Even if Class members themselves could afford such individual litigation, the
8 court system could not. Given the complex legal and factual issues involved,
9 individualized litigation would significantly increase the delay and expense to all parties
10 and to the Court. Individualized litigation would also create the potential for inconsistent
11 or contradictory rulings. By contrast, a class action presents far fewer management
12 difficulties, allows claims to be heard which might otherwise go unheard because of the
13 relative expense of bringing individual lawsuits, and provides the benefits of adjudication,
14 economies of scale and comprehensive supervision by a single court.

15 **FIRST CLAIM FOR RELIEF**

16 **Breach of Contract**
17 **(On behalf of the Classes)**

18 38. Plaintiff incorporates the preceding allegations by reference as if fully set
19 forth herein.

20 39. Plaintiff and the Class have contracted with BoA for bank account deposit,
21 checking, ATM, and debit card services, as embodied in BoA's account agreement,
22 Personal Schedule of Fees, and related documentation.

23 40. No contractual provision authorizes BoA to assess an ITF for foreign ATM
24 withdrawals based on 3% of the amount of ATM fees assessed by the ATM operator on
25 top of the amount of the foreign currency withdrawn and obtained by the customer,
26 resulting in an inflated ITF assessed to customers.

27 41. Therefore, BoA breached the terms of its contract, which prohibits such
28 policies and practices.

1 42. Plaintiff and members of the Class have performed all, or substantially all, of
2 the obligations imposed on them under the Schedule and other relevant agreements.

3 43. Plaintiff and members of the Class have sustained damages as a result of
4 BoA's breach of the Schedule and other relevant agreements.

5 **SECOND CLAIM FOR RELIEF**

6 **Breach of the Covenant of Good Faith and Fair Dealing**
7 **(On behalf of the Classes)**

8 44. Plaintiff incorporates the preceding allegations by reference as if fully set
9 forth herein.

10 45. Plaintiff and the proposed Class have contracted with BoA for bank account
11 deposit, checking, ATM, and debit card services, as embodied in BoA's account
12 agreement, Personal Schedule of Fees, and related documentation.

13 46. Under the laws of the states where BoA does business, good faith is an
14 element of every contract. Whether by common law or statute, all such contracts impose
15 upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in
16 connection with executing contracts and discharging performance and other duties
17 according to their terms, means preserving the spirit—not merely the letter—of the
18 bargain. Put differently, the parties to a contract are mutually obligated to comply with
19 the substance of their contract in addition to its form. Evading the spirit of the bargain
20 and abusing the power to specify terms constitute examples of bad faith in the
21 performance of contracts.

22 47. Subterfuge and evasion violate the obligation of good faith in performance
23 even when an actor believes their conduct to be justified. Bad faith may be overt or may
24 consist of inaction, and fair dealing may require more than honesty. Examples of bad
25 faith are evasion of the spirit of the bargain, willful rendering of imperfect performance,
26 abuse of a power to specify terms, and interference with or failure to cooperate in the
27 other party's performance.
28

1 48. BoA has breached the covenant of good faith and fair dealing in the Schedule
2 through its ITF policies and practices as alleged herein.

3 49. Plaintiff and members of the Class have performed all, or substantially all, of
4 the obligations imposed on them under the Schedule and related agreements.

5 50. Plaintiff and members of the Class have sustained damages as a result of
6 BoA's breach of the covenant of good faith and fair dealing.

7 **THIRD CLAIM FOR RELIEF**

8 **Conversion (On behalf of the classes)**

9 51. Plaintiff incorporates the preceding allegations by reference as if fully set
10 forth herein.

11 52. BoA had and continues to have a duty to maintain and preserve its
12 customers' checking accounts and to prevent their diminishment through its own wrongful
13 acts.

14 53. BoA has wrongfully collected inflated ITF's from Plaintiff and the members
15 of the Class, and has taken specific and readily identifiable funds from their accounts in
16 payment of these fees in order to satisfy them.

17 54. BoA has, without proper authorization, assumed and exercised the right of
18 ownership over these funds, in hostility to the rights of Plaintiff and the members of the
19 Class, without legal justification.

20 55. BoA continues to retain these funds unlawfully without the consent of
21 Plaintiffs or members of the Class.

22 56. BoA intends to permanently deprive Plaintiff and the members of the Class
23 of these funds.

24 57. These funds are properly owned by Plaintiff and the members of the Class,
25 not BoA, which now claims that it is entitled to their ownership, contrary to the rights of
26 Plaintiff and the members of the Class.

27 58. Plaintiff and the members of the Class are entitled to the immediate
28 possession of these funds.

1 59. BoA has wrongfully converted these specific and readily identifiable funds.

2 60. BoA's wrongful conduct is continuing.

3 61. As a direct and proximate result of this wrongful conversion, Plaintiff and the
4 members of the Class have suffered and continue to suffer damages.

5 62. By reason of the foregoing, Plaintiff and the members of the Class are
6 entitled to recover from BoA all damages and costs permitted by law, including all
7 amounts that BoA has wrongfully converted.

8 **FOURTH CLAIM FOR RELIEF**

9 **Unjust Enrichment (On behalf of the classes)**

10 63. Plaintiff incorporates the preceding allegations by reference as if fully set
11 forth herein.

12 64. Plaintiff, on behalf of herself and the Class, assert a common law claim for
13 unjust enrichment.

14 65. By means of BoA's wrongful conduct alleged herein, BoA knowingly
15 provided banking services to Plaintiff and members of the Class that was unfair,
16 unconscionable, and oppressive.

17 66. BoA knowingly received and retained wrongful benefits and funds from
18 Plaintiff and members of the Class. In so doing, BoA acted with conscious disregard for
19 the rights of Plaintiff and members of the Class.

