

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3 KRISTEN SCHERTZER, MEAGAN
4 HICKS, and BRITTANY COVELL, on
5 behalf of themselves and all others similarly
6 situated,

7 Plaintiffs,

8 v.

9 BANK OF AMERICA, N.A.,
10 CARDTRONICS, INC., FCTI, INC., CASH
11 DEPOT, LTD., N.A., and DOES 1–50,
12 inclusive,

13 Defendants.

Case No. 3:19-cv-00264-DMS-MSB

14 **STIPULATION AND SETTLEMENT AGREEMENT AND RELEASE**

15 Subject to approval by the Court, this Stipulation and Settlement Agreement and
16 Release (“Settlement Agreement”) is made and entered into by (1) Plaintiff Brittany
17 Covell (“Class Representative”), individually and as representative of the Settlement
18 Class (defined below) and (2) Bank of America, N.A. (“BANA”). The Class
19 Representative and BANA are collectively referred to herein as the “Parties.” The
20 Parties intend for this Settlement Agreement to fully and finally resolve and settle all
21 released rights and claims to the extent set forth below and subject to the terms and
22 conditions set forth below.

23 **RECITALS**

24 WHEREAS, this class action was initially filed on February 5, 2019, in the
25 United States District Court for the Southern District of California;

26 WHEREAS, Plaintiffs Kristen Schertzer, Meagan Hicks, and Brittany Covell
27 filed the Third Amended Complaint on March 25, 2020, asserting claims against BANA
28 and three independent ATM operators—Cardtronics, Inc.; FCTI, Inc. (“FCTI”); and
Cash Depot, Ltd.—regarding out-of-network fees (“OON Fee(s)”) for balance inquiries
at non-BANA ATMs, or out-of-network ATMs. Following the dismissals or

1 adjudications of the other claims by the other plaintiffs against BANA, only the claim
2 for breach of contract by Class Representative against BANA as to her \$2.50 OON Fee
3 generated from her FCTI transaction remained (the “Action”). See *Schertzer et al. v.*
4 *Bank of America, N.A.*, No. 3:19-cv-00264-DMS-MSB (S.D. Cal.);

5 WHEREAS, on April 8, 2024, plaintiff Molly Weiss filed a class action
6 complaint in the Superior Court of California, County of San Diego, entitled *Weiss v.*
7 *FCTI, Inc.*, No. 37-2024-00016908-CU-BT-NC, asserting violations of California’s
8 Unfair Competition Law against FCTI (“Weiss”);

9 WHEREAS, on December 24, 2025, a San Diego Superior Court granted final
10 approval of a class settlement in *Weiss* for “[a]ll Accountholders, defined to include
11 BANA customers, “who were assessed two OON Fees for a balance inquiry during the
12 same visit at a FCTI ATM in the United States from May 1, 2018 to November 16,
13 2021”;

14 WHEREAS, on May 20, 2025, the Court in this Action certified a class of
15 “Defendant Bank of America checking account holders in the United States who were
16 assessed more than one OON balance inquiry fee during the same visit to a FCTI, Inc.-
17 owned ATM located in a 7-Eleven store from May 1, 2018, to November 16, 2021,
18 and who did not make a valid claim and receive payment in *Weiss*” (Dkt. No. 331);

19 WHEREAS, the Parties have engaged in discovery and participated in an arms-
20 length mediation in good faith through which the basic terms of Settlement were
21 negotiated and agreed as to Class Representative’s claims related to OON Fees
22 assessed for balance inquiries;

23 WHEREAS, the Parties are ready and willing to make and enter into this
24 Settlement Agreement to settle the claims of the Class Representative and all putative
25 class members in the Action;

26 WHEREAS, the Parties recognize that the outcome of the Action is uncertain,
27 and that a final resolution through the litigation process would likely require further
28 protracted adversarial litigation and appeals, involve substantial risk and expense, and

1 could result in additional expenses associated with possible future litigation raising
2 similar or duplicative claims. Class Counsel has concluded, after inquiry and
3 investigation of the facts, that the terms of this Settlement Agreement are fair,
4 reasonable, adequate, and in the best interests of the Settlement Class; and the Parties
5 and their counsel have agreed to resolve the Action as a class action settlement
6 according to the terms of this Settlement Agreement;

7 WHEREAS, BANA denies all wrongdoing and liability, denies that Class
8 Representative's claims entitle her or the class members to any relief, and denies that
9 anyone was harmed by the conduct the Class Representative alleges. Nevertheless,
10 BANA desires to settle the Class Representative and putative class members' claims
11 on the terms described herein solely for the purpose of avoiding the burden, expense,
12 risk, and uncertainty of continuing litigation, and in order to put the litigation to rest;

13 NOW, THEREFORE, IT IS HEREBY AGREED, by the undersigned, on behalf
14 of Class Representative, the Settlement Class, and BANA, without any admission or
15 concession whatsoever by the Parties as to the strength or weakness of the merits of
16 the claims and defenses asserted in the Action, that all Released Claims, as defined
17 below, against BANA be fully and forever settled, compromised, released, and
18 dismissed on the merits with prejudice on the following terms and conditions, subject
19 to the Court's approval:

20 **1. DEFINITIONS**

21 As used in this Settlement Agreement, the following terms have the meanings
22 specified below:

23 **1.1. "Account"** means any BANA consumer checking or savings account from
24 which an OON Fee generated from an FCTI transaction was paid during the Class
25 Period.

26 **1.2. "Accountholder"** means any individual who is or was identified as an
27 owner of an Account during the Class Period. It includes Current Accountholders and
28 Past Accountholders.

1 **1.3.** “Action” means the above-captioned action, *Kristen Schertzer, et al. v.*
2 *Bank of America, N.A.*, No. 3:19-cv-00264-DMS-MSB, pending in the United States
3 District Court for the Southern District of California.

4 **1.4.** “Attorneys’ Fees and Costs” means the attorneys’ fees and costs related
5 to this Settlement Agreement that Class Counsel intend to seek under Section 9 of this
6 Settlement Agreement.

7 **1.5.** “BANA” means Defendant Bank of America, N.A.

8 **1.6.** “BANA’s Counsel” means Amanda L. Groves and Shawn R. Obi of
9 Winston & Strawn LLP.

10 **1.7.** “CAFA Notice” means notice of this proposed Settlement to the United
11 States Attorney General and appropriate state Attorneys General, as provided by the
12 Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

13 **1.8.** “Claim” means the submission of a Claim Form by a Claimant.

14 **1.9.** “Claim Form” means the proof of claim by which a Past Accountholder
15 may apply for a Settlement Class Member Payment, substantially in the form attached
16 as Exhibit D.

17 **1.10.** “Claimant” means a Past Accountholder who submits a Claim Form
18 seeking a Settlement Class Member Payment.

19 **1.11.** “Claims Deadline” shall be seventy-five (75) days after the original date
20 of issuance of the Preliminary Approval Order. The Claims Deadline shall be the last
21 day by which a Claim Form may be submitted to the Settlement Administrator.

22 **1.12.** “Claims Process” means the procedure by which a Claimant may submit
23 a Claim Form to receive a Settlement Class Member Payment.

24 **1.13.** “Class Counsel” means Todd D. Carpenter, (Eddie) Jae K. Kim, and
25 Tiffine E. Malamphy of Lynch Carpenter, LLP.

26 **1.14.** “Class List” means the list of all Settlement Class Members and their last
27 known email and postal addresses at least as of August 25, 2025, which BANA will
28 provide to the Settlement Administrator for the purposes of disseminating Notice. The

1 Class List shall be designated Confidential and protected pursuant to the terms of the
2 Stipulated Protective Order, and its usage shall be limited to administration of the
3 Notice Plan in this Action as stated in Section 4. BANA may, at its election, update the
4 Class List to reflect which Current Accountholders, if any, have become Past
5 Accountholders.

6 **1.15.** “Class Notice” means the notice of this Settlement and Final Approval
7 Hearing, which is to be sent to the Settlement Class substantially in the manner set
8 forth in this Settlement Agreement and approved by the Court, consistent with the
9 requirements of Due Process and Rule 23, and substantially in the form of Exhibits A
10 (Email Notice), B (Postcard Notice), and C (Long Form Notice), attached hereto.

11 **1.16.** “Class Period” means the time period beginning on May 1, 2018, and
12 ending on November 16, 2021.

13 **1.17.** “Class Representative” means Plaintiff Brittany Covell.

14 **1.18.** “Court” means the United States District Court for the Southern District
15 of California.

16 **1.19.** “Current Accountholder” means a Settlement Class Member who is an
17 Accountholder of BANA as reflected on the Class List and who will receive a
18 Settlement Class Member Payment as a credit to their Account.

19 **1.20.** “Effective Date” means thirty (30) days after the entry of the Final
20 Approval Order and Final Judgment and Order of Dismissal provided there are no
21 objections to the approval of the Settlement Agreement. If there are objections, then
22 the Effective Date shall mean the next business day following the last date on which a
23 notice of appeal directed to the entry of the Final Approval Order and Final Judgment
24 and Order of Dismissal could have been timely filed but with no notice of appeal
25 having been filed; or, should a notice of appeal be filed, it shall mean the next business
26 day after the Final Approval Order and Final Judgment and Order of Dismissal is
27 affirmed, all appeals are dismissed, and no further appeal is permitted.

1 **1.21.** “Email Notice” means the short form of notice that shall be sent by email
2 to Settlement Class Members, substantially in the form attached as Exhibit A.

3 **1.22.** “Fees and Costs Award” means the amount of Attorneys’ Fees and Costs,
4 if any, awarded by the Court to Class Counsel pursuant to a motion made under
5 Section 9 herein, which will be paid out of the Settlement Amount.

6 **1.23.** “Final Approval” means the approval of this Settlement Agreement by the
7 Court at or following the Final Fairness Hearing, and entry of the Final Approval Order
8 on the Court’s docket.

9 **1.24.** “Final Approval Order” means a final order and judgment in which the
10 Court gives Final Approval to the Settlement and dismisses with prejudice the Class
11 Representative and Settlement Class Members’ claims and enters a judgment
12 according to the terms set forth herein.

13 **1.25.** “Final Fairness Hearing” or “Final Approval Hearing” means the hearing
14 at which the Court will consider and finally decide whether to approve this Settlement,
15 enter the Final Approval Order, and make other such rulings contemplated by this
16 Settlement Agreement.

17 **1.26.** “Final Judgment and Order of Dismissal” means a final judgment that
18 dismisses the Action with prejudice following the Final Approval of the Settlement
19 pursuant to Fed. R. Civ. P. 58.

20 **1.27.** “Long Form Notice” means the long form of notice that shall be posted to
21 the settlement website, substantially in the form attached as Exhibit C.

22 **1.28.** “Motion for Final Approval” means the motion seeking Final Approval,
23 the Fees and Costs Award, and Service Award.

24 **1.29.** “Net Settlement Fund” means the Settlement Fund, minus Court-
25 approved Fees and Costs Award to Class Counsel, Service Award to the Class
26 Representative, and Settlement Administration Costs.

27 **1.30.** “Notice Plan” means the plan for sending Class Notice to Settlement Class
28 Members, as set forth in Section 4.

1 **1.31.** “OON Fees” means the out-of-network ATM fee(s) that a Settlement
2 Class Member paid to BANA in connection with a balance inquiry conducted at an
3 FCTI, Inc.-owned ATM.

