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15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF SAN FRANCISCO
18

19 RHONDA J. CLOSSON and ARIANA NASH on)
behalf of themselves and all others similarly)
20 situated,)

21 Plaintiffs,)

22 v.)

23 BANK OF AMERICA N.A., BANK OF)
AMERICA CALIFORNIA N.A., BANK OF)
24 AMERICA CORP., and DOES 1-50,)

25 Defendants.)
26)
27)
28)

Case No. CGC 04436877

CLASS ACTION

FINAL SETTLEMENT AGREEMENT

1 This Settlement Agreement (“Settlement”) is entered into by and between plaintiff Ariana Nash,
2 individually and as representative of the Settlement Class (as defined below), on the one hand, and
3 defendant Bank of America, N.A., on the other hand. This Settlement is subject to preliminary and
4 final approval by the Court.

5 DEFINITIONS

6 1. As used in this Settlement, the following terms have the meanings specified below:

7 (a) “Action” means and refers to the action entitled *Closson, et al. v. Bank of*
8 *America N.A., et al.*, Case No. CGC 04-436 877 in the files of the San Francisco Superior Court.

9 (b) “Bank of America” or “Defendant” means Bank of America, N.A. (sued in
10 the Action as Bank of America N.A.) and includes Bank of America California, N.A. (sued in the
11 Action as Bank of America California N.A.) and Bank of America Corporation (sued in the Action
12 as Bank of America Corp.), except that references to a “Bank of America debit card” shall mean a
13 debit card, check card or any other bank card used for debit purchases bearing the Bank of America
14 logo or brand, including such cards bearing the Bank of America logo or brand issued by any
15 subsidiary or affiliate of Bank of America, and such cards bearing the logo or brand of another
16 financial institution acquired by or merged into Bank of America, including Fleet Bank, N.A.,
17 LaSalle Bank N.A., LaSalle Bank Midwest N.A., and United States Trust Company, N.A., but only
18 after April 1, 2004, for Fleet Bank, N.A., only after July 1, 2007, for United States Trust Company,
19 N.A., and only after October 1, 2007, for LaSalle Bank N.A. and LaSalle Bank Midwest N.A.;
20 references to “Bank of America debit card transaction(s)” shall mean transaction(s) effectuated with
21 or relating to such Bank of America debit card(s); references to a “Bank of America account” shall
22 mean an account maintained by or with Bank of America or any subsidiary or affiliate of Bank of
23 America; references to a “Bank of America account agreement” or “Bank of America account
24 information” shall mean an account agreement or account information relating to a Bank of
25 America account; and references to a “Bank of America website” shall mean a website and web
26 pages created, operated, maintained or owned by Bank of America or any subsidiary or affiliate of
27 Bank of America.

1 (c) "Claim Form" means and refers to the claim form to be completed, signed
2 under penalty of perjury, and timely submitted to the Claims Administrator by each Settlement
3 Class Member seeking to obtain a distribution of settlement funds provided for in Paragraph 10(a)
4 of this Settlement. As specified in Paragraphs 18 and 19, Claim Forms will be provided to
5 Settlement Class Members by mail ("Mailed Claim Form") and/or on the Settlement Website
6 ("Web Claim Form") and will be available upon request of any Settlement Class Member from the
7 Claims Administrator. The Parties' proposed Mailed Claim Form is attached as Exhibit C. The
8 Parties' proposed Web Claim Form is attached as Exhibit E.

9 (d) "Claims Administrator" means the settlement administrator retained by Bank
10 of America pursuant to Paragraph 25.

11 (e) "Class Counsel" means and refers to Whatley Drake & Kallas LLC, 1540
12 Broadway, 37th Floor, New York, NY 10036; Davis, Cowell & Bowe, LLP, 595 Market Street,
13 Suite 1400, San Francisco, CA 94105; McCune & Wright, 2068 Orange Tree Lane, Suite 215,
14 Redlands, CA 92374; and Rosner & Mansfield, LLP, 10085 Carroll Canyon Road, Suite 100, San
15 Diego, CA 92131; or their respective successor(s).

16 (f) "Class Period" means December 6, 2000 through and including December
17 31, 2007.