20 67. As a result of BoA's wrongful conduct as alleged herein, BoA has been
21 unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the
22 Class.

23 68. BoA's unjust enrichment is traceable to, and resulted directly and
24 proximately from, the conduct alleged herein.

25 69. Under the common law doctrine of unjust enrichment, it is inequitable for
26 BoA to be permitted to retain the benefits it received, and is still receiving, without
27 justification, from the imposition of ATM fees on Plaintiff and members of the Class in an
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1 unfair, unconscionable, and oppressive manner. BoA’s retention of such funds under
2 circumstances making it inequitable to do so constitutes unjust enrichment.

3 70. The financial benefits derived by BoA rightfully belong to Plaintiff and
4 members of the Class. BoA should be compelled to disgorge in a common fund for the
5 benefit of Plaintiff and members of the Class all wrongful or inequitable proceeds
6 received by them. A constructive trust should be imposed upon all wrongful or
7 inequitable sums received by BoA traceable to Plaintiff and the members of the Class.

8 71. Plaintiff and members of the Class have no adequate remedy at law.

9 **FIFTH CLAIM FOR RELIEF**

10 **Violation of California Unfair Competition Law, Unfair Prong**
11 **Business and Professions Code § 17200**
(On behalf of the California Class)

12 72. Plaintiff incorporates by reference each of the allegations set forth in the
13 preceding paragraphs.

14 73. Defendant’s conduct described herein violates the Unfair Competition Law
15 (the “UCL”), codified at California Business and Professions Code section 17200, *et seq.*

16 74. The UCL prohibits, and provides civil remedies for, unfair competition. Its
17 purpose is to protect both consumers and competitors by promoting fair competition in
18 commercial markets for goods and services. In service of that purpose, the Legislature
19 framed the UCL’s substantive provisions in broad, sweeping language.

20 75. By defining unfair competition to include any “any unlawful, unfair or
21 fraudulent business act or practice,” the UCL permits violations of other laws to be treated
22 as unfair competition that is independently actionable, and sweeps within its scope acts
23 and practices not specifically proscribed by any other law.

24 76. Defendant’s conduct violates the UCL’s “unfair” prong insofar as Defendant
25 charged inflated International Transaction Fees.

26 77. Defendant’s conduct was not motivated by any business or economic need or
27 rationale. The harm and adverse impact of Defendant’s conduct on members of the
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1 general public was neither outweighed nor justified by any legitimate reasons,
2 justifications, or motives.

3 78. The harm to Plaintiff and Class members arising from Defendant’s unfair
4 practices relating to the imposition of ITF’s outweighs the utility, if any, of those
5 practices.

6 79. Defendant’s unfair business practices relating to ITF’s as alleged herein are
7 immoral, unethical, oppressive, unscrupulous, unconscionable and/or substantially
8 injurious to Plaintiff and members of the Class.

9 80. Defendant’s conduct was substantially injurious to consumers in that they
10 have been forced to pay ITF’s which are not disclosed in their contract with BoA.

11 81. As a result of Defendant’s violations of the UCL’s “unfair” prong, Plaintiff
12 and members of the Class have paid, and/or will continue to pay OON Fees and thereby
13 have suffered and will continue to suffer actual damages.

14 82. Defendant also committed fraudulent business acts and practices in violation
15 of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it affirmatively and knowingly
16 misrepresented or failed to disclose its inflation-of-ITF practices. Such representations
17 and omissions misled Plaintiff and are likely to mislead the public.

18 83. In addition, Defendant committed fraudulent business acts and practices in
19 violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it affirmatively and knowingly
20 omitted disclosures that ATM transaction fees assessed by foreign ATM operators would
21 be included as part of the 3% for determining the amount of the ITF when a customer
22 withdraws foreign currency. Such omissions misled the Plaintiffs and are likely to
23 mislead the public.

24 84. As a result of Defendant’s violations of the UCL’s “fraudulent” prong,
25 Plaintiffs and members of the Class have paid, and/or will continue to pay, unreasonably
26 excessive amounts of money for banking services and thereby have suffered and will
27 continue to suffer actual damages.

28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays on behalf of herself and all others similarly situated, for judgment against Defendant as follows:

1. declaring BoA’s International Transaction Fee policies and practices to be wrongful, unfair, and unconscionable and in breach of the Schedule and other related agreements;

2. restitution of all International Transaction Fees paid to BoA by Plaintiff and the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;

3. disgorgement of the ill-gotten gains derived by BoA from its misconduct;

4. injunctive relief, including public injunctive relief, enjoining BoA from further engaging in its wrongful ITF practice, and requiring BofA to notify its customers of their rights regarding this improper practice, engage in a corrective marketing campaign, and amend its disclosures;

5. actual damages in an amount according to proof;

6. punitive and exemplary damages;

7. pre-judgment interest at the maximum rate permitted by applicable law;

8. costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys’ fees pursuant to the account agreement, Code of Civil Procedure § 1021.5, and other applicable law; and

9. such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for all of the claims so triable.

Dated: February 12, 2020

CARLSON LYNCH, LLP

/s/ Todd D. Carpenter

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*Attorneys for Plaintiffs and
Proposed Class Counsel*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ANDREA F. DURKEE on Behalf of Herself All Others Similarly Situated,

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) CARLSON LYNCH, LLP, 1350 Columbia St. Ste. 603, San Diego, California 92101 (619) 762-1900

DEFENDANTS

BANK OF AMERICA, N.A., and Does 1-100, inclusive,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) '20CV0347 JM LL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332(d)(2) and (6)
Brief description of cause: Breach of Contract & Covenant of Good Faith and Fair Dealing; Conversion; Unjust Enrichment; Violation of UCL

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/24/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Todd D. Carpenter

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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*Attorneys for Plaintiffs and
Proposed Class Counsel*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ANDREA F. DURKEE on Behalf of Herself
All Others Similarly Situated,

Plaintiffs,

vs.