4 **1.32.** “Opt-Out Deadline” or “Objection Deadline” means the period that begins
5 the day after the earliest date on which the Class Notice is first distributed, and that
6 ends no later than forty-five (45) days before the Final Approval Hearing.

7 **1.33.** “Party” means each of Class Representative and BANA, and “Parties”
8 means Class Representative and BANA, collectively.

9 **1.34.** “Past Accountholder” means a Settlement Class Member who is no longer
10 an Accountholder of BANA, as reflected on the Class List.

11 **1.35.** “Person” means a natural person, firm, association, organization,
12 partnership, business, trust, limited liability company, corporation, or public entity.

13 **1.36.** “Postcard Notice” means the short form of notice that shall be sent by
14 mail to any Class Members for whom Email Notice is returned as undeliverable,
15 substantially in the form attached as Exhibit B.

16 **1.37.** “Preliminary Approval” means preliminary approval of the Settlement
17 Agreement by the Court, conditional certification of the Settlement Class, and approval
18 of the method and content of the Class Notice to the Settlement Class Members.

19 **1.38.** “Preliminary Approval Order” means the Order agreed upon by the
20 Parties and attached to the Motion for Preliminary Approval.

21 **1.39.** “Released Claims” means any individual, class, representative, group or
22 collective claim, liability, right, demand, suit, matter, obligation, damage, loss, action
23 or cause of action, of every kind and description, that a Releasing Party has or may
24 have, including assigned claims, whether known or Unknown Claims, contingent or
25 absolute, suspected or unsuspected, disclosed or undisclosed, accrued or un-accrued,
26 latent or patent, contingent or non-contingent, liquidated or un-liquidated, at law or in
27 equity, matured or un-matured, apparent or unapparent, that the Class Representative
28 or Settlement Class Members raised or could have raised in the Action, or which they

1 could raise in the future, in any court, tribunal, forum, or proceeding, arising out of or
2 relating in any way to the allegations made in the Action.

3 **1.40.** “Released Parties” refers to BANA and each of its present, former, and
4 future parents, predecessors, successors, assigns, assignees, affiliates, conservators,
5 divisions, departments, subdivisions, owners, partners, principals, trustees, creditors,
6 shareholders, joint ventures, co-venturers, officers, and directors (whether acting in
7 such capacity or individually), attorneys, vendors, accountants, nominees, agents
8 (alleged, apparent, or actual), representatives, employees, managers, administrators,
9 and each Person or entity acting or purporting to act for them or on their behalf,
10 including, but not limited to, Bank of America Corporation and all of its subsidiaries
11 and affiliates.

12 **1.41.** “Releasing Parties” means the Class Representative and Settlement Class
13 Members, and any Person claiming by or through the Class Representative and each
14 Settlement Class Member, including their respective past, present and future heirs,
15 children, spouses, beneficiaries, conservators, executors, estates, administrators,
16 assigns, attorney, agents, consultants, and any other representatives of any of these
17 Persons and entities.

18 **1.42.** “Service Award” means the monetary award ordered to be paid to Class
19 Representative for serving as the Class Representative, if any, which is in addition to
20 any payment due to Class Representative as a Settlement Class Member, as set forth in
21 Section 9 herein.

22 **1.43.** “Settlement” means the Agreement between the Class Representative, on
23 behalf of herself and as the proposed representative of the Settlement Class, and BANA
24 to settle and compromise the Class Representative’s and the Settlement Class
25 Members’ claims in the Action, as memorialized in this Settlement Agreement and
26 accompanying documents attached hereto.

27 **1.44.** “Settlement Administrator” means the qualified third-party administrator
28 and agent agreed to by the Parties and approved and appointed by the Court in the

1 Preliminary Approval Order to administer the Settlement, including administering the
2 Class Notice Plan and overseeing the Claims Process. The Parties agree to recommend
3 that the Court appoint Kroll Settlement Administration LLC as the Settlement
4 Administrator.

5 **1.45.** “Settlement Administration Costs” means the costs and expenses
6 reasonably and actually incurred in obtaining the services of the Settlement
7 Administrator to facilitate the Settlement, including but not limited to, costs of
8 identifying Settlement Class Members, disseminating the Class Notice, providing
9 CAFA notice, and making payments to Settlement Class Members as described below.

10 **1.46.** “Settlement Agreement” means this Settlement Agreement and Release.

11 **1.47.** “Settlement Amount” or “Settlement Fund” means the amount of two
12 million, two hundred fifty thousand dollars (\$2,250,000.00), which BANA will be
13 obligated to pay to the Settlement Administrator on behalf of the Settlement Class, as
14 set forth in Section 5, and only if all other contingencies outlined in Section 5 are met.

15 **1.48.** “Settlement Class” means BANA Accountholders in the United States
16 who were assessed more than one OON balance inquiry fee during the same visit to a
17 FCTI, Inc.-owned ATM located in a 7-Eleven store from May 1, 2018, to
18 November 16, 2021, and who did not make a valid claim and receive payment in *Weiss*.

19 **1.49.** “Settlement Class Member” means any Person who falls within the
20 definition of the Settlement Class, and who does not timely submit a valid request to
21 opt-out from the Settlement Class and who is entitled to benefits of the Settlement,
22 including a Settlement Class Member Payment.

23 **1.50.** “Settlement Class Member Payment” means the settlement payment of a
24 pro rata distribution of the Net Settlement Fund to each Settlement Class Member.

25 **1.51.** “Settlement Website” means the website to be created, launched, and
26 maintained by the Settlement Administrator which shall provide access to relevant case
27 documents including the Notice, the operative complaint, and other relevant
28 documents.

1 **1.52.** “Successful Opt-Out(s)” means any Person(s) who timely and validly
2 exercised their right to be excluded from the Settlement Class by the Opt-out Deadline.

3 **1.53.** “Third Amended Complaint” means the operative Third Amended
4 Complaint filed on March 25, 2020 (Dkt. No. 96) in the Action.

5 **1.54.** “Unknown Claims” means any claim arising out of or related to OON
6 Fees that a Releasing Party does not know or suspect exists in his, her or its favor at
7 the time of the release of the Released Claims as against the Released Parties, including
8 without limitation those which, if known, might have affected the decision to enter into
9 the Settlement. The Settlement is intended to extinguish all Released Claims arising
10 out of OON Fees, and, consistent with such intentions, the Releasing Parties shall
11 waive their rights to the extent permitted by state law, federal law, foreign law or
12 principle of common law, which may have the effect of limiting the release set forth
13 above. Class Representative, on behalf of herself and the Releasing Parties, expressly
14 waives and releases any and all provisions, rights, and benefits conferred by California
15 Civil Code Section 1542, and by any law of any other jurisdiction, or principle of
16 common law, that is similar, comparable, or equivalent in effect to California Civil
17 Code Section 1542 with respect to the release of claims. California Civil Code
18 Section 1542 provides:

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

26 In making this waiver of rights, the Class Representative, on behalf of herself
27 and the Releasing Parties, acknowledges that she and Settlement Class Members may
28 discover facts in addition to or different from those that she now knows or believes to

1 be true with respect to the subject matter of this release, but that it is her intention, as
2 Class Representative and on behalf of the Settlement Class Members, to fully, finally
3 and forever settle and release any and all claims released hereby known or unknown,
4 suspected or unsuspected, which now exist, or heretofore existed, or may hereafter
5 exist, and without regard to the subsequent discovery or existence of such additional
6 or different facts for any potential claims arising out of or related to the facts,
7 transactions, fees, events, and claims alleged in the Third Amended Complaint. The
8 Class Representative, and the Settlement Class Members by operation of the judgment,
9 shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the
10 definition of “Released Claims” was separately bargained for, constitutes separate
11 consideration for, and was a key element of the Settlement and was relied upon by the
12 BANA in entering into the Settlement.

13 **1.55.** “Valid Claim” means a Claim Form submitted by a Past Accountholder
14 that is: (a) submitted in accordance with the directions accompanying the Settlement
15 Website; or (b) the Claim Form and the provisions of the Settlement; (c) personally
16 signed physically or by e-signature by the Settlement Class member; (d) returned via
17 mail and postmarked by the Claims Deadline, or, if submitted online, submitted by
18 11:59 p.m., Eastern time on the Claims Deadline; and (e) determined to be valid by the
19 Settlement Administrator.

20 **1.56.** “Weiss” means the action entitled *Weiss v. FCTI, Inc.*, No. 37-2024-
21 00016908-CU-BT-NC, in the Superior Court of California, County of San Diego.

22 **1.57.** As used herein, the plural of any defined term includes the singular thereof
23 and *vice versa*, except where the context requires otherwise.

24 **1.58.** Other terms are defined in the text of this Settlement Agreement, and shall
25 have the meaning given to those terms in the text. It is the intent of the Parties in
26 connection with all documents related to the Settlement that defined terms as used in
27 other documents shall have the meaning given to them in this Settlement Agreement.
28

1 **2. SETTLEMENT CONSIDERATION**

2 **2.1.** In full settlement of the claims asserted in the Action, and in return for
3 dismissal with prejudice of the Action and the release of the Released Claims as
4 provided for in Section 11 below, BANA shall pay the Settlement Amount in
5 accordance with Section 5.

6 **3. MOTION FOR PRELIMINARY APPROVAL**

7 **3.1. Filing of Motion for Preliminary Approval.** As soon as reasonably
8 practicable after execution of this Settlement Agreement, Class Counsel shall provide
9 a draft of the Motion for Preliminary Approval to BANA's Counsel. Class Counsel
10 will seek to (i) preliminarily approve the Settlement set forth in this Settlement
11 Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23;
12 (ii) approve the proposed Notice Plan and authorize the dissemination of Notice as set
13 forth in Section 4; and (iii) approve of and appoint the Settlement Administrator.
14 BANA's Counsel shall have no less than ten (10) days to review and comment on the
15 Motion for Preliminary Approval. No earlier than ten (10) days after provision of the
16 draft to BANA's Counsel, Class Counsel shall file this Settlement Agreement with the
17 Court together with the Motion for Preliminary Approval.

18 **3.2. Preliminary Approval Order.** Class Counsel agrees that the proposed
19 Preliminary Approval Order, which will be filed with the Motion for Preliminary
20 Approval, will be in substantially the same form as Exhibit E. The Preliminary
21 Approval Order shall (i) preliminarily approve the Settlement memorialized in this
22 Settlement Agreement as fair, reasonable, and adequate, including the material terms
23 of this Settlement Agreement; (ii) set a date for a Final Fairness Hearing; (iii) state that
24 if Final Approval of the Settlement is not obtained, the Settlement is null and void, and
25 the Parties will revert to their positions ex ante without prejudice to their rights, claims,
26 or defenses; (iv) approve the proposed Class Notices in the forms attached hereto as
27 Exhibits A through C, and authorize their dissemination to the Settlement Class; (v) set
28 deadlines consistent with this Settlement Agreement for emailing and mailing of the

1 Class Notice, the filing of objections, the filing of motions, and the filing of papers in
2 connection with the Final Fairness Hearing; (vi) appoint and approve the Settlement
3 Administrator; (vii) set deadlines by which Class Representative and Class Counsel
4 shall file their Motion for Final Approval, which shall be at least forty-five (45) days
5 prior to the Final Fairness Hearing; (viii) state that any appeal of the Court's order on
6 the Fee and Costs Award or the motion for a Service Award shall have no effect on the
7 Court's Final Approval of the Settlement; and (ix) prohibit and preliminarily enjoin the
8 Class Representative, all Settlement Class Members (excepting those who are
9 Successful Opt-Outs), and Class Counsel from commencing, prosecuting, or assisting
10 in any lawsuit against the Released Parties that asserts or purports to assert matters
11 within the scope of the Release during the time between entry of the Preliminary
12 Approval Order and final determination by the Court regarding whether to grant Final
13 Approval of the Settlement. BANA agrees that it will not oppose the entry of the
14 Preliminary Approval Order, provided it is substantially in the form of Exhibit D hereto
15 and consistent with the material terms of the Settlement. Without implication of
16 limitation, BANA's agreement that it will not oppose the entry of the Preliminary
17 Approval Order shall not be an admission or concession by it that a class was
18 appropriate in the Action (other than for purposes of this Settlement) or would be
19 appropriate in any other matter, and/or that any relief was appropriate in the Action,
20 for litigation purposes, or would be appropriate in any other matter.