18 (g) "Closson" means Rhonda J. Closson.

19 (h) "Complaint" means the Complaint and the First Amended Complaint, and
20 any other or further amended or supplemental complaints, filed in the Action.

21 (i) "Court" means the Superior Court of the State of California for the County of
22 San Francisco.

23 (j) "Defendant's Counsel" means Arnold & Porter LLP, 777 S. Figueroa Street,
24 44th Floor, Los Angeles, California 90017.

25 (k) "Effective Date" has the meaning set forth in Paragraph 27 of this Settlement.

26 (l) "Final Hearing" means the hearing in the Action for the Court to consider
27 final approval of this Settlement and entry of the Judgment.

1 (m) "Judgment" means the Judgment and Order of Dismissal with Prejudice to be
2 entered in the Action in connection with the Settlement after the Final Hearing. The Judgment shall
3 be substantially in the form of Exhibit F.

4 (n) "Notice" means the Notice of Proposed Class Action Settlement to be given
5 to Settlement Class Members in connection with the Settlement following the filing of the
6 Preliminary Approval Order. As provided in Paragraphs 18-20, Notice will be given to Settlement
7 Class Members by mail ("Mailed Notice") or electronically ("Electronic Notice") and by
8 publication ("Published Notice"). The Parties' proposed form of Mailed Notice is attached hereto
9 as Exhibit B-1. The Parties' proposed form of Electronic Notice is attached hereto as Exhibit B-2.
10 The Parties' proposed form of Published Notice is attached hereto as Exhibit D. Based upon the
11 Preliminary Approval Order and the date set by the Court for the Final Hearing, the Parties shall
12 fill-in or substitute concrete calendar dates in the Notice to the extent reasonably feasible, before the
13 Notice is provided to Settlement Class Members.

14 (o) "Parties" means the Plaintiff and Defendant in the Action.

15 (p) "Plaintiff" means plaintiff Ariana Nash, individually and as representative of
16 the Settlement Class.

17 (q) "Preliminary Approval Order" means the Order Preliminarily Approving
18 Settlement and Providing for Notice to the Class. The Parties' proposed form of Preliminary
19 Approval Order is attached hereto as Exhibit A.

20 (r) "Settlement Class Member[s]" means all persons who are members of the
21 Settlement Class to be certified under Paragraph 8 hereof.

22 (s) "Settlement Fund" means the amount referred to in the first sentence of
23 Paragraph 10(a).

24 (t) "Settlement Website" means a website to be created and maintained by the
25 Claims Administrator entitled Rust Consulting, Inc.

26 RECITALS

27 2. The Action was commenced on December 6, 2004, by Rhonda J. Closson and Ariana
28 Nash, individually and in a representative capacity on behalf of a putative class, against Bank of

1 America, N.A. (erroneously named as Bank of America N.A.), Bank of America California, N.A.
2 (erroneously named as Bank of America California N.A.), and Bank of America Corporation
3 (erroneously named as Bank of America Corp.). At Closson's request, the Court, on January 30,
4 2007, approved her withdrawal as a putative class representative, without waiving her right to be
5 part of any class that may be certified in the Action. On July 11, 2007, the Court approved a
6 stipulation of the Parties and dismissed Bank of America California, N.A. and Bank of America
7 Corp. from the Action without prejudice.

8 3. In the Complaint, Plaintiff alleges, among other things, that she was a Bank of
9 America accountholder and had, and had used, a debit card in connection with her account; that
10 Bank of America posted debit card (and other) transactions to accounts in high-to-low order instead
11 of in chronological order; that Bank of America allowed and authorized customers to overdraw their
12 account balances through debit card transactions and failed to warn customers when a debit card
13 transaction would cause their accounts to be overdrawn; that certain account balance and other
14 account information available to Bank of America customers is not current or accurate; that Bank of
15 America made statements in its account agreements, in advertising, on its website, and otherwise,
16 that encouraged and induced customers to use their Bank of America debit cards; that Bank of
17 America's conduct in the foregoing respects was intended to increase, and had the effect of
18 increasing, the number of insufficient funds, returned item, overdraft and overlimit fees Bank of
19 America charged customers; that Bank of America's customer agreements are unconscionable; and
20 that Bank of America does not provide copies of its account agreements to customers until after
21 they open their accounts.