BANK OF AMERICA, N.A., and Does 1-100,
inclusive,

Defendant.

Case No. **'20CV0347 JM LL**

**APPENDIX OF EXHIBITS TO
CLASS ACTION COMPLAINT**

Pursuant to Local Rule 5.1(e), Plaintiff hereby submits this Appendix of Exhibits to the Class Action Complaint:

Ex.	Description	Page Nos.
1	Bank of America, N.A.'s Personal Schedule of Fees	1-20

Dated: February 12, 2020

CARLSON LYNCH, LLP

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*Attorneys for Plaintiffs and
 Proposed Class Counsel*

Personal Schedule of Fees

Effective November 1, 2019

BANK OF AMERICA 

[bankofamerica.com](https://www.bankofamerica.com)

Applies in all states.

Bank of America, N.A. Member FDIC. ©2019 Bank of America Corporation.
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Investment products are provided by Merrill Lynch, Pierce, Fenner & Smith Incorporated and:

Are Not FDIC Insured	Are Not Bank Guaranteed	May Lose Value
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Merrill Lynch, Pierce, Fenner & Smith Incorporated (also referred to as “MLPF&S” or “Merrill”) makes available certain investment products sponsored, managed, distributed or provided by companies that are affiliates of Bank of America Corporation (“BofA Corp.”). MLPF&S is a registered broker-dealer, Member SIPC and a wholly owned subsidiary of BofA Corp.

Overview

This schedule lists the fees associated with your account and ways to avoid them when applicable. For details about your account and its fees, please review the account descriptions and Other Account Fees and Services section of this document.

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

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

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

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

Deposit Agreement and Disclosures Amended for Bank of America Advantage SafeBalance Banking® Account

Your account and deposit relationship with us are governed by this schedule of fees and the *Deposit Agreement and Disclosures*. Note that since there are no check-writing privileges with the Advantage SafeBalance Banking account, references in the *Deposit Agreement and Disclosures* to the ability to write checks and associated rights and obligations do not apply to Advantage SafeBalance Banking. All other terms and conditions in the *Deposit Agreement and Disclosures* that apply to checking accounts apply to Advantage SafeBalance Banking except as otherwise amended in this schedule of fees.

Other terms and conditions in this schedule of fees amend the *Deposit Agreement and Disclosures*, including information in the "Other Important Account Information for Bank of America Advantage SafeBalance Banking® Account" section.

Optional Services

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

- Debit card (Photo Security® feature available) or ATM card
- Online Banking service
- Online and Mobile Bill Pay service
- Email and Text Alerts
- Direct deposits
- Keep the Change® Savings Service

- Affinity Banking
- Preferred Rewards
- Overdraft Protection Service from another linked account (Overdraft Protection Service is not available on Advantage SafeBalance Banking account)
- Automatic transfers from checking to savings

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

Advantage Banking Account Settings

- Bank of America Advantage SafeBalance Banking®
- Bank of America Advantage Plus Banking®
- Bank of America Advantage Relationship Banking®

Your Bank of America Advantage Banking Account offers you the ability to choose from and switch between three account settings. Each account setting has a different set of features to offer you flexibility if your banking needs change.

Paper checks are an included feature of the Bank of America Advantage Plus Banking and Bank of America Advantage Relationship Banking account settings.

The Bank of America Advantage SafeBalance Banking account setting is a checkless checking account setting which means that you cannot write personal paper checks. With the Advantage

SafeBalance Banking account setting you can make deposits, withdrawals and pay bills. You can make payments with your debit card, a wire transfer, an Automated Clearing House transaction (ACH), Zelle®, or through our Online and Mobile Banking Bill Pay service, and you can make withdrawals at an ATM or financial center.

Switching to the Advantage SafeBalance Banking Account Setting

If you elect to switch from your existing personal checking account or account setting to Advantage SafeBalance Banking, you will no longer be able to write personal paper checks and should immediately stop writing them. We will continue to process checks you have written prior to switching to Advantage SafeBalance Banking for 60 days. After the 60 day period, all paper checks that you have written will be returned unpaid even when sufficient funds are available in the account to cover the check. When this happens, we will not charge you an NSF: Returned Item Fee, but the payee may charge you a fee(s) for the returned payment.

Account	Monthly Maintenance Fee and How to Avoid It	Other Important Account Information
<p>Bank of America Advantage SafeBalance Banking</p> <ul style="list-style-type: none"> • No overdraft or NSF fees • No paper checks • Use direct deposit • Non-interest bearing account • Minimum to open - \$25.00 	<p>Monthly maintenance fee for Advantage SafeBalance Banking account - \$4.95</p> <p>To avoid the monthly maintenance fee, enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 checking accounts)</p>	<p>The Advantage SafeBalance Banking account is different from a traditional checking account. It has important limitations that you should review. If you want any of the functions listed below, it might not be the right account setting for you.</p> <p>The following features are not available with your Advantage SafeBalance Banking account:</p> <ul style="list-style-type: none"> • Checks. Paper checks written by you or others on the account will not be paid. <ul style="list-style-type: none"> - Do not buy checks from any source, such as checks you see advertised on the internet or in the newspaper or any other third parties. - If a check is presented for payment, it will not be paid even if you have enough money in your account to cover it. You may incur fees from the party you were trying to pay when the check is returned. - If a merchant uses your account and routing numbers to process a payment as a check, it will be rejected. • Overdraft Protection Service to or from a linked account. • Overdraft services. Your account does not come with overdraft services and it is set to a Decline All Overdraft Setting. This means that if you do not have sufficient available funds in your account to cover an item, the item will be returned unpaid. You may be assessed a fee by a merchant if this happens. Please see the “Other Important Account Information” section for more details. <p>Student waiver. When this account is owned either individually or jointly by a student, upon your request we waive the monthly maintenance fee for each statement cycle during which the student meets both of the following requirements:</p> <ul style="list-style-type: none"> • The student is enrolled in a high school or a college, university or vocational program <p>and</p> <ul style="list-style-type: none"> • The student is under 24 years old. <p>College, university and vocation students may be required to show proof of enrollment. This student waiver does not apply when the student turns 24, ceases to be an owner of the account, or is no longer enrolled in school.</p>

Personal Bank of America Advantage Banking Accounts (cont.)