21 **3.3. Filing of Motion for Final Approval.** If Preliminary Approval of the
22 Settlement is entered by the Court, the Class Representative shall seek, and BANA
23 shall support, entry of a Final Approval Order and Final Judgment and Order of
24 Dismissal that: (i) approves finally the Settlement set forth in this Settlement
25 Agreement and its terms as being a fair, reasonable, and adequate settlement as to
26 Settlement Class Members within the meaning of Fed. R. Civ. P. 23 and directing its
27 consummation according to its terms; (ii) finds that the Notice Plan constitutes due,
28 adequate, and sufficient notice of the Settlement set forth in this Settlement Agreement

1 and the Final Fairness Hearing and meets the requirements of Due Process and the
2 Federal Rules of Civil Procedure; (iii) directs that, as to the Released Parties, the
3 Action shall be dismissed with prejudice and, except as provided for in this Settlement
4 Agreement, without award of costs; (iv) orders that the Releasing Parties are
5 permanently enjoined and barred from instituting, commencing, or prosecuting any
6 action or other proceeding asserting any Released Claims against any Released Party;
7 (v) retains with the Court exclusive jurisdiction over the Settlement and this Settlement
8 Agreement, including the administration and consummation of the Settlement; and
9 (vi) determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and
10 directs that the judgment of dismissal as to BANA shall be final and entered forthwith.

11 **4. NOTICE PLAN**

12 **4.1. Preparation and Production of Settlement Class List.** BANA or its
13 agent shall furnish the Class List, which shall consist of a list of all Settlement Class
14 Members, to the Settlement Administrator within ten (10) days of entry of the
15 Preliminary Approval Order. The Class List shall include whether the Settlement Class
16 Member is a Current Accountholder or Past Accountholder with BANA as of
17 August 25, 2025, or later, as well as (i) all known email addresses in BANA's
18 possession, custody, or control, for the Settlement Class Members who are Current
19 Accountholders and (ii) all known physical addresses and email addresses in BANA's
20 possession, custody, or control, for the Settlement Class Members who are Past
21 Accountholders. Given BANA's right to update the Class List under Section 1.14, the
22 Settlement Administrator shall use the most recent version of the Class List provided
23 by BANA and shall do so for the sole purpose of identifying the current postal
24 addresses and/or email addresses for the Settlement Class Members. Class Counsel
25 will also provide the Settlement Administrator information regarding any valid
26 claimants among the Nationwide Settlement Class Members from the *Weiss* settlement
27 who claimed to be BANA customers and received payment in the *Weiss* settlement, so
28 that they can be removed from the Class List.

1 **4.2. Dissemination of Class Notice.** For purposes of providing Court-
2 approved Class Notices and establishing that the best practicable notice has been given,
3 Class Notice will be provided as follows:

4 **4.2.1.** Within thirty (30) days after receiving the Class List, the Settlement
5 Administrator shall begin the process of sending Email Notice to each
6 Settlement Class Member's last known email address, in a manner that is
7 calculated to avoid being caught and excluded by spam filters or other devices
8 intended to block mass email. For any emails that are returned undeliverable, the
9 Settlement Administrator shall send a Postcard Notice.

10 **4.2.2.** The Settlement Administrator shall format the Class Notice(s) and
11 otherwise administer the Notice Plan in a reasonable manner to minimize costs.

12 **4.2.3.** For up to thirty (30) days following the last date on which the
13 Settlement Administrator mailed Postcard Notice under this Section 4, if a
14 Postcard Notice is returned by the Postal Service as undeliverable, the
15 Settlement Administrator shall re-mail the Postcard Notice immediately to the
16 forwarding address, if any, provided by the Postal Service on the face of the
17 returned mail. For any Postcard Notice that is returned as undeliverable without
18 a forwarding address, the Settlement Administrator will use commercially
19 reasonable efforts to obtain updated addresses during the thirty (30) days
20 following the date the last Postcard Notice was mailed. Other than as set forth
21 above, BANA and the Settlement Administrator shall have no other obligation
22 to re-mail Class Notice.

23 **4.2.4.** In support of the Motion for Final Approval, the Settlement
24 Administrator shall prepare a declaration describing what it did to comply with
25 the Notice Plan, as well as providing its opinion that the Notice Plan satisfied
26 the requirements of Due Process.

27 **4.3. Settlement Website.** The Settlement Administrator shall establish a
28 website to assist in facilitating notice to the Settlement Class Members. This Settlement

1 Website, www.OONFeeSettlement.com, shall be accessible no later than the date of
2 the Class Notice mailing described above. The Settlement Website shall set forth the
3 following information: (i) the Third Amended Complaint; (ii) the full text of this
4 Settlement Agreement; (iii) the Long Form Notice (Exhibit C); (iv) the Motion for
5 Preliminary Approval and the Preliminary Approval Order; (v) the method for opting
6 out of the Settlement; (vi) contact information for the Settlement Administrator;
7 (vii) the Motion for Final Approval and the Final Approval Order (once filed); (viii) if
8 the Settlement is terminated, a notice of such termination, which language shall be
9 approved by the Parties; and (ix) such other document(s) as the Parties jointly or the
10 Court determine to place on the Settlement Website.

11 **4.3.1** Neither the Parties nor the Settlement Administrator shall have any
12 further obligation to send notice of the Settlement to Settlement Class Members
13 once these Class Notice provisions have been complied with.

14 **4.3.2** Not later than twenty (20) days before the Final Fairness Hearing,
15 the Settlement Administrator shall cause proof of the establishment and
16 maintenance of the Settlement Website to be provided to Class Counsel and
17 BANA's Counsel.

18 **4.3.3** The Settlement Website shall be taken down thirty (30) days after
19 the completion of the distribution of remaining funds in accordance with Section
20 5 or, if the Settlement is terminated, thirty (30) days after such termination.

21 **4.4. Media Campaign.** The Settlement Administrator shall prepare and
22 execute a targeted digital media campaign to garner attention for the Settlement
23 Website.

24 **4.5. CAFA Notice.** The Settlement Administrator shall send CAFA Notice to
25 the United States Attorney General, appropriate state Attorneys General, and other
26 appropriate government agencies in accordance with 28 U.S.C. § 1715(a) no later than
27 ten (10) days after this Settlement Agreement is filed with the Court.
28

1 **5. PAYMENT OF THE SETTLEMENT AMOUNT**

2 **5.1. Payments to Settlement Administrator.** Within ten (10) business days
3 following BANA advising the Settlement Administrator of the number of Current
4 Accountholders, Past Accountholders, and the breakdown of those Settlement Class
5 Members that shall receive Email Notice and Postcard Notice, the Settlement
6 Administrator shall provide an estimate of the Settlement Administration Costs to
7 BANA and Class Counsel. BANA will pay all Settlement Administration Costs within
8 thirty (30) days following its receipt of an invoice from the Settlement Administrator,
9 but not until BANA has received a properly completed W-9 Form from the Settlement
10 Administrator. All Settlement Administration Costs shall be paid out of the Settlement
11 Amount. The Settlement Amount represents the total extent of BANA's monetary
12 obligations under this Settlement and includes all sums to be paid under this Settlement
13 Agreement as the consideration to eligible Settlement Class Members, including
14 Service Award(s), if any, the Fee and Costs Award, if any, and any Settlement
15 Administration Costs.

16 **5.2. Escrow Account.** Within twenty (20) business days after the date of entry
17 of the Final Approval Order, the Settlement Administrator shall establish and BANA
18 shall fund an escrow account with funds sufficient for the payment of the remainder of
19 the Settlement Amount, less any funds previously provided to the Settlement
20 Administrator for the Settlement Administration Costs, as set forth in Paragraph 5.1.
21 BANA (a) shall have the right to impose any reasonable terms and conditions on the
22 operation and maintenance of the fund, and of any funds that it pays in connection with
23 the Settlement, that it deems appropriate to take advantage of the Qualified Settlement
24 Fund ("QSF") provisions of the tax code or to protect the moneys from intentional or
25 unintentional diversion, expenditure, forfeiture, escheat, or other dispersion that is
26 inconsistent with the express terms of the Settlement, and (b) shall inform Class
27 Counsel of any such terms and conditions. In the event that BANA desires to have the
28 Settlement Administrator enter into an agreement or undertaking to take advantage of

1 the QSF provisions of the tax code or to protect the moneys in accordance with this
2 paragraph, or to obtain any order from the Court in connection with this paragraph, the
3 Class Representative agrees not to object to such requested agreement or order other
4 than on the grounds that the terms or relief sought, in whole or in part, are inconsistent
5 with the express terms of the Settlement. BANA shall pay no portion of the Settlement
6 Amount until it has received a properly completed W-9 Form from the Settlement
7 Administrator.

8 **5.3. Application of Settlement Amount.** The Settlement Amount shall be
9 applied as follows: to pay all Settlement Administration Costs; to pay any other Court-
10 approved fees and expenses; to pay the Service Award; to distribute the Net Settlement
11 Fund to Settlement Class Members; and to pay the Fees and Costs Award.

12 **5.4. No Other Payments from BANA.** As set forth above, BANA shall be
13 responsible for paying the total Settlement Amount. BANA shall have no responsibility
14 for any other costs, including, as further detailed in this Settlement Agreement, any
15 Attorneys' Fees and Costs, including any taxes or tax-related costs relating to the
16 Settlement Amount, but all such fees, expenses, and costs shall be paid out of the
17 Settlement Amount as approved by the Court. The Class Representative and Settlement
18 Class Members shall look solely to the Settlement Amount as full, final, and complete
19 satisfaction of all Released Claims. Except as set forth herein, BANA shall have no
20 obligation under this Settlement Agreement or the Settlement to pay or cause to be paid
21 any amount of money, and BANA shall have no obligation to pay or reimburse any
22 fees, expenses, costs, liability, losses, taxes, or damages whatsoever alleged or incurred
23 by the Class Representative, by any Settlement Class Member, or by any Releasing
24 Parties, including but not limited to their attorneys, experts, advisors, agents, or
25 representatives, with respect to the Action and Released Claims. Class Representative
26 and Settlement Class Members acknowledge that, as of the Effective Date, the releases
27 given herein shall become effective immediately by operation of the Final Judgment
28 and Order of Dismissal and shall be permanent, absolute, and unconditional.

1 **5.5. Interest on Settlement Amount.** Any interest earned on the Settlement
2 Amount, once it has been delivered to the Settlement Administrator, shall be for the
3 benefit of the Settlement Class.