22 4. Based on these allegations, Plaintiff, on behalf of herself and in a representative
23 capacity, asserts claims for unlawful, unfair, and fraudulent business practices and false advertising
24 under California's Unfair Competition Law and False Advertising Law (Cal. Bus. & Prof. Code
25 §§17200 and 17500); and for violation of the California Consumers Legal Remedies Act (Cal. Civ.
26 Code §1750 *et seq.*). Plaintiff seeks injunctive relief, restitution and disgorgement, corrective
27 advertising, compensatory damages, punitive damages, reasonable attorneys' fees and costs
28 pursuant to California Code of Civil Procedure § 1021.5, and pre- and post-judgment interest.

1 5. Bank of America has filed an Answer in the Action denying all claims asserted
2 against it, denying all allegations of wrongdoing and liability, and denying that Plaintiff or the
3 putative class she represents is entitled to any relief whatsoever. In particular, Bank of America
4 disputes Plaintiff's allegations that Bank of America engaged in any respect in any illegal,
5 fraudulent, deceptive, or unfair conduct or advertising or charged any fees that were not lawful and
6 duly provided for in its customer agreements. Bank of America further contends that Plaintiff's
7 claims and the relief sought based thereon are preempted by the provisions of the National Bank
8 Act (12 U.S.C. 21 *et seq.*) and by regulations of the Office of the Comptroller of the Currency
9 promulgated thereunder. Nevertheless, solely for the purpose of avoiding the burden, expense, risk
10 and uncertainty of continuing to litigate the Action, and for the purpose of putting to rest the
11 controversies engendered by the Action, and without any admission of any liability or wrongdoing
12 whatsoever, Bank of America desires to settle the Action and all claims asserted in or subsumed by
13 the Action on the terms and conditions set forth herein.

14 6. Class Counsel have investigated the facts relating to the claims alleged in the Action,
15 and the underlying events and transactions forming the subject matter of the Action, and have
16 analyzed the applicable legal principles. While Plaintiff and Class Counsel believe that the claims
17 asserted in the Action have merit, they have concluded, based upon their investigation, taking into
18 account the sharply contested issues involved, the unsettled state of the applicable law, the inherent
19 problems of proof and legal defenses which may be an impediment to prevailing in whole or in part
20 on the claims they assert, the risks, uncertainties and costs of further prosecution of the Action, and
21 the substantial benefits to be received pursuant to this Settlement, that a resolution and compromise
22 on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Settlement
23 Class Members.

24 7. Under the circumstances, Plaintiff, on behalf of herself and the members of the
25 Settlement Class and Bank of America, through their respective duly authorized counsel of record
26 in the Action, hereby agree that this Action, and all matters and claims in the Complaint, and all
27 matters and claims arising out of or related to the allegations or subject matter of the Complaint and
28

1 Action, are settled, compromised, and dismissed, on the merits and with prejudice, upon the below
2 terms and conditions.

3 TERMS OF THE SETTLEMENT

4 In consideration of the complete and final settlement of the Action, and under the terms and
5 conditions herein, the Parties agree as follows:

6 **Certification of the Settlement Class**

7 8. For settlement purposes only, the Parties agree that the Court may certify a
8 Settlement Class defined as follows:

9 Any person who, at any time between December 6, 2000 and December 31, 2007,
10 resided in the United States and had an account at Bank of America accessible
11 through a Bank of America debit card, and either (i) paid at least one insufficient
12 funds fee, overdraft fee, returned item fee, or similar fee, that was assessed to the
13 person's account within five business days after a Bank of America debit card
14 transaction either occurred or posted to the account, or (ii) paid at least one overlimit
15 fee, or similar fee, that was assessed for an account cycle in which a Bank of America
16 debit card transaction either occurred or posted to the person's account. ("Debit card"
17 means debit card, check card or any other bank card used for debit purchases.)