Account	Monthly Maintenance Fee and How to Avoid It	Other Important Account Information
<p>Bank of America Advantage Plus Banking</p> <ul style="list-style-type: none"> • Use direct deposit • Non-interest bearing account • Minimum to open - \$100.00 	<p>Monthly maintenance fee for Advantage Plus Banking account - \$12.00</p> <p>To avoid the monthly maintenance fee, meet one of the following requirements during each statement cycle:</p> <ul style="list-style-type: none"> • Have at least one qualifying direct deposit of \$250 or more made to your account. Or • Maintain a minimum daily balance of \$1,500 or more in your account. Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 checking accounts). 	<p>Student waiver. When this account is owned either individually or jointly by a student, upon your request we waive the monthly maintenance fee for each statement cycle during which the student meets both of the following requirements:</p> <ul style="list-style-type: none"> • The student is enrolled in a high school or a college, university or vocational program, and • The student is under 24 years old. <p>College, university and vocation students may be required to show proof of enrollment. This student waiver does not apply when the student turns 24, ceases to be an owner of the account, or is no longer enrolled in school.</p> <p>For information about direct deposits, see the Frequently Asked Questions About Accounts section.</p> <p>The minimum daily balance is the lowest balance that we determine is in the account during a statement cycle. This means you will need to ensure your account does not fall below \$1,500 during your statement cycle.</p>

Personal Bank of America Advantage Banking Accounts (cont.)

Account	Monthly Maintenance Fee and How to Avoid It	Other Important Account Information
<p>Bank of America Advantage Relationship Banking</p> <ul style="list-style-type: none"> • Interest bearing account • Variable rate • Minimum to open - \$100.00 	<p>Monthly maintenance fee for Advantage Relationship Banking account - \$25.00</p> <p>To avoid the monthly maintenance fee, maintain a combined balance of \$10,000 or more during each statement cycle.</p> <p>For each statement cycle, we add the following balances together to determine your combined balance:</p> <ul style="list-style-type: none"> • The average daily balance in your Advantage Relationship Banking account and in each checking and savings account that is linked to your Advantage Relationship Banking account. We determine the average daily balance in a linked account by using the beginning balance in the linked account for each day of the Advantage Relationship Banking statement cycle. And • The current balance, as of the end of your Advantage Relationship Banking statement cycle, in each CD and IRA that is linked to your Advantage Relationship Banking account. And • The current balance, as of two business days before the end of your Advantage Relationship Banking statement cycle, in each eligible Merrill investment account that is linked to your Advantage Relationship Banking account. Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 checking accounts). 	<p>You can also get the following services with this account:</p> <ul style="list-style-type: none"> • Three additional Advantage Relationship Banking accounts and four savings accounts with no monthly maintenance fee when you link them to your primary Advantage Relationship Banking account. • Free standard checks or discounts on certain styles. • No transfer fee for Overdraft Protection transfers from your linked Bank of America savings, line of credit or secondary checking account. (Other line of credit fees may apply.) • No fee for incoming domestic wire transfers, stop payments, and more. <p><i>Additional accounts.</i> For accounts linked to your Advantage Relationship Banking account, we waive the monthly maintenance fee on the first three linked Advantage Relationship Banking accounts and on the first four linked savings accounts of any type. The minimum amount you need to open each additional account, and other terms and fees, apply to each linked account. While you can also have us link more accounts, this waiver of the monthly maintenance fee does not apply to them. Transaction limits apply to savings accounts. See “What are the transaction limitations on my savings account?” in the Frequently Asked Questions About Accounts section.</p> <p><i>Linking accounts.</i> You must tell us what accounts you want us to link to your Advantage Relationship Banking account. You can do so by visiting a financial center or calling us at the number on your statement. We do not automatically link other accounts for pricing. Certain restrictions apply. Please review “What does it mean to link accounts?” in the Frequently Asked Questions About Accounts section.</p> <p><i>Employees and Retirees:</i> Bank of America employee and retirees qualify for a waiver of the monthly maintenance fee on up to four Bank of America Advantage Relationship Banking accounts. When employees or retirees no longer meet the qualifications, standard product terms and pricing apply. See “Which employees and retirees are eligible for a waiver of the Monthly Maintenance Fee?” in the Frequently Asked Questions About Accounts section.</p>

Please also review the *Other Account Fees and Services* section, *Frequently Asked Questions About Accounts* section and the *Deposit Agreement and Disclosures* for additional details related to your Bank of America Advantage Banking account.