4 **5.6. Use and Disbursal of Settlement Amount**

5 **5.6.1 Purpose and Use.** The Settlement Amount shall be used only in
6 the manner and for the purposes set forth in this Settlement. No
7 portion of the Settlement Amount shall be disbursed except as
8 expressly set forth herein. The Settlement Amount shall be used
9 only for payments to Settlement Class Members, Settlement
10 Administration Costs, Attorneys' Fees and Costs (described in
11 Section 8), and the Service Award(s) (described in Section 9).

12 **5.6.2 Settlement Class Member Payments.** Settlement Class Members
13 are entitled to payment by distributing the proceeds from the Net
14 Settlement Fund in an equal *pro rata* amount of the Net Settlement
15 Fund to each Settlement Class Member.

16 **5.7. Claims Process**

17 **5.7.1** The Email Notice, Postcard Notice, and Long Form Notice that is
18 posted on the Settlement Website will explain to Past Accountholders how to Submit
19 a Claim Form to receive their payment from the Net Settlement Fund. Current
20 Accountholders are not required to do anything to receive their portion of the Net
21 Settlement Fund.

22 **5.7.2** For Past Accountholders, a Claim Form may be submitted online
23 through the Settlement Website or in a paper copy through U.S. mail by sending them
24 to the Settlement Administrator at the post office mailing address designated in the
25 Notice no later than the Claims Deadline.

26 **5.7.3** The Claim Form shall disclose that payments to Past
27 Accountholders will be in the form of an electronic payment and/or check via U.S.
28 Postal Mail if their Claim is filed electronically. If no selection is made or an election

1 is made for payment through a physical check, then a check will be mailed. For Class
2 Members choosing to submit paper Claims, their payment method will default to a
3 standard paper check.

4 **5.7.4** The Settlement Administrator shall collect, review, de-duplicate,
5 and assess each Claim Form received to determine whether the Claim Form is a Valid
6 Claim. The Settlement Administrator shall examine the Claim Form to ensure the
7 Claim is properly submitted.

8 **5.7.5** The Parties retain the right to audit any Claim Form submitted by
9 requesting proof of claim in the form of a bank account statement or ATM receipt
10 establishing that two OON balance inquiry fees were assessed to the class member as
11 a result of a single visit to an FCTI ATM.

12 **5.7.6** The Settlement Administrator shall make the final determination as
13 to whether a Claim Form is a Valid Claim. The Settlement Administrator shall establish
14 a reasonable procedure to determine whether any duplicate Claim Forms are submitted.
15 In the event any Settlement Class Members submit duplicate Claim Forms, provided
16 that at least one of those Claim Forms is timely submitted and completed within the
17 requirements of this Agreement, then the Settlement Administrator shall approve the
18 Claim.

19 **5.8. Payment Calculations.** Within twenty-one (21) days of the Effective
20 Date, the Settlement Administrator shall provide to Class Counsel and to BANA's
21 Counsel the sum total of all Settlement Class Members who will receive payments
22 from the Net Settlement Fund, including the breakdown of (i) Settlement Class
23 Members who are Current Accountholders that have not opted-out and who will
24 receive their Settlement Class Member Payments directly from BANA in the form of
25 a credit into the Account from which the OON Fee was paid and (ii) Settlement Class
26 Members who are Past Accountholders and have made a Valid Claim who will receive
27 their Settlement Class Member Payment in the form of either a electronic payment
28 option or check.

1 **5.10. Jurisdiction Over Payments.** All proceedings with respect to the notice,
2 administration and processing of payments and the determination of all controversies
3 relating thereto shall be subject to the jurisdiction of the Court.

4 **6. TERMINATION OF THE SETTLEMENT**

5 **6.1.** This Settlement is contingent upon Court approval. If the Court fails to
6 grant final approval of the Settlement in any material respect, the Settlement will be
7 subject to termination by any Party. Notwithstanding this paragraph, the Court's
8 determination as to the Attorneys' Fees and Costs Application and/or any plan of
9 distribution, or any determination on appeal from any such order, shall not provide
10 grounds for termination of this Settlement Agreement or Settlement.

11 **6.2.** Except as otherwise provided herein, in the event the Settlement
12 Agreement is terminated in accordance herewith, is vacated, is not approved, or the
13 Effective Date fails to occur for any reason, then the Parties to this Settlement
14 Agreement shall be deemed to have reverted to their respective status in the Action as
15 of July 7, 2025. BANA retains all rights regarding any defenses on the statute of
16 limitations that it had as of July 7, 2025. Further, the Parties agree that BANA reserves
17 and preserves all of its defenses and claims related to the Action which it may assert if
18 this Settlement Agreement is terminated.

19 **6.3.** Except as otherwise expressly provided herein, in the event the Settlement
20 Agreement is terminated in accordance herewith, is vacated, or not approved, or the
21 Effective Date fails to occur for any reason, the Parties shall proceed in all respects as
22 if this Settlement Agreement and any related orders had not been entered, and any
23 portion of the Settlement Amount previously paid by or on behalf of BANA, together
24 with any interest earned thereon (and, if applicable, re-payment of any Attorneys' Fees
25 and Costs Award, if any, with respect to such income) shall be returned to BANA
26 within ten (10) business days from the date of the event causing such termination. The
27 Parties further agree that any Settlement Administration Costs that have been paid prior
28 to termination shall be split evenly between the Parties.

1 **7. PROCEDURES FOR OPT-OUTS AND OBJECTIONS**

2 **7.1. Opt-Out Procedures.** The Long Form Notice shall inform proposed
3 Settlement Class Members how they may opt out of the Settlement.

4 **7.1.1.** A proposed Settlement Class Member may request to be excluded
5 from the Settlement Class by sending a written, printed request for exclusion,
6 addressed to “Exclusion Requests: Bank of America OON Fee Class Action” at
7 the Settlement Administrator’s address as shown in the Long Form Notice. The
8 proposed Settlement Class Member’s opt-out request must contain his or her
9 original signature, current postal address, and a specific affirmative statement
10 that the proposed Settlement Class Member wishes to be excluded from the
11 Settlement Class. Opt-Out requests must be postmarked no later than forty-five
12 (45) days prior to the Final Approval Hearing (the Opt-Out Deadline).

13 **7.1.2.** No Party hereto or its counsel shall directly, or indirectly, solicit or
14 encourage any Person to request exclusion from the Settlement Class.

15 **7.1.3.** Persons who purport to opt-out of the Settlement Class as a group,
16 aggregate, or class involving more than one purported class member shall **not**
17 be considered to have validly opted out.

18 **7.1.4. List of Successful Opt-Outs.** No later than seven (7) days after the
19 Opt-Out Deadline, the Settlement Administrator shall provide Class Counsel and
20 BANA’s Counsel a complete list of the Successful Opt-Outs, together with all
21 opt-out requests.

22 **7.2. Objections from Settlement Class Members.**

23 **7.2.1.** Any Settlement Class Member who does not opt-out but instead
24 wishes to object to the Settlement or any matters described in the Class Notice
25 may do so by filing with the Court a notice of his or her intention to object.

26 **7.2.2.** Each Settlement Class Member desiring to object to the Settlement
27 Agreement or to the attorneys’ fees, costs and expenses, shall submit a timely
28 written notice of his or her objection. Such notice shall state: (i) the objector’s

1 full name, address, telephone number, and e-mail address (if any); (ii)
2 information identifying the objector as a Settlement Class Member in this
3 Action, including evidence that the objector is a member of the Settlement Class;
4 (iii) a written statement of all grounds for the objection, accompanied by any
5 legal support for the objection the objector believes applicable; (iv) the identity
6 of all counsel representing or assisting the objector, if any; (v) the identity of all
7 counsel representing the objector who will appear at the Final Fairness Hearing,
8 if any; (vi) a list of all persons who will be called to testify at the Final Fairness
9 Hearing in support of the objection, if any; (vii) a statement confirming whether
10 the objector intends to personally appear and/or testify at the Final Fairness
11 Hearing; (viii) the objector's signature and the signature of the objector's duly
12 authorized attorney or other duly authorized representative (along with
13 documentation setting forth such representation), if any; (ix) a list, by case name,
14 court, and docket number, of all other cases in which the objector (directly or
15 through counsel) has filed an objection to any proposed class action settlement
16 within the last three (3) years; (x) a list, by case name, court, and docket number,
17 of all other cases in which the objector's counsel (on behalf of any person or
18 entity) has filed an objection to any proposed class action settlement within the
19 last 3 years; and (xi) a list, by case name, court, and docket number, of all other
20 cases in which the objector has been a named plaintiff in any class action or
21 served as a lead plaintiff or class representative. To be timely, written notice of
22 an objection in the appropriate form must be filed with the Clerk of the Court by
23 the date certain as ordered by the Court in the Preliminary Approval Order forty-
24 five (45) days before the Final Approval Hearing and served concurrently
25 therewith upon Class Counsel and BANA's Counsel.

26 **7.2.3.** Any Settlement Class Member who fails to comply with the
27 requirements for objecting set forth herein shall waive and forfeit any and all
28 rights he or she may have to appear separately and/or to object to the Settlement

1 Agreement and shall be bound by all the terms of the Settlement Agreement and
2 by all proceedings, orders and judgments in the Action. The exclusive means for
3 any challenge to the Settlement Agreement shall be through the provisions set
4 forth herein. Without limiting the foregoing, any challenge to the Settlement
5 Agreement, the Final Approval Order and Judgment to be entered upon final
6 approval shall be pursuant to appeal under the Federal Rules of Appellate
7 Procedure and not through a collateral attack.

8 **7.2.4.** The Parties shall file their responses to objections, if any, to the
9 Settlement no later than ten (10) days prior to the Final Fairness Hearing.

10 **7.2.5.** By filing an objection, objectors and their counsel, if any, submit
11 to the jurisdiction of the Court for all purposes, including but not limited to
12 subpoenas and discovery.

13 **7.2.6.** Objectors must also make themselves available for deposition by
14 counsel for the Parties between the time the objection is filed and a date no later
15 than five (5) days before the Final Fairness Hearing, and the objection must
16 include the dates when the objector is available for deposition.

17 **7.2.7.** Any Settlement Class Member who, within forty-five (45) days
18 prior to the Final Approval Hearing (the Objection Deadline), files and serves a
19 written objection satisfying the requirements of this section may appear at the
20 Fairness Hearing, either in person or through personal counsel hired at the
21 Settlement Class Member's expense, to object to any aspect of the fairness,
22 reasonableness, or adequacy of the Settlement. Settlement Class members, or
23 their attorneys, intending to make an appearance at the Final Fairness Hearing
24 must deliver to Class Counsel and BANA's Counsel and have file-marked by
25 the Court, no later than forty-five (45) days before the Final Fairness Hearing or
26 as the Court otherwise may direct, a Notice of Intent to Appear. The Notice of
27 Intent to Appear must: (i) state how much time the Settlement Class Member
28 anticipates needing to present the objection; (ii) identify, by name, address, and

1 telephone number all witnesses the Settlement Class Member proposes to have
2 testify; (iii) summarize in detail the anticipated testimony of all such witnesses;
3 (iv) identify all exhibits the Settlement Class Member intends to offer in support
4 of the objection; and (v) attach complete copies of all such exhibits.

5 **7.2.8.** Any Settlement Class Member who fails to timely file such a
6 written statement of his or her intention to object shall be foreclosed from
7 making any objection to the Settlement and shall waive and forfeit any and all
8 rights he or she may have to appear separately and/or object, and shall be bound
9 by all the terms of this Settlement Agreement and by all proceedings, orders and
10 judgments, including but not limited to, the Release contained in this Settlement
11 Agreement.