18 Excluded from the Settlement Class are Bank of America, any parent, subsidiary,
19 affiliate or sister company of Bank of America, and all officers or directors of Bank
20 of America or any parent, subsidiary, affiliate or sister company at any time during
21 the Class Period, and the legal representatives, heirs, successors, and assigns of any of
22 the foregoing. Also excluded from the Settlement Class is any person who timely
23 submits a valid request to be excluded from this Settlement.

24 9. If the Court does not certify the Settlement Class, or limits or changes the
25 composition of the Settlement Class, either Party shall have the right to terminate the Settlement by
26 serving on the other Party's counsel and filing with the Court a notice of termination within ten
27 court days of its receipt of notice of the Court's ruling.

28 **Settlement Consideration**

10. Subject to approval by the Court, and except as otherwise expressly stated in
Paragraph 10(e), the total monetary consideration to be provided by Bank of America pursuant to
this Settlement shall be \$35 million, inclusive of all of Class Counsel's attorneys' fees and costs of
litigation, the incentive payment to Plaintiff referred to in Paragraph 10(d), and the administrative
costs of settlement described in Paragraph 10(e)(1). Said \$35 million shall be apportioned and
distributed as follows:

1 (a) **Benefits to Settlement Class Members:** Within 30 days after the Effective
2 Date, Bank of America will pay a total of \$ 35 million less the sum of (i) the amount awarded by
3 the Court to Class Counsel for attorneys' fees and litigation costs pursuant to Paragraphs 10(c) and
4 12; (ii) the amount awarded by the Court as an incentive payment to Plaintiff pursuant to Paragraph
5 10(d); and (iii) \$2.5 million for administrative costs of settlement pursuant to Paragraph 10(e); to
6 Settlement Class Members in partial refund of overdraft, returned item, insufficient funds and
7 overlimit fees.

8 (1) To receive a refund under this paragraph, a Settlement Class Member
9 shall submit a Claim Form no later than 45 days prior to the Final Hearing, attesting under
10 penalty of perjury that the person submitting the Claim Form is a person residing in the
11 United States who, at any time between December 6, 2000 and December 31, 2007, had an
12 Account at Bank of America with a Bank of America debit card and either (i) paid at least
13 one insufficient funds fee, overdraft fee, returned item fee, or similar fee, that was assessed
14 to the person's account within five business days after a Bank of America debit card
15 transaction either occurred or posted to the account, or (ii) paid at least one overlimit fee, or
16 similar fee, that was assessed for an account cycle in which a Bank of America debit card
17 transaction either occurred or posted to the person's account.

18 (2) Bank of America may take such steps as it deems necessary and
19 appropriate in its sole discretion to verify the information provided on Claim Forms
20 submitted by Settlement Class Members and to prevent fraudulent claims under this
21 Settlement. In doing so, Bank of America shall be entitled to rely on the information
22 contained in its business records relating to the Settlement Class Members' accounts.
23 Nothing herein is intended or shall be construed to obligate Bank of America to verify each
24 or any Claim Form submitted.

25 (3) Each Settlement Class Member shall submit no more than one Claim
26 Form, regardless of the number of insufficient funds, returned item, overdraft or overlimit
27 fees, or similar fees, such Settlement Class Member may have paid during the Class Period
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1 as a result of the use of a Bank of America debit card. In the event that a Settlement Class
2 Member files multiple Claim Forms, only a single valid Claim Form will be honored.

3 (4) The amount to be received by each Settlement Class Member under
4 this Settlement shall be determined as of the Effective Date on a pro rata basis by dividing
5 the Settlement Fund by the number of Settlement Class Members timely submitting a valid
6 Claim Form, but excluding the number of Settlement Class Members who submit a Claim
7 Form that is untimely, incomplete or fraudulent (as determined under Paragraph 10(a)(2)).
8 If the amount to be received by each Settlement Class Member who timely submitted a valid
9 Claim Form, as calculated in accordance with the preceding sentence, exceeds \$78.00, each
10 such Settlement Class Member shall receive \$78.00, and the amount not distributed to
11 Settlement Class Members as a result of this \$78.00 cap shall be paid into the *cy pres* fund
12 provided for in Paragraph 10(b). In no event shall Bank of America be required to pay out
13 in the aggregate to Settlement Class Members more than the Settlement Fund. Payments to
14 Settlement Class Members pursuant to this paragraph will be made by mailing checks to
15 them at the addresses stated in their respective Claim Forms.