Personal Savings Accounts

Account	Monthly Maintenance Fee and How to Avoid It	Other Important Account Information
<p>Bank of America Advantage Savings</p> <ul style="list-style-type: none"> • Interest bearing account • Variable interest rate • Potential for Preferred Rewards interest rate booster feature • Minimum amount to open - \$100.00 	<p>Monthly maintenance fee - \$8.00</p> <p>For new accounts opened on or after August 13, 2018, we will waive the monthly maintenance fee for six months from account opening. This waiver does not apply if your account has been converted or changed to a Bank of America Advantage Savings account.</p> <p>To avoid the monthly maintenance fee, meet one of the following requirements during each statement cycle (after the expiration of any applicable waiver):</p> <ul style="list-style-type: none"> • Maintain a minimum daily balance of \$500 or more in your account. Or • Link your account to your Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking or Bank of America Advantage® Regular Checking accounts (first 4 savings accounts). Or • Enroll in the Preferred Rewards program and qualify for the Gold, Platinum or Platinum Honors tier (first 4 savings accounts). 	<ul style="list-style-type: none"> • This account is eligible for the interest rate booster feature of the Preferred Rewards program, which may increase your interest rate based on your Preferred Rewards tier. • Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee. • If you maintain a minimum daily balance of \$20,000 or more in your Bank of America Advantage Savings account or if you are enrolled in the Preferred Rewards program, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is \$10.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means. • Limits apply to some types of withdrawals and transfers from a savings account. See “What are the transaction limitations on my savings account?” in the Frequently Asked Questions About Accounts section. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law. <p>Student waiver. When this account is owned either individually or jointly by a student, upon your request we waive the monthly maintenance fee for each statement cycle during which the student meets both of the following requirements:</p> <ul style="list-style-type: none"> • The student is enrolled in a high school or a college, university or vocational program, and • The student is under 24 years old. <p>College, university and vocation students may be required to show proof of enrollment. This student waiver does not apply when the student turns 24, ceases to be an owner of the account, or is no longer enrolled in school.</p>
<p>Minor Savings Accounts (Under 18)</p> <ul style="list-style-type: none"> • Under 18 years old, beginning a savings program • Interest bearing account • Variable interest rate • Minimum amount to open - \$25.00 <p><i>(Bank of America Advantage Savings account terms and fees apply to UTMA / UGMA custodial accounts opened for the benefit of a minor.)</i></p>	<p>No monthly maintenance fee</p>	<ul style="list-style-type: none"> • After you turn 18, we automatically convert your Minor Savings to a Bank of America Advantage Savings account. • Parents can make automatic transfers from checking. • Each monthly statement cycle, you can make a total of six withdrawals and transfers with no Withdrawal Limit Fee. • If you maintain a minimum daily balance of \$300 or more in your Minor Savings account, you may make additional withdrawals and transfers with no Withdrawal Limit Fee. Otherwise, the Withdrawal Limit Fee is \$1.00 for each withdrawal and transfer during the monthly statement cycle above the six. We charge no more than six Withdrawal Limit Fees per monthly statement cycle. This fee applies to all types of withdrawals and transfers, including at ATMs, at financial centers, by telephone, by mail, through Online and Mobile Banking, and by any other electronic means. • Limits apply to some types of withdrawals and transfers from a savings account. See “What are the transaction limitations on my savings account?” in the Frequently Asked Questions About Accounts section. Note that the Withdrawal Limit Fee is separate from the transaction limitations that apply to savings accounts under federal law.

Please also review the *Other Account Fees and Services* section, *Frequently Asked Questions About Accounts* section and the *Deposit Agreement and Disclosures*.

Personal CD/IRA Accounts

Account	Minimum Amount You Need to Open Account	Account Features/ Services	Other Important Account Information
Fixed Term CD Terms of 7 Days—27 Days	\$15,000	<ul style="list-style-type: none"> • Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. 	<ul style="list-style-type: none"> • A penalty is imposed for early withdrawal.
Fixed Term CD Terms of 28 Days—10 Years	\$1,000	<ul style="list-style-type: none"> • Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. 	<ul style="list-style-type: none"> • A penalty is imposed for early withdrawal. • For CDs with terms of 30 days or more, we send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.
Featured CD/IRA	See deposit rate sheet for minimum opening amount	<ul style="list-style-type: none"> • Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. • See deposit rate sheet for available terms. 	<ul style="list-style-type: none"> • A penalty is imposed for early withdrawal. • For CDs with terms of 30 days or more, we send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.
Fixed Term IRA/CESA Terms of 6 Months—10 Years	Fixed Term IRA: \$1,000; CESA: \$500	<ul style="list-style-type: none"> • Interest rate fixed until maturity. • No additional deposits until maturity. • Automatically renews. 	<ul style="list-style-type: none"> • A penalty is imposed for early withdrawal. • We send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.

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

Personal CD/IRA Accounts (cont.)

Account	Minimum Amount You Need to Open Account	Account Features / Services	Other Important Account Information
Variable Rate IRA/CESA Terms of 18 Months— 23 Months	\$100	<ul style="list-style-type: none"> • Variable interest rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate and annual percentage yield on your account at any time. • Additional deposits allowed during term. • Automatically renews. • Make saving easier with automatic transfers. 	<ul style="list-style-type: none"> • A penalty is imposed for early withdrawal. • We send you a maturity notice prior to renewal. Please read it carefully. We may change the type, term or other feature of your CD by giving you notice. If we make a change, we tell you about the change in the maturity notice.
Money Market IRA/ CESA	\$100	<ul style="list-style-type: none"> • Variable interest rate. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate and annual percentage yield on your account at any time. • Additional deposits allowed at any time. • Make saving easier with automatic transfers. 	<ul style="list-style-type: none"> • This is a savings account. • Pre-authorized transfers and withdrawals are subject to certain limitations. See “What are the transaction limitations on my savings account?” in the Frequently Asked Questions About Accounts section. Withdrawals by check, draft or debit card are not allowed.