12 **8. ATTORNEYS' FEES AND COSTS**

13 **8.1.** Class Counsel will move for approval of an award of Attorneys' Fees and
14 reimbursement of the expenses of this Action at least thirty (30) days prior to the Opt-
15 Out and Objection Deadline, which motion shall be separate and apart from the Motion
16 for Preliminary Approval and the Motion for Final Approval. The Motion for
17 Attorneys' Fees and Costs shall include a proposed order on said Motion.

18 **8.2.** BANA agrees that Class Counsel shall be entitled to an award of
19 reasonable Attorneys' Fees, to be determined by the Court.

20 **8.3.** BANA agrees not to object to Class Counsel's request for attorneys' fees
21 up to 30% of the total of the Settlement Amount. However, BANA reserves its rights
22 to object or oppose any request for Attorneys' Fees by Class Counsel over and above
23 that amount.

24 **8.4.** In addition, Class Counsel may request reimbursement of reasonable
25 expenses and costs in prosecuting this matter on behalf of the Class Representative and
26 Settlement Class. BANA agrees not to object to Class Counsel's request for attorneys'
27 expenses and costs up to \$35,000. However, BANA reserves its rights to object or
28

1 oppose any request for attorneys' expenses or costs over and above that amount.. Any
2 Court-approved Costs and Fees shall be deducted from the Settlement Amount.

3 **8.5.** The Attorneys' Fees and Costs Award shall be paid from the Settlement
4 Amount within twenty (20) business days of the Effective Date, with no further
5 obligation by BANA.

6 **8.6.** If the award of Attorneys' Fees is reduced or reversed on appeal, Class
7 Counsel shall make all necessary refunds and repayments into the Settlement Amount
8 no later than thirty (30) days after the Court notifies Class Counsel. Such refunds shall
9 be distributed by the Settlement Administrator to the Settlement Class in the manner
10 provided by the Final Approval Order.

11 **9. SERVICE AWARD TO CLASS REPRESENTATIVE**

12 **9.1. Application for Service Award.** Class Counsel shall apply to the Court
13 for a service award to be paid from the Settlement Amount to the Class Representative
14 for serving as class representative in support of the Settlement at least thirty (30) days
15 prior to the Opt-Out Deadline, which motion shall be separate and apart from the
16 Motion for Preliminary Approval and the Motion for Final Approval. BANA will not
17 oppose a request of up to \$25,000 to the Class Representative.

18 **9.2. No Additional Obligation by BANA.** BANA shall have no other
19 responsibility for or liability with respect to the payment of a service award to the Class
20 Representative beyond the amount stated above for resolution of the Released Claims
21 herein.

22 **9.3. Source of Payment.** A Service Award in the amount approved by the
23 Court shall be paid by the Settlement Administrator through distribution from the
24 Settlement Amount within twenty (20) business days of the Effective Date.

25 **9.4. Appeal of Service Award.** If a Service Award is reduced or reversed on
26 appeal, Class Representative shall make all necessary refunds and repayments into the
27 Settlement Amount no later than thirty (30) days after the Court notifies Class Counsel.
28

1 Such refunds shall be distributed by the Settlement Administrator to the Settlement
2 Class in the manner provided by the Final Approval Order.

3 **10. FINAL FAIRNESS HEARING AND FINAL APPROVAL**

4 **10.1. Final Fairness Hearing.** The Parties will jointly request that the Court
5 hold the Final Fairness Hearing to consider approval of the settlement of the Action as
6 provided for herein approximately one hundred and sixty-five (165) days after
7 Preliminary Approval but in no event fewer than ninety (90) days after the CAFA
8 Notice is served. At least forty-five (45) days before the Final Fairness Hearing, Class
9 Counsel shall file a motion for entry of the Final Approval Order. Class Counsel shall
10 provide a draft of the motion for entry of the Final Approval Order to BANA's Counsel
11 for review and comment no less than thirty (30) days before the Final Fairness Hearing.
12 The Parties agree that the Final Approval Order constitutes a final judgment dismissing
13 the Action with prejudice.

14 **10.2. Final Approval.** All relief contemplated by this Settlement Agreement
15 is expressly contingent upon the Court's Final Approval.

16 **11. RELEASE OF CLAIMS**

17 **11.1. Release of BANA and Released Parties.** Upon the Effective Date, in
18 exchange for the relief described herein, each Releasing Party releases and discharges
19 the Released Parties of and from the Released Claims. This Release shall be included
20 as part of any judgment, so that all released claims and rights shall be barred by
21 principles of *res judicata*, collateral estoppel, and claim and issue preclusion. Subject
22 to the Court's approval, this Settlement Agreement shall bind all Settlement Class
23 Members, and all Released Claims shall be dismissed with prejudice and released as
24 against the Released Parties. The Released Claims are released regardless of whether
25 these claims are known or Unknown Claims, actual or contingent, liquidated or
26 unliquidated.

27 **11.2. Covenant Not to Sue.** The Class Representative, on behalf of herself and
28 the Settlement Class Members, covenants and agrees: (i) not to file, commence,

1 prosecute, intervene in, or participate in (as class members or otherwise) any action in
2 any jurisdiction based on or relating to any of the Released Claims, or the facts and
3 circumstances relating thereto, against any of the Released Parties; (ii) not to organize
4 or solicit the participation of Settlement Class Members, or Persons who would
5 otherwise fall within the definition of the Settlement Class but who requested to be
6 excluded from the Settlement Class, in a separate class for purposes of pursuing any
7 action (including by seeking to amend a pending complaint to include class allegations,
8 or seeking class certification in a pending action in any jurisdiction) based on or
9 relating to any of the Released Claims or the facts and circumstances relating thereto,
10 against any of the Released Parties; and (iii) that the foregoing covenants and this
11 Settlement Agreement shall be a complete defense to any of the Released Claims
12 against any of the Released Parties.

13 **12. DISPUTES RELATING TO THE SETTLEMENT**

14 **12.1. Good Faith.** The Parties shall work in good faith to resolve any disputes
15 that may arise in connection with the Settlement.

16 **12.2. Best Efforts.** Until and unless this Settlement Agreement is dissolved or
17 becomes null and void by its own terms, or unless otherwise ordered by the Court, or
18 if Final Approval is not achieved, the Class Representative, BANA, Class Counsel and
19 BANA's Counsel represent and warrant that they shall take all appropriate steps in the
20 Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause
21 the Court to grant Preliminary Approval and Final Approval of this Settlement
22 Agreement as promptly as possible, and take or join in such other steps as may be
23 necessary to implement this Settlement Agreement and to effectuate the Settlement.

24 **13. MISCELLANEOUS PROVISIONS**

25 **13.1. Non-Disparagement:** The Class Representative, Class Counsel, BANA,
26 and BANA's Counsel shall not issue, or otherwise cause to be issued, any press release,
27 advertisement, or Internet posting related to this Settlement, including that which (i)
28 disparages the Class Representative, Class Counsel, BANA, or BANA's Counsel with

1 respect to any matters or issues alleged or asserted in the Action or relating to this
2 Settlement; or (ii) includes evidence or information protected from disclosure by the
3 Stipulated Protective Order in the Action.

4 **13.2. No Admission.** Nothing herein shall constitute any admission as to any
5 assertion, claim, or allegation made by any Party, or as to the scope of liability. BANA
6 specifically denies any wrongdoing or liability in this Action and specifically denies
7 that a class could or should be certified in the Action for litigation purposes. This
8 Settlement Agreement is entered into to resolve all claims amicably and avoid the risk
9 and expense of additional litigation, and does not imply or suggest in any way fault or
10 wrongdoing. The Parties agree that this Settlement Agreement and its exhibits, and any
11 and all associated negotiations, documents, discussions, shall not be deemed or
12 construed by anyone to be an admission or evidence of any violation of any statute or
13 law, or of any liability or wrongdoing by BANA.

14 **13.3. Admissibility of Settlement Agreement.** This Settlement Agreement
15 shall not be offered nor shall be admissible as evidence in any action or proceeding
16 except (i) the hearings necessary to obtain and implement Court approval of this
17 Settlement; and (ii) any hearing to enforce the terms of this Settlement Agreement or
18 related order by the Court. This Settlement Agreement, whether or not consummated,
19 any proceedings relating to the Settlement, and any of the terms of the Settlement
20 Agreement, whether or not consummated, shall in no event be construed as, or deemed
21 to be evidence of, an admission or concession on the part of BANA with respect to any
22 fact or matter alleged in the Action, or any fault or liability or wrongdoing or damage
23 whatsoever, or any infirmity in any defense that has been or could have been asserted.

24 **13.4. Successors and Assigns.** This Settlement Agreement's terms shall apply
25 to and bind the Parties and their heirs, successors, and assigns.

26 **13.5. No Assignments.** The Class Representative and Class Counsel represent,
27 covenant, and warrant that they have not directly or indirectly assigned, transferred,
28 encumbered, or purported to assign, transfer, or encumber any portion of any Released

1 Claim except as set forth herein, and that there are no Persons having any interest in
2 any award of attorneys' fees, expenses, or litigation costs in connection with the
3 Action. Class Counsel agrees to indemnify and hold BANA and its counsel harmless
4 as to (a) any breach of the representation and warranty contained in the prior sentence;
5 and (b) any claim by any other Person against BANA or its counsel for such an award
6 of attorneys' fees, expenses, or litigation costs.

7 **13.6. No Tax Advice.** BANA may be required to file certain Form 1099 or other
8 information reports with the United States Internal Revenue Service or other
9 government agencies as required indicating its payments to the Settlement Class
10 Members. No representations or advice regarding the tax consequences of this
11 Settlement Agreement have been made by anyone. The Parties further understand and
12 agree that each Party, each Settlement Class Member, and each of Class Counsel shall
13 be responsible for his, her, its, or their own taxes, if any, resulting from this Settlement
14 Agreement and any payments made pursuant to this Settlement Agreement.

15 **13.7. Communications with Parties Relating to Settlement Agreement.** All
16 notices, requests for consent, and other formal communications under this Settlement
17 Agreement shall be in writing and sent by mail and email to counsel for the Party to
18 whom notice is directed at all of the addresses below. Any Party may change its
19 designated recipient(s) or notice address(es) by written notice to all other Parties.

20 **If to Class Representative:**

21 Todd Carpenter
22 (Eddie) Jae K. Kim
23 Tiffine E. Malamphy
24 Lynch Carpenter, LLP
25 1234 Camino Del Mar
26 Del Mar, CA 92014
todd@lcllp.com
ekim@lcllp.com

If to Defendant:

Amanda L. Groves
Shawn R. Obi
Winston & Strawn LLP
333 S. Grand Ave.
Los Angeles, CA 90071
agroves@winston.com
sobi@winston.com

27 **13.8. Entire and Voluntary Agreement.**

1 **Knowing and Voluntary Assent.** The Parties agree that the Settlement
2 Agreement is voluntary and that its terms were negotiated at arm’s length. The
3 Parties agree that they were represented by competent and experienced counsel.

4 **Entire Agreement.** The Parties intend the Settlement Agreement to be a
5 complete and final resolution to the Action. This Settlement Agreement contains
6 the Parties’ entire agreement on and understanding of the subject matter at issue
7 in the Action. This Settlement Agreement merges with and supersedes all prior
8 negotiations and proposals, whether written or oral.

9 **13.9. Headings and Titles.** The headings and titles in this Settlement
10 Agreement are for the reader’s convenience only and shall not affect or alter the
11 meaning of the Settlement Agreement’s terms.