16 (5) Any portion of the Settlement Fund that is not paid to Settlement
17 Class Members pursuant to Paragraph 10(a) shall be paid into the *cy pres* fund provided for
18 in Paragraph 10(b) and shall not revert to Bank of America.

19 (6) The payments provided for in Paragraph 10(a) do not constitute an
20 "amount that will be payable to all Settlement Class Members" or an "amount to which
21 [class members] are entitled pursuant to the judgment" contemplated herein, as those terms
22 are used in §384 of the California Code of Civil Procedure.

23 (b) ***Cy Pres Funds:*** Bank of America shall create a *cy pres* fund consisting of (i)
24 the difference, if any, between the \$2.5 million set aside pursuant to Paragraph 10(e) to cover the
25 administrative costs of this Settlement and the actual administrative costs of this Settlement
26 (assuming the actual administrative costs of this Settlement are less than \$2.5 million), and (ii) any
27 funds not paid to Settlement Class Members pursuant to Paragraph 10(a), such as, by way of
28 example only, funds sent to Settlement Class Members under Paragraph 10(a) that are not cashed or

1 that are not deliverable and funds in excess of the maximum amount distributable to Settlement
2 Class Members under Paragraph 10(a)(4). Notwithstanding the foregoing sentence, in the event the
3 actual administrative costs of this Settlement, as described in Paragraph 10(e)(1), equal or exceed
4 \$2.5 million and in the further event that all funds provided for in Paragraph 10(a) are paid to
5 Settlement Class Members, Bank of America will have no obligation to create a *cy pres* fund under
6 this paragraph or as part of the Settlement. The amount in the *cy pres* fund, if any, shall be
7 distributed, as follows:

8 (1) The Parties shall mutually agree upon up to four recipients of the
9 monies, if any, in the *cy pres* fund. Any such recipients shall be subject to Court approval.
10 If the Parties are unable to agree upon four such recipients, the Court in the Action shall
11 select the remaining recipients of the *cy pres* fund.

12 (2) Any monies in the *cy pres* fund shall be distributed *pro rata* to the
13 four recipients selected in accordance with subparagraph (1) above to fund consumer
14 financial education projects.

15 (3) Each distribution of *cy pres* funds shall carry the restriction that the
16 funds may not be used to finance, promote, or facilitate litigation or lobbying activities
17 against financial institutions. Violation by a recipient of the foregoing restrictions shall
18 obligate the recipient to forfeit the entire distribution amount, used or unused, so that the
19 funds may be redistributed to another recipient mutually agreed upon by the Parties or, if no
20 agreement is reached, selected by the Court in the Action.

21 (4) The amounts to be paid out of the *cy pres* fund, if any, shall be paid as
22 soon as is practicable following the distribution of funds to Settlement Class Members under
23 Paragraph 10(a) and the payment of the administrative costs under Paragraph 10(e).

24 (c) **Attorneys' Fees and Costs to Plaintiff Counsel:** As more fully set forth in
25 Paragraph 12, Bank of America shall not oppose an application by Class Counsel for attorneys' fees
26 and litigation costs in an amount not exceeding \$8.125 million (of the \$35 million). Bank of
27 America shall have no other or further liability for fees and costs of Plaintiff, any Settlement Class
28 Member, or any Class Counsel. If the Court approves a payment to Class Counsel of less than

1 \$8.125 million, the difference between the sum requested by Class Counsel and the amount actually
2 awarded to Class Counsel shall be added to the Settlement Fund referred to in Paragraph 10(a) for
3 distribution to the Settlement Class.

4 (d) **Incentive Payment to Plaintiff:** Bank of America shall not oppose an
5 application by Class Counsel for Court approval for a payment of not more than \$10,000 (out of the
6 \$35 million) to Plaintiff for her service as the representative of the Settlement Class in the Action.
7 Except as specified in this subparagraph and in Paragraph 10(a), Bank of America shall have no
8 other or further obligation to make any payment to Plaintiff or any Settlement Class Member. If the
9 Court approves a payment to Plaintiff of less than \$10,000, the difference between the sum
10 requested for Plaintiff and the amount actually awarded to Plaintiff shall be added to the Settlement
11 Fund referred to in Paragraph 10(a) for distribution to the Settlement Class.