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

Other Account Fees and Services

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Card and Debit Card Fees	Replacement ATM or Debit Card Fee	\$5.00 per card	<ul style="list-style-type: none"> • Fee for each requested replacement of a card or other debit access device. • The replacement fee does not apply when we replace a card upon its expiration. • Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers qualify for a waiver of this fee.
	Rush Replacement ATM or Debit Card Fee	\$15.00 per card	<ul style="list-style-type: none"> • Fee for each requested rush delivery of a card or other debit access device. • The Replacement ATM or Debit Card Fee may also apply and would be in addition to the rush delivery fee. • Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers qualify for a waiver of this fee.
	Non-Bank of America Teller Withdrawal Fee	For each transaction, the greater of \$5.00 OR 3% of the dollar amount of the transaction, up to a maximum of \$10.00	<ul style="list-style-type: none"> • Fee applies when you authorize another financial institution to use your card or card number to conduct a transaction (such as a withdrawal, transfer, or payment) and the other financial institution processes the transaction as a cash disbursement.
	International Transaction Fee	3% of the U.S. dollar amount of the transaction	<ul style="list-style-type: none"> • Fee applies if you use your card to purchase goods or services in a foreign currency or in U.S. dollars with a foreign merchant (a "Foreign Transaction"). Foreign Transactions include internet transactions made in the U.S. but with a merchant who processes the transaction in a foreign country. • Fee also applies if you use your card to obtain foreign currency from an ATM. Visa® or Mastercard® converts the transaction into a U.S. dollar amount, and the International Transaction Fee applies to that converted U.S. dollar amount. ATM fees may also apply to ATM transactions. See ATM Fees section. • See disclosure information that accompanied your card for more information about this fee.

Other Account Fees and Services (cont.)

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
ATM Fees Bank of America ATM – an ATM that prominently displays the Bank of America name and logo on the ATM Non-Bank of America ATM – an ATM that does not prominently display the Bank of America name and logo on the ATM	Withdrawals, deposits, transfers, payments and balance inquiries at a Bank of America ATM	No ATM fee	<ul style="list-style-type: none"> • Deposits and payments may not be available at some ATMs. Transaction fees may apply to some accounts. See account descriptions in this schedule.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in the U.S.	\$2.50 each	<ul style="list-style-type: none"> • When you use a non-Bank of America ATM, you may also be charged a fee by the ATM operator or any network used and you may be charged a fee for a balance inquiry even if you do not complete a funds transfer. • The non-Bank of America ATM fees do not apply at some ATMs located outside the United States. Call us before you travel internationally for current information about banks participating in the program. • Non-Bank of America ATM fees are in addition to other account fees that may apply to the transaction, such as a Withdrawal Limit Fee for savings. • Preferred Rewards Platinum customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S., and receive a refund of the ATM operator fee for one withdrawal, transfer and balance inquiry per statement cycle from a non-Bank of America ATM in the U.S. • Preferred Rewards Platinum Honors customers using a Bank of America Debit or ATM card are not charged the non-Bank of America ATM fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S., and receive a refund of the ATM operator fee for withdrawals, transfers and balance inquiries from non-Bank of America ATMs in the U.S. • See the disclosure information that accompanied your card for other fees that may apply.
	Non-Bank of America ATM Fee for: Withdrawals, transfers and balance inquiries at a non-Bank of America ATM in a foreign country	\$5.00 each	
Check Cashing – <i>Bank of America customer</i>		No Check Cashing Fee	A fee may be assessed to a payee presenting a check that you issued if the payee is not a Bank of America relationship customer.
Check Cashing – <i>Nonrelationship customer</i>	Applies to checks drawn on Bank of America personal accounts including checks issued through Online or Mobile Bill Pay	\$8.00 per check for amounts greater than \$50.00.	A Bank of America relationship customer is an account owner of a deposit account (checking, savings, CD), Individual Retirement Account (IRA), loan, credit card, mortgage, safe deposit box or a Merrill Investment account.
Check Image Service	Check Image Service Fee	\$3.00 each statement cycle	<ul style="list-style-type: none"> • Fee to return images of your cancelled checks with your statement. Applies to each statement cycle during which we return one or more images of your checks. • Our Online Banking service allows you to view and print copies of checks that posted to your account within the last 18 months. • Preferred Rewards customers qualify for a waiver of this fee. • No fee for check images if you receive your statements online instead of in the mail.

Other Account Fees and Services (cont.)

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Copies	Check Copy Fee	No fee for the first two copies of each request. After two copies, there is a \$3.00 fee for each copy up to a maximum of \$75.00 per request.	<ul style="list-style-type: none"> • Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers qualify for a waiver of this fee. • This fee does not apply to accounts opened in Massachusetts and New Hampshire. • You can avoid the fee by viewing and printing your available checks in Online Banking, instead of ordering the copy from us. For information about what checks are available in Online Banking, please review the Activity tab.
	Deposit Slips and other Credit Items	No fee for the first two copies of each request. After two copies, there is a \$3.00 fee for each copy up to a maximum of \$75.00 per request.	<ul style="list-style-type: none"> • Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers qualify for a waiver of this fee. • This fee does not apply to accounts opened in Massachusetts and New Hampshire. • You can avoid the fee by viewing and printing your available Deposit Slips and other Credit Items, instead of ordering the copy from us. For information about what Deposit Slips and other Credit Items are available in Online Banking, please review the Activity tab.
	Statement Copy Fee	\$5.00 per copy	<ul style="list-style-type: none"> • Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers qualify for a waiver of this fee. • You can avoid the fee by viewing and printing your available statements in Online Banking, instead of ordering the copy from us. For information about what statements are available in Online Banking, please review the Statements and Documents tab. • This fee does not apply to your monthly statement delivery. It only applies when you request paper copies of your statements.
IRA	IRA and Coverdell ESA Direct Custodian Transfer Processing Fee	\$50.00 each plan, each occurrence	<ul style="list-style-type: none"> • Fee for transferring funds to another institution.

Other Account Fees and Services (cont.)