12 **13.10. Settlement Agreement Controls Over Exhibits.** All exhibits attached
13 to this Settlement Agreement are hereby incorporated into this Settlement Agreement
14 as though fully set forth herein. If there is any conflict between the terms of the
15 Settlement Agreement and the attached exhibits, the Settlement Agreement shall
16 control.

17 **13.11. Amendments and Modifications.** This Settlement Agreement may be
18 amended or modified only by a written instrument signed by the Parties or by the
19 respective attorneys, or their respective successors-in-interest.

20 **13.12. Authorization of Counsel.** The Class Representative and Settlement
21 Class Members expressly authorize Class Counsel to take all appropriate action
22 required or permitted to be taken by the Settlement Class pursuant to the Settlement
23 Agreement to effectuate its terms. Class Counsel are furthermore expressly authorized
24 to enter into any modifications or amendments to the Settlement Agreement on behalf
25 of the Settlement Class Members that they deem necessary or appropriate. Each
26 attorney or other Person executing the Settlement Agreement on behalf of a Party
27 hereto warrants that such attorney or other Person has full authority to do so. The
28 undersigned representatives of BANA represent that they are fully authorized to enter

1 into and execute this Settlement Agreement on behalf of BANA. Class Counsel
2 represent that they are fully authorized to conduct settlement negotiations with
3 BANA's Counsel on behalf of the Class Representative and to enter into and execute
4 this Settlement Agreement on behalf of the Class Representative and the putative
5 Settlement Class Members, subject to approval by the Court.

6 **13.13. Computation of Time.** Except as expressly set forth herein, in computing
7 any period of time prescribed or allowed by this Settlement Agreement, the provisions
8 of Federal Rule of Civil Procedure 6 shall govern.

9 **13.14. Continuing Jurisdiction and Exclusive Venue.** Each of the Parties,
10 each Settlement Class Member, and each of the Releasing Parties that are otherwise
11 subject to the jurisdiction of a United States court hereby irrevocably submits to the
12 exclusive jurisdiction and venue of the United States District Court for the Southern
13 District of California for any suit, action, proceeding, case, controversy, or dispute
14 arising from or related to this Settlement Agreement and/or Exhibits hereto and the
15 negotiation, performance, or breach of same.

16 **13.15. Construction and Interpretation of Terms.** The Parties have
17 cooperated in drafting and preparing this Settlement Agreement. There shall therefore
18 be no presumption for or against any Party because that Party initially drafted a
19 particular section or subsection. Before declaring any provision invalid, a court should
20 first attempt to construe the provision as valid, consistent with the Settlement
21 Agreement's purposes, and consistent with applicable precedent.

22 **13.16. Severance.** If any provision of this Agreement is held by a court of
23 competent jurisdiction or an arbitrator to be invalid, void, or unenforceable, the
24 remaining provisions shall nevertheless continue in full force without being impaired
25 or invalidated in any way.

26 **13.17. No Claims Arising from this Settlement Agreement.** No Person shall
27 have any claim against any of the Released Parties, against the Class Representative,
28

1 or against counsel for any Party, based on distribution of benefits made substantially
2 in accordance with this Settlement Agreement or related order(s) of the Court.

3 **13.18. Standing of Released Parties.** The Released Parties who are not
4 signatories hereto shall be third-party beneficiaries under this Settlement Agreement
5 and shall be entitled to enforce this Settlement Agreement in accordance with its terms.
6 Aside from the Released Parties, it is not the intention of the Parties to confer third-
7 party beneficiary rights or remedies upon any other Person or entity.

8 **13.19. Applicable Law.** This Settlement Agreement shall be interpreted under
9 and governed by federal law. To the extent state law applies, the laws of the State of
10 California shall apply, without regard to choice of law principles. All judicial
11 proceedings regarding this Settlement Agreement shall be brought only in this Court.

12 **13.20. Counterparts.** This Settlement Agreement may be executed in two or
13 more counterparts and by facsimile or email of PDF, both of which shall be deemed an
14 original. Original signatures are not required. All executed counterparts shall be
15 deemed to be one and the same instrument. Counsel for the Parties shall exchange
16 among themselves signed counterparts. A complete set of executed Counterparts shall
17 be filed with the Court.


18 IN WITNESS THEREOF, the Parties have caused this Settlement Agreement
19 and Release to be executed by their duly authorized representatives.

20 **PLAINTIFF**

BANK OF AMERICA, N.A.

21 DocuSigned by:

22 F5A3A72073F14B1...
Brittany Covell

By: 
Its: Associate General Counsel

24 **CLASS COUNSEL**

BANA'S COUNSEL

25 
26 Todd D. Carpenter
27 LYNCH CARPENTER, LLP



Shawn R. Obi
WINSTON & STRAWN LLP

EXHIBIT A

To: _____

From: _____

Re: Class Action Concerning Bank of America's Fees for Balance Inquiries

If You Were Assessed Fees by Bank of America for Balance Inquiries at ATMs Owned and Operated by FCTI, Inc., Which are Located at 7-Eleven Stores, You May be Eligible to Receive Monetary Compensation from a Class Action Settlement.

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

Why did I get this Notice? A settlement (“Settlement”) has been reached in a class action lawsuit filed in the United States District Court for the Southern District of California. You received this email because Bank of America, N.A.’s (“BANA”) records indicate you may be a member of the class of consumers on whose behalf the lawsuit was filed and the Settlement may affect your rights. The purpose of this Email Notice is to inform you of the Settlement so that you may decide what steps to take in relation to it.

What is the Lawsuit about? A lawsuit was filed against BANA by Plaintiff Brittany Covell (“Plaintiff”) alleging that BANA breached its contract with its customers by assessing two out-of-network fees (“OON”) for balance inquiry requests when only a single balance inquiry was undertaken at FCTI-owned ATMs located in 7-Eleven stores. BANA denies that the assessment of two OON balance inquiry fees was improper, or that it has done anything wrong. **No court has decided which side is right. Both sides agreed to settle the claims rather than go to trial. The proposed settlement provides for payments to be made to consumers who were charged two balance inquiry fees by their bank.**

Am I affected by the Settlement? You are affected by the Settlement and considered a “Settlement Class Member” if you are a BANA Accountholder in the United States who was assessed more than one OON balance inquiry fee during the same visit to a FCTI, Inc.-owned ATM located in a 7-Eleven store from May 1, 2018, to November 16, 2021, and did not make a valid claim and receive payment in *Weiss v. FCTI, Inc.*, No. 37-2024-00016908-CU-BT-NC.

What does the Settlement provide? BANA has agreed to provide \$2,250,000 to the Settlement Fund. If you are a Settlement Class Member, you will receive a pro-rata share of the remainder of the Net Settlement Fund based on the number of class members who are Current Accountholders and Valid Claims submitted by class members who are Past Accountholders.

What are your options? You may remain in the Settlement Class and receive the payments described above. You do not need to do anything to stay in the Settlement Class. If you are a Current Accountholder with BANA, you do not need to do anything to receive your portion of the Net Settlement Fund if this Settlement is granted final approval by the Court, as those funds will be directly deposited into Current Accountholder’s accounts by BANA. If you are a Past Accountholder with BANA (*i.e.*, no longer a BANA customer), you must submit a Valid Claim

by visiting www.OONFeeSettlement.com and submitting a claim online or printing, completing, and mailing back a Claim Form, available on the website, in order to receive your portion of the Net Settlement Fund if this Settlement is granted final approval by the Court.

If you do not want to receive the payments identified above or to be legally bound by the Settlement, you must notify the Settlement Administrator by [DATE] that you want to be excluded from the Settlement Class. If you choose to be excluded from the Settlement Class, you will not receive a monetary payment from this Settlement. If you stay in the Settlement Class, you may object to the terms of the Settlement by [DATE]. There is a more detailed notice available on www.OONFeeSettlement.com that explains how to request to be excluded or to object. The Court will hold a hearing on [DATE] at [TIME] to consider whether to approve the Settlement terms and a request by the lawyers representing all Settlement Class Members (Lynch Carpenter, LLP) for Attorneys' Fees and Costs, and a Service Award to Class Representative for her role in this Action and Settlement. You may ask to appear at the hearing, but you are not required to do so.

Want More Information? For complete information about the Settlement and to view the Settlement Agreement and related documents, related Court documents, and Claim Form, and to learn more about how to exercise your various options under the Settlement, visit www.OONFeeSettlement.com/documents. You may also contact the Settlement Administrator via the website or send a letter to: [ADDRESS]. You may also contact the Settlement Administrator at the following phone number: [NUMBER].

EXHIBIT B

x

Schertzer, et al. v. BANA Settlement
c/o Settlement Administrator
[ADDRESS]:

NOTICE OF CLASS ACTION SETTLEMENT
United States District Court for the Southern District of
California
Schertzer, et al. v Bank of America, N.A., et al.
Case No. 3:19-cv-00264-DMS-MSB

IF YOU WERE ASSESSED FEES BY BANK OF AMERICA
FOR BALANCE INQUIRIES AT ATMS OWNED AND
OPERATED BY FCTI, INC., WHICH ARE LOCATED AT 7-
ELEVEN STORES, YOU MAY BE ELIGIBLE TO RECEIVE
MONETARY COMPENSATION FROM A CLASS ACTION
SETTLEMENT.

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

A settlement (“Settlement”) has been reached in a class action lawsuit filed in the United States District Court for the Southern District of California. You received this postcard because Bank of America, N.A.’s (“BANA”) records indicate you may be a Settlement Class Member. The purpose of this Postcard Notice is to inform you of the Settlement so that you may decide what steps to take in relation to it.

What is the Lawsuit about? A lawsuit was filed against BANA by Plaintiff Brittany Covell (“Class Representative”) alleging that BANA breached its contract with its customers by assessing two out-of-network (“OON”) fees for balance inquiry requests when only a single balance inquiry was undertaken at FCTI-owned ATMs located in 7-Eleven stores. BANA denies that the assessment of two OON balance inquiry fees was improper, or that it has done anything wrong. **No court has decided which side is right. Both sides agreed to settle the claims rather than go to trial. The proposed settlement agreement provides for payments to be made to consumers who were charged two balance inquiry fees by their bank.**

Am I affected by the Settlement? You are affected by the Settlement and considered a “Settlement Class Member” if you are a BANA Accountholder in the United States who was assessed more than one OON balance inquiry fee during the same visit to a FCTI, Inc.-owned ATM located in a 7-Eleven store from May 1, 2018, to November 16, 2021, and did not make a valid claim and receive payment in *Weiss v. FCTI, Inc.*, No. 37-2024-00016908-CU-BT-NC.

What does the Settlement provide? BANA has agreed to provide \$2,250,000 to the Settlement Fund. If you are a Settlement Class Member, you will receive a pro-rata share of the remainder of the Net Settlement Fund based on the number of class members who are Current Accountholders and Valid Claims submitted by class members who are Past Accountholders.