12 (e) **Administrative Costs of Settlement:** \$2.5 million (of the \$35 million) shall
13 be used by Bank of America to cover, pay for and/or reimburse all fees, costs and expenses (as such
14 fees, costs and expenses are incurred) relating to implementation or effectuation of the Settlement,
15 as follows:

16 (1) The fees, costs and expenses payable from said \$2.5 million shall
17 include, among other items, without limitation, the fees, costs and expenses of preparing,
18 printing and mailing the Mailed Notice and Mailed Claim Forms; preparing, placing and
19 publishing the Published Notice; preparing and transmitting the Electronic Notice and Web
20 Claim Form; creating, hosting and maintaining the Settlement Website; establishing,
21 operating and maintaining the 1-800 number for Settlement inquiries; receiving, processing
22 and verifying Claim Forms; data storage; establishing and maintaining the Post Office box
23 required for opt-outs; opt-out processing costs; any costs incurred in preparing to perform or
24 performing the actions required by Paragraphs 18-20; preparing, disseminating and filing
25 any data or reports required by the Settlement or the Court; preparing and transmitting
26 payments to Settlement Class Members; account reconciliation; the performance of the other
27 duties of the Claims Administrator described in Paragraph 26; administration and labor
28

1 incidental or related to the foregoing; and any and all other actions reasonably necessary to
2 the performance, approval and effectuation of the Settlement.

3 (2) In the event the \$2.5 million is insufficient to cover such fees, costs
4 and expenses, Bank of America will be responsible to pay the additional amount of such
5 fees, costs and expenses. Any additional amount paid by Bank of America in accordance
6 with the immediately preceding sentence shall be over and above the total settlement sum of
7 \$35 million. If the actual amount of such fees, costs and expenses is less than \$2.5 million,
8 the difference between such actual amount and \$2.5 million shall be paid into the *cy pres*
9 fund pursuant to Paragraph 10(b).

10 (f) **Business Practices:** Bank of America represents that, following the
11 commencement of the Action:

12 (1) Bank of America has ceased running the advertisement referenced in
13 paragraphs 25 and 26 of the Complaint and deleted from its website and advertising the
14 statement that, when a Bank of America debit card is used for a debit card purchase
15 transaction, the money for the purchase comes out of the customer's account at the time the
16 customer spends it;

17 (2) Bank of America has created an educational brochure and launched
18 an online fee education site and a promotional campaign to raise awareness of Bank of
19 America's customers concerning Bank of America's account processes and fees, including,
20 without limitation:

21 The creation and dissemination of *The Helpful Information for Better*
22 *Banking Guidebook* that provides customers with straightforward descriptions of bank
23 processes and how customers can better manage their accounts to attempt to avoid or
24 minimize fees.

25 The creation and operation of a fully functional online fee and bank
26 processes education and management website
27 (www.bankofamerica.com/feesandprocesses) as a customer resource and to provide quick
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1 access to information about account alerts, overdraft protection, and online banking, among
2 other subjects; and

3 (3) Bank of America has revised various account brochures and customer
4 notices, including its *Personal Schedule of Fees, Deposit Agreement and Disclosures*, and
5 insufficient funds/overdraft notices, to provide more information and practical solutions to
6 various customer account concerns.

7 **Waiver of Five-Year Period**

8 11. The time for bringing this Action to trial under §583.310 of the California Code of
9 Civil Procedure shall be extended for a period equal to the period from June 30, 2007, to the earlier
10 of the date on which this Settlement is terminated pursuant to written notice as permitted by this
11 Settlement, or the Effective Date. Such extension shall be in addition to any other extensions, if
12 any, previously agreed to by the Parties and/or mandated or applicable by law.

13 **Attorneys' Fees and Costs**

14 12. Class Counsel will seek Court approval for payment by Bank of America of not
15 more than \$8.125 million for attorneys' fees