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
<p>Overdraft Protection Service</p> <p><i>This optional service can help you avoid declined transactions as well as overdraft and NSF: Returned Item Fees. To apply for this service, please call the number on your account statement or talk to your local financial center associate.</i></p> <p><i>Bank of America Advantage SafeBalance Banking is not eligible for Overdraft Protection to or from a linked account</i></p>	<p>Overdraft Protection Transfer Fee - transfer from a linked Bank of America savings or secondary checking account</p>	<p>\$12.00 each transfer</p>	<ul style="list-style-type: none"> • Overdraft Protection transfers are made for the amount required to cover the overdraft and the applicable transfer fee. If your savings or secondary checking account does not have enough available funds to cover the necessary amount, we may decline to make the transfer. • Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers qualify for a waiver of this fee. • Only 1 transfer fee charged per day that a transfer is made. • We will not charge an Overdraft Protection Transfer Fee if all individual items covered by the transfer are \$1.00 or less. In addition, we will not charge this fee if your account is overdrawn by a total amount of \$1.00 or less before we apply overdraft protection.
	<p>Overdraft Protection Transfer Fee - transfer from a linked Bank of America line of credit</p>	<p>\$12.00 each transfer</p>	<ul style="list-style-type: none"> • Overdraft Protection transfers are advances under the terms of the line of credit agreement and are made in increments of \$100. Advances are subject to interest charges or finance charges, as provided in the line of credit agreement. Please see the line of credit agreement. • Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers qualify for a waiver of this fee. • Only 1 transfer fee charged per day that a transfer is made. • We will not charge an Overdraft Protection Transfer Fee if all individual items covered by the transfer are \$1.00 or less. In addition, we will not charge this fee if your account is overdrawn by a total amount of \$1.00 or less before we apply overdraft protection.
	<p>Overdraft Protection Transfer Fee - transfer from a linked Bank of America credit card</p>	<p>See Credit Card Agreement</p>	<ul style="list-style-type: none"> • Overdraft Protection transfers are considered cash advances and may be subject to additional Overdraft Protection cash advance fees. See your Credit Card Agreement for applicable rates and fees. • Only 1 transfer fee charged per day that a transfer is made.

Please also review the *Deposit Agreement and Disclosures*.

Other Account Fees and Services (cont.)

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
<p>Overdraft Items (an overdraft item)</p> <p><i>Bank of America Advantage SafeBalance Banking does not have Overdraft Item Fees</i></p>	<p>Overdraft Item Fee</p>	<p>\$35.00 each item over \$1.00</p>	<ul style="list-style-type: none"> • When we determine that you do not have enough available funds in your account to cover an item, then we either authorize and pay the item and overdraw your account (an overdraft item), or we decline or return the item unpaid (an NSF: Returned Item). • Some common examples of items are a check or other transaction made using your checking account number, an everyday non-recurring debit card transaction, a recurring debit card transaction, an ATM withdrawal, an ACH transaction, and an Online or automatic bill payment. Please see the <i>Deposit Agreement and Disclosures</i> for more information about items, overdrafts, declined or returned items and for information about how we process and post items. • We do not charge you an Overdraft Item Fee on an everyday non-recurring debit card transaction. We also do not charge you an Overdraft Item Fee on an ATM transaction unless you agreed to our overdraft practices for that particular ATM transaction. We do charge you an Overdraft Item Fee each time we authorize and pay any other type of overdraft transaction. These other types of transactions include checks and other transactions made using your checking account number, recurring debit card transactions, Online and automatic bill payments, and ACH transactions. We do not charge you an Overdraft Item Fee for any item that is \$1.00 or less or any item that overdraws your account by \$1.00 or less.
<p>NSF: Returned Items (a returned item)</p> <p><i>Bank of America Advantage SafeBalance Banking does not have NSF: Returned Item Fees</i></p>	<p>NSF: Returned Item Fee</p>	<p>\$35.00 each item over \$1.00</p>	<ul style="list-style-type: none"> • We do not charge you an NSF: Returned Item Fee when we decline an ATM transaction or debit card transaction. We do charge you an NSF: Returned Item Fee each time we decline or return any other type of transaction unpaid. These other types of transactions include checks and other transactions made using your checking account number, Online and automatic bill payments, and ACH transactions. We do not charge you an NSF: Returned Item Fee for any item that is \$1.00 or less. • We charge you Overdraft Item Fees and NSF: Returned Item Fees for no more than 4 items each day. • For information about our Overdraft Protection plans and overdraft practices and overdraft settings, please see our <i>Deposit Agreement and Disclosures</i> and our <i>What You Need to Know about Overdrafts and Overdraft Fees</i> notice.

Please also review the *Deposit Agreement and Disclosures*.

Other Account Fees and Services (cont.)

Fee Category	Fee Name/Description	Fee Amount	Other Important Information About This Fee
Miscellaneous	Check and Deposit Ticket Orders	Fee varies	<ul style="list-style-type: none"> Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers receive free standard checks or discounts on certain designs. We may change the fees for check and deposit ticket orders at any time. Visit a financial center or call us at the number on your statement for current fees.
	Deposited Item Returned or Cashed Item Returned Fee (Returned Item Chargeback Fee)	\$12.00 each domestic item \$15.00 each foreign item	<ul style="list-style-type: none"> We charge this fee each time a check or other item that we either cashed for you or accepted for deposit to your account is returned to us unpaid.
	Legal Process Fee	\$125.00 each occurrence (or such other rate as may be set by law)	<ul style="list-style-type: none"> Fee applies to each legal order or process that directs us to freeze, attach or withhold funds or other property, such as an attachment, levy or garnishment.
	Stop Payment Fee	\$30.00 each request	<ul style="list-style-type: none"> Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers qualify for a waiver of this fee. There is no charge to place a stop payment on a recurring debit card transaction.
	Wire Transfers, Incoming or Outgoing (U.S. or International)	Fee varies	<ul style="list-style-type: none"> Bank of America Advantage Relationship Banking, Bank of America Advantage® with Tiered Interest Checking and Bank of America Advantage® Regular Checking accounts plus Preferred Rewards customers qualify for a waiver of our standard wire fee for an incoming domestic wire transfer. The standard wire fee for incoming international wire transfers is waived for Preferred Rewards (Platinum and Platinum Honors tiers only) customers. We may change the fees for wire transfers at any time. Visit a financial center or call us at the number on your statement for current fees. For international wire transfers, in addition to our standard wire transfer fee, other fees may also apply, including those charged by the recipient's financial institution, foreign taxes, and other fees that are part of the wire transfer process. Markups associated with the currency conversion are included in the Bank of America exchange rate. When deciding between sending in foreign currency or U.S. Dollars, you should consider factors that impact the total cost to send or the amount available after transfer, such as exchange rates and other fees.