What are your options? You may remain in the Settlement Class and receive the payments described above. You do not need to do anything to stay in the Settlement Class. If you are a Current Accountholder with BANA, you do not need to do anything to receive your portion of the Net Settlement Fund if this settlement is granted final approval by the Court, as those funds will be directly deposited into Current Accountholder’s accounts by BANA. If you are a Past Accountholder with BANA (*i.e.*, no longer a BANA customer), you must submit a Valid Claim by visiting www.OONFeeSettlement.com and submitting a claim online or printing, completing, and mailing back a Claim Form, available on the website, in order to receive your portion of the Net Settlement Fund if this settlement is granted final approval by the Court. If you do not want to receive the payments identified above or to be legally bound by the Settlement, you must notify the Settlement Administrator by [DATE] that you want to be excluded from the Settlement Class. If you choose to be excluded from the Settlement Class, you will not receive a monetary payment from this Settlement. If you stay in the Settlement Class, you may object to the terms of the Settlement by [DATE]. There is a more detailed notice available on www.OONFeeSettlement.com that explains how to request to be excluded or to object. The Court will hold a hearing on [DATE] at [TIME] to consider whether to approve the Settlement terms and a request by the lawyers representing all Settlement Class Members (Lynch Carpenter, LLP) for Attorneys’ Fees and Costs, and a Service Award to Class Representative for her role in this Action and Settlement. You may ask to appear at the hearing, but you are not required to do so.

Want More Information? For complete information about the Settlement and to view the Settlement Agreement and related documents, related Court documents, and claim form and to learn more about how to exercise your various options under the Settlement, visit www.OONFeeSettlement.com. You may also contact the Settlement Administrator via the website or send a letter to: [ADDRESS]. You may also contact the Settlement Administrator at the following phone number: [NUMBER].

EXHIBIT C

United States District Court for the Southern District of California

Schertzer, et al. v Bank of America, N.A., et al.

Case No.: 3:19-cv-00264-DMS-MSB

If You Were Assessed Fees by Bank of America for Balance Inquiries at ATMs Owned and Operated by FCTI, Inc., Which are Located at 7-Eleven Stores, You May be Eligible to Receive Monetary Compensation from a Class Action Settlement.

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

Your legal rights are affected whether you act or not. Please read this notice carefully.

A settlement (“Settlement”) has been reached in a class action lawsuit filed in the United States District Court for the Southern District of California. If the Court gives final approval of the Settlement, Bank of America, N.A., (“BANA”) will provide \$2,250,000 in a Settlement Fund¹ and you may be entitled to a portion of that Settlement Fund. The purpose of this Long Form Notice is to inform you of the Settlement so that you may decide what steps to take in relation to it.

BASIC INFORMATION

1. Why did I get this Notice?

You received this Long Form Notice because a Settlement has been reached in a class action lawsuit filed in the United States District Court for the Southern District of California. You might be a member of the Settlement Class; thus, you may be eligible for the relief detailed below.

This Long Form Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 19 below.

2. What is a class action?

In a class action, one or more people called “Class Representative(s)” (in this case, Brittany Covell) sue on behalf of people who have similar claims. For purposes of this proposed Settlement, one court will resolve the issues for all Settlement Class Members. Since BANA was the company sued in this Action, it is called the Defendant.

3. What is the lawsuit about?

A lawsuit was filed against BANA by the Class Representative alleging that BANA breached its contract with its customers by assessing two out-of-network (“OON”) fees for balance inquiry requests when only a single balance inquiry was undertaken at FCTI-owned ATMs located in 7-Eleven stores. BANA denies that the assessment of two OON balance inquiry fees was improper, or that it has done anything wrong. No court has decided which side is right. To learn more about what has happened in this litigation to date, please see Section 19.

¹ Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Settlement Agreement, available at www.OONFeeSettlement.com.

4. Why is there a Settlement?

Both sides agreed to the Settlement to avoid ongoing litigation costs and going to trial. As a result, the Settlement Class Members will receive relief now rather than years from now, if at all.

5. How do I know if I am part of the Settlement?

You are a member of the Settlement Class if you fit the following description:

You are a BANA Accountholder in the United States who was assessed more than one out-of-network balance inquiry fee during the same visit to a FCTI, Inc.-owned ATM located in a 7-Eleven store from May 1, 2018, to November 16, 2021, and did not make a valid claim and receive payment in *Weiss v. FCTI, Inc.*, No. 37-2024-00016908-CU-BT-NC.

6. What if I am still not sure if I am included?

If you are still not sure whether you are included in the Settlement Class, you can visit the website www.OONFeeSettlement.com, call toll free X-XXX-XXX-XXXX, or write to [ADDRESS] for more information.

THE PROPOSED SETTLEMENT

7. What relief does the Settlement provide?

BANA has agreed to provide \$2,250,000 to the Settlement Fund. If you are a Settlement Class Member, you will receive a pro-rata share of the remainder of the Net Settlement Fund based on the number of Current Accountholders and Valid Claims submitted by Past Accountholders.

YOUR RIGHTS AND OPTIONS

If you are a Settlement Class Member, you must decide how you wish to handle the Settlement and exercise your options as detailed below, including meeting any associated deadline.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
DO NOTHING	If you are a Current Accountholder and received an Email Notice and/or Postcard Notice: If you do nothing and the Court approves the Settlement, you will receive a pro-rata distribution of the Net Settlement Fund based on the number of Current Accountholders and Past Accountholders who submitted a Valid Claim.	Deadline: [DATE]
SUBMIT A CLAIM FORM	If you are a Past Accountholder and received an Email Notice and/or Postcard Notice:	Deadline:

Questions? Call X-XXX-XXX-XXXX or visit www.OONFeeSettlement.com

	If you would like to submit a Claim Form, a copy of the Claim Form can be found on the Settlement Website, located at www.OONFeeSettlement.com . If you submit a Valid Claim, you will receive a pro-rata distribution of the Net Settlement Fund based on the combined total number of Current Accountholders, and the total number of Past Accountholders who submitted a Valid Claim.	[DATE]
ASK TO BE EXCLUDED	Get out of this Settlement and get no money. If you ask to be excluded from the Settlement, you are not eligible to share in the Settlement Fund. Instead, you will keep any rights to sue BANA separately over the legal claims in this Action.	Deadline: [DATE]
OBJECT	Challenge the Settlement. You may file a written objection telling the Court why you object to (i.e., don't like) the Settlement and think it should not be approved. Submitting an objection does not exclude you from the Settlement.	Deadline: [DATE]
GO TO THE FINAL FAIRNESS HEARING	Go to Court. The Court will hold a "Final Fairness Hearing" to consider the Settlement, the request for Attorneys' Fees and Costs of the lawyers who brought the Action, and the Class Representative's request for a Service Award for bringing the Action. You may, but are not required to, speak at the Final Fairness Hearing about any objection you filed to the Settlement. If you intend to speak at the Final Fairness Hearing, you must also submit a "Notice of Intention to Appear" indicating your intent to do so.	Date and Time: [DATE] at [TIME]

These rights and options – **and the deadlines to exercise them** – are explained in more detail below. The Court has preliminarily approved the Settlement and must decide whether to give final approval of the Settlement. The relief provided to Settlement Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. *Please be patient.*

8. What happens if I do nothing at all?

If you do nothing and the Court approves the proposed Settlement, you will be releasing your claims against BANA. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against BANA regarding the claims in the Action. The Settlement Agreement, available online at the following Settlement Website: www.OONFeeSettlement.com, contains the full terms of the release.

9. What happens if I exclude myself?

If you exclude yourself from the Settlement, you will be excluded from the Settlement Class, you will not receive monetary compensation from the Settlement, you will not be bound by the Judgment entered in

the Action, and you will not be precluded from prosecuting any timely, individual claim against BANA based on the conduct alleged in the Action.

10. How do I request to be excluded?

To exclude yourself, you must send an opt-out request by U.S. Mail or private courier (e.g., Federal Express) to the Settlement Administrator, stating the wish to be excluded from the Settlement Class. The opt-out request must be personally signed by you and contain your name, postal address, and a statement that indicates a desire to be excluded from the Settlement Class. The opt-out request must be postmarked by the last day of the Opt-Out Period. If submitted by mail, the opt-out request shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an exclusion request shall be deemed to have been submitted on the shipping date reflected on the shipping label.

The last day of the Opt-Out Period is [DATE]. The mailing address of the Settlement Administrator is [ADDRESS].

11. How do I tell the Court that I disagree with the Settlement?

To object to the Settlement, you must submit the objection no later than the last day of the Objection Deadline. The objection must be filed with or mailed to the Clerk of the Court and mailed to the Settlement Administrator. If submitted by mail, a written objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

For an objection to be considered by the Court, the objection must also set forth: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member in this Action, including evidence that the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing or assisting the objector, if any; (v) the identity of all counsel representing the objector who will appear at the Final Fairness Hearing, if any; (vi) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection, if any; (vii) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; (viii) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation), if any; (ix) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action settlement within the last three (3) years; (x) a list, by case name, court, and docket number, of all other cases in which the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last 3 years; and (xi) a list, by case name, court, and docket number, of all other cases in which the objector has been a named plaintiff in any class action or served as a lead plaintiff or class representative.

The Objection Deadline is [DATE]. The mailing address of the Settlement Administrator is [ADDRESS]. The mailing address for the Court is **333 W. Broadway, San Diego, CA 92101**.

12. What is the difference between excluding myself and objecting to the Settlement?

Objecting is simply telling the Court that you disagree with something about the Settlement. You can object only if you do not exclude yourself from the Settlement.

Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

THE LAWYERS REPRESENTING THE CLASS.

13. Do I have a lawyer in this case?

Yes. The Court appointed Todd D. Carpenter, (Eddie) Jae K. Kim, and Tiffine E. Malamphy of Lynch Carpenter, LLP as “Class Counsel.” You do not have to pay Class Counsel. If you want to be represented by your own lawyer and have that lawyer appear in court for you in this case, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel will ask the Court to approve attorneys’ fees up to 30% of the Settlement Amount and costs up to \$35,000, which will be paid out of the Settlement Fund. You will not be required to pay any attorneys’ fees or costs.

15. May I get my own lawyer?

You are not required to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you can hire one at your own expense. For example, you can ask your lawyer to appear in court for you if you want someone other than Class Counsel to speak for you.

FINAL APPROVAL HEARING

16. What is the Final Approval Hearing?

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Final Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the award of attorneys’ fees and expenses to Class Counsel; and to consider the request for Service Award to the Class Representative. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement. You may attend, but you do not have to attend.

17. When and where is the Final Approval Hearing?

On [DATE] at [TIME] PT, a hearing will be held on the fairness of the proposed Settlement. The hearing will take place before the Hon. Dana M. Sabraw in Courtroom 13A of the United States District Court for the Southern District of California, located at 333 W. Broadway, San Diego, CA 92101. The hearing may be postponed to a different date, time, or transferred to a different location without notice. Please check www.OONFeeSettlement.com for any updates about the Settlement or Final Fairness Hearing.

18. May I speak at the hearing?

You may speak at the Final Fairness Hearing if: (a) you have timely submitted an objection; and (b) you have timely provided a Notice of Intent to Appear.

If you have requested exclusion from the Settlement, you may not speak at the hearing.

GETTING MORE INFORMATION

19. Are more details available?

Visit the Settlement Website at www.OONFeeSettlement.com/documents, where you will find a copy of the Settlement Agreement, the Court's Preliminary Approval Order, Class Counsel's application for Attorneys' Fees and Costs, and the operative Complaint filed in the Action. Alternatively, you may contact the Settlement Administrator via the website: www.OONFeeSettlement.com or the U.S. postal (mailing) address: [ADDRESS].

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file, you should visit the Clerk's office at 333 W. Broadway, San Diego, CA 92101. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

20. What if my address or other information has changed?

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so in the following manner: at the website: www.OONFeeSettlement.com/documents or the U.S. postal (mailing) address: [ADDRESS].

DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE, EXCEPT FOR AS PROVIDED ABOVE.

EXHIBIT D

SCHERTZER, ET. AL. V. BANK OF AMERICA, N.A., ET AL. – CLAIM FORM

YOU MUST SUBMIT YOUR CLAIM FORM NO LATER THAN [DATE].

Personal Information. Please legibly print or type the information requested below. *This information will be used to deliver your monetary compensation and communicate with you, if necessary.*

Name (first, middle, and last): _____

Residential Street Address: _____

City, State, and ZIP code: _____

Email Address: _____

Telephone Number: (_____) _____

Confirmation of Class Membership.

I declare that I was a Bank of America accountholder in the United States who was assessed more than one out-of-network balance inquiry fee during the same visit to a FCTI, Inc.-owned ATM located in a 7-Eleven store between May 1, 2018 to November 16, 2021, and I did not make a valid claim or receive payment in *Weiss v. FCTI, Inc.*, No. 37-2024-00016908-CU-BT-NC.

The Settlement Administrator and/or Bank of America may verify your Claim.

Acknowledgement. I have seen the Postcard Notice in this Action and I am a member of the Settlement Class of persons described in the Notice. I agree to release all the claims, known and unknown, stated in Section 11 of the Settlement Agreement. I submit to the jurisdiction of the United States District Court for the Southern District of California, with regard to my Claim and for purposes of enforcing the release of claims stated in the Settlement Agreement. I am aware that I can obtain a copy of the Long Form Notice and Settlement Agreement at www.OONFeeSettlement.com/documents, or by contacting the Settlement Administrator via the website: www.OONFeeSettlement.com, or the postal address: [ADDRESS]. I agree to furnish additional information to support this Claim if required to do so.

IF SUBMITTED ELECTRONICALLY:

I agree that by submitting this Claim Form, I certify under the penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge and that checking this box constitutes my electronic signature on the date of its submission.

IF SUBMITTED BY U.S. MAIL:

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Signature: _____

Date: _____

Please visit www.OONFeeSettlement.com for more information or call the Settlement Administrator toll-free at (xxx) xxx-xxxx to hear more about the settlement.

EXHIBIT E

1 The Court, having heard Plaintiff Covell’s Motion for Preliminary Approval of
2 Class Settlement, reviewed the Settlement Agreement and Release (“Settlement
3 Agreement”),¹ and good cause appearing, hereby **GRANTS** the motion and **ORDERS**
4 as follows:

5 1. The Settlement Agreement appears to be the product of serious, informed,
6 non-collusive negotiations with Defendant Bank of America, N.A. (“BANA”) and falls
7 within the range of possible approval as fair, reasonable, and adequate.

8 2. The Email Notice, Postcard Notice, Long Form Notice, and Claim Form:
9 (a) constitute the best such forms and notice practicable under the circumstances; (b)
10 the method for providing notice to Settlement Class Members set forth in the Settlement
11 Agreement constitutes valid, due, and sufficient notice to all Settlement Class Members;
12 and (c) the Notice Program complies fully with the requirements of Federal Rule of
13 Civil Procedure 23, the United States Constitution, and other applicable law.

14 3. For purposes of the Settlement only, the Settlement Class is so numerous
15 that joinder of all Settlement Class Members is impracticable.

16 4. For purposes of the Settlement only, Plaintiff’s claims are typical of the
17 Settlement Class’s claims.

18 5. For purposes of the Settlement only, there are questions of law and fact
19 common to the Settlement Class, which predominate over any questions affecting only
20 individual Settlement Class Members.

21 6. For purposes of the Settlement only, class adjudication is superior to other
22 available methods for the fair and efficient adjudication of the controversy.

23 **IT IS ORDERED THAT:**

24 1. **Settlement Approval.** The Settlement Agreement, including the Notice
25 Program, is preliminarily approved.

26 _____
27 ¹ All undefined, capitalized terms have the same meaning as set forth in the Settlement
28 Agreement.

1 2. **Provision of Notice.** Class Counsel, through the Settlement Administrator,
2 will notify Settlement Class Members of the Settlement in the manner specified in the
3 Settlement Agreement.

4 3. **Settlement Class Payment.** Each Settlement Class Member will be
5 entitled to receive a pro-rata distribution of the Net Settlement Fund based on the
6 number of Current Accountholders and Past Accountholders who submitted a Valid
7 Claim.

8 4. **Objections to the Settlement.** To object to the Settlement, a Settlement
9 Class Member must submit their objection no later than the Objection Deadline, as
10 specified in the Long Form Notice. The objection must be filed with or mailed to the
11 Clerk of the Court and mailed to the Settlement Administrator. If submitted by mail, a
12 written objection shall be deemed to have been submitted when posted if received with
13 a postmark date indicated on the envelope if mailed first-class postage prepaid and
14 addressed in accordance with the instructions. If submitted by private courier (e.g.,
15 Federal Express), an objection shall be deemed to have been submitted on the shipping
16 date reflected on the shipping label.

17 For an objection to be considered by the Court, the objection must also set forth:
18 (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii)
19 information identifying the objector as a Settlement Class Member in this Action,
20 including evidence that the objector is a member of the Settlement Class; (iii) a written
21 statement of all grounds for the objection, accompanied by any legal support for the
22 objection the objector believes applicable; (iv) the identity of all counsel representing
23 or assisting the objector, if any; (v) the identity of all counsel representing the objector
24 who will appear at the Final Fairness Hearing, if any; (vi) a list of all persons who will
25 be called to testify at the Final Fairness Hearing in support of the objection, if any; (vii)
26 a statement confirming whether the objector intends to personally appear and/or testify
27 at the Final Fairness Hearing; (viii) the objector's signature and the signature of the
28

1 objector's duly authorized attorney or other duly authorized representative (along with
2 documentation setting forth such representation), if any; (ix) a list, by case name, court,
3 and docket number, of all other cases in which the objector (directly or through counsel)
4 has filed an objection to any proposed class action settlement within the last three (3)
5 years; (x) a list, by case name, court, and docket number, of all other cases in which the
6 objector's counsel (on behalf of any person or entity) has filed an objection to any
7 proposed class action settlement within the last 3 years; and (xi) a list, by case name,
8 court, and docket number, of all other cases in which the objector has been a named
9 plaintiff in any class action or served as a lead plaintiff or class representative.

10 **5. Failure to Object to the Settlement.** Settlement Class Members who fail
11 to timely object to the Settlement in the manner specified will: (a) be deemed to have
12 waived their right to object to the Settlement; (b) be foreclosed from objecting (whether
13 by a subsequent objection, intervention, appeal, or any other process) to the Settlement;
14 and (c) not be entitled to speak at the Final Approval Hearing.

15 **6. Requesting Exclusion from the Settlement.** To be excluded, a member
16 of the Settlement Classes must send an opt-out request by U.S. Mail or private courier
17 (e.g., Federal Express) to the Settlement Administrator, stating the wish to be excluded
18 from the Settlement Classes. The opt- out request must be personally signed by them
19 and contain their name, postal address, and a statement that indicates a desire to be
20 excluded from the Settlement Class. The opt-out request must be postmarked by the last
21 day of the Opt-Out Period. If submitted by mail, the opt-out request shall be deemed to
22 have been submitted when posted if received with a postmark date indicated on the
23 envelope if mailed first-class postage prepaid and addressed in accordance with the
24 instructions. If submitted by private courier (e.g., Federal Express), an exclusion request
25 shall be deemed to have been submitted on the shipping date reflected on the shipping
26 label.

1 7. **Claims Provision.** Past Accountholders may submit a Claim Form online
2 through the Settlement Website or in paper copy through U.S. mail by sending them to
3 the Settlement Administrator at the post office box mailing address designated in the
4 Notice no later than the Claims Deadline. Past Accountholders have 75 days after the
5 entry of this order to submit a Claim through the procedures outlined in the Settlement
6 Agreement, but the parties may agree to extend the deadline to provide additional time
7 for Past Accountholders to submit Claims.

8 8. **Provisional Certification.** The Settlement Class is provisionally certified
9 as: all BANA Accountholders in the United States who were assessed more than one
10 out-of-network (“OON”) balance inquiry fee during the same visit to a FCTI, Inc.-
11 owned ATM located in a 7-Eleven store from May 1, 2018, to November 16, 2021, and
12 who did not make a valid claim and receive payment in Weiss. Excluded are BANA’s
13 Counsel, Defendant’s officers and directors, and the judges presiding over the Action.

14 9. **Conditional Appointment of Class Representatives and Class Counsel.**
15 Plaintiff is conditionally certified as the Class Representative to implement the
16 Settlement in accordance with the Agreement. Todd D. Carpenter, Jae K. Kim, and
17 Tiffine E. Malamphy of Lynch Carpenter, LLP, are conditionally appointed as Class
18 Counsel. Plaintiff and Class Counsel must fairly and adequately protect the interests of
19 the Settlement Classes.

20 10. **Termination.** In the event of termination, the Agreement shall be
21 considered null and void; all of Plaintiff’s, Class Counsel’s, and BANA’s obligations
22 under the Settlement shall cease to be of any force and effect; and the Parties shall return
23 to the status quo ante in the Action as if the Parties had not entered into this Settlement
24 Agreement. In addition, in the event of such a termination, all of the Parties’ respective
25 pre-Settlement rights, claims and defenses will be retained and preserved. If this
26 Settlement Agreement terminates or is nullified, the provisional Settlement Class
27 certification shall be vacated by its terms, and the Action shall revert to the status that
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1 existed before execution of this Settlement Agreement. Thereafter, Plaintiff shall be free
2 to pursue any claims available to her, and BANA shall be free to assert any defenses
3 available to it. Nothing in this Settlement Agreement shall be argued or deemed to estop
4 any party from the assertion of such claims and defenses.

5 11. **No Admission.** Nothing in this Order is, or may be construed as, an
6 admission or concession on any point of fact or law by or against any party.

7 12. **Stay of Proceedings.** All discovery and pre-trial proceedings, and
8 deadlines, are stayed and suspended until further notice from the Court, except for such
9 actions as are necessary to implement the Settlement Agreement and this Order.

10 13. **Further Procedures.** Counsel for the parties are hereby authorized to
11 agree to utilize all reasonable procedures in connection with the administration of the
12 Settlement which are not materially inconsistent with either this Order or the terms of
13 the Settlement Agreement.

14 14. **Final Approval Hearing.** On _____, 2026, at _____, [at
15 least 120 days after entry of this Order] this Court will hold a Final Approval Hearing
16 to determine whether the Agreement should be finally approved as fair, reasonable, and
17 adequate. Based on the date of this Order and the date of the Final Approval Hearing,
18 the following are certain associated deadlines in this Settlement.

Event	Proposed Date
Last day to issue Notice and publish the Settlement Website	40 days after entry of this Order
Claim deadline	75 days after entry of this Order
Last day for Plaintiff to file Application for Attorneys' Fees, Costs, and Service Award	30 days before the Opt-Out Deadline
Last day for Plaintiff to file Motion for Final Approval	45 days before the Final Approval Hearing
Last day for Settlement Class Members to file an objection or opt out of the Settlement	45 days before the Final Approval Hearing

1 This Court may order the Final Approval Hearing to be postponed, adjourned, or
2 continued. If that occurs, the updated hearing date shall be posted on the Settlement
3 Website, but other than the website posting, Plaintiff will not be required to provide any
4 additional notice to Settlement Class Members.

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6 **IT IS SO ORDERED.**

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9 DATED: _____

10 _____
11 Hon. Dana M. Sabraw
12 United States District Judge
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