Frequently Asked Questions About Accounts

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

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

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

What are paperless statements?

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

What is a direct deposit?

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

For Bank of America Advantage Plus Banking accounts, qualifying direct deposits are deposits of regular monthly income — such as your salary, pension, or Social Security benefits — which are made by your employer or other payer using the account and routing numbers that you provide to them.

Other types of transfers and deposits do not qualify for the waiver of the monthly maintenance fee. Examples of non-qualifying transfers and deposits include: teller deposits, wire transfers, Online and Mobile Banking transfers, transfers from one account to another, and ATM transfers and deposits.

What does variable rate mean?

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

What does it mean to link accounts?

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

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

When a new account is opened to replace an existing account, we do not automatically link the new account to your checking or banking account for pricing, even if the existing account was linked. You must tell us to link the new account. As examples, when you

refinance your mortgage loan, the refinanced loan is a new account. Whenever we change the account number of your checking account, we close the current checking account and open a new checking account. In both examples, the replacement account is a new account and, if you want us to link it to your checking or banking account for pricing, you need to tell us to link the new account.

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

What Bank of America first mortgage loans can qualify for a waiver of the monthly maintenance fee on a Bank of America Advantage® with Tiered Interest Checking or Bank of America Advantage® Regular Checking account?

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

What limits apply to linking accounts?

Some restrictions apply to what accounts can be linked to a checking or banking account, including the following. You can generally link savings, Individual Retirement Account (IRA) and CD, and some checking and Merrill investment accounts to your checking or banking account. You may only link an account to one checking or banking account at a time. To link additional accounts to a checking or banking account, at least one of the owners of the linked additional account must also be an owner of the checking or banking account. You may not link personal and business accounts together.

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

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

Are the statement cycles for linked accounts the same?

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

What are combined statements?

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

(continued)

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

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

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

What are the transaction limitations on my savings account?

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

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

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

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

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

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

Keep the Change® Savings Service

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

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

round-up purchases posted on that business day and we cancel the Keep the Change transfer for that day.

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

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

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

Other Important Account Information for Bank of America Advantage SafeBalance Banking Account

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

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

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

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

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

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

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

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

What overdraft setting is applied to Advantage SafeBalance Banking account setting?

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

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

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

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

You can pay bills and make payments with your debit card, a wire transfer, an Automated Clearing House transaction (ACH), Zelle®, or through our Online and Mobile Banking Bill Pay service. If you need to write checks on a regular basis and these alternatives do not work for you, you may need a traditional checking account that offers check-writing capability. Cashier's checks are also available for a fee in our financial centers.

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

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

What happens to checks I have written from my existing personal checking account if I switch my account to Advantage SafeBalance Banking?

If you switch from your existing personal checking, Advantage Plus Banking, or Advantage Relationship Banking account to an Advantage SafeBalance Banking account, we will continue to process checks for 60 days. After the 60 day period, all paper checks that you have written will be returned unpaid even when sufficient funds are available in the account to cover the check. When this happens, we will not charge you an NSF: Returned Item Fee, but the payee may charge you a fee(s) for the returned payment.

Preferred Rewards

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

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

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

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

You will qualify for the next higher balance tier when your three-month average combined balances meet or exceed the minimum amount for that balance tier. You will be moved to a higher balance tier starting in the month after the month in which you satisfy the combined balance requirement.

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

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

You or we may terminate your enrollment at any time. We may change or terminate program benefits at any time, without prior notice.

Only personal accounts that you own, and that in our determination are in good standing,

count toward your balance requirements and receive benefits. Accounts on which you are a signer but not an owner, or accounts included in your periodic statement on which you are not an owner, are not eligible. Bank of America Advantage SafeBalance Banking accounts count towards the checking account and balance requirements, and receive benefits.

Business accounts do not count towards the checking account requirement or balance requirements for the program, and will not be eligible to receive program benefits. Preferred Rewards for Business is Bank of America's rewards program for business accounts. Your business accounts may qualify separately for Preferred Rewards for Business.

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

Qualify

Accounts on which you are an owner or co-owner, including -

- Bank of America deposit accounts: Checking, Bank of America Advantage Banking, Savings, CD, and IRA accounts
- Merrill investment accounts, such as the Cash Management Account (CMA) and IRA accounts (Traditional, Roth, Rollover, SEP, Simple)
- 529 plans appearing on your Merrill statement (except 529 plans owned in Uniform Transfers to Minors Act (UTMA)/Uniform Gifts to Minors Act (UGMA) form)
- Revocable grantor trust accounts

Does Not Qualify

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

Not all products and services eligible for benefits under the Preferred Rewards program are available in all locations. Please contact 888.888.RWDS (888.888.7937), or if you are a Merrill Lynch Wealth Management or Bank of America Private Bank client contact your advisor, for details about which products and services are available in your location.

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

Notice for Maine Deposit Account Customers:

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

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

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

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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bank of America Faces Class Action Over Allegedly Inflated International Transaction Fees](#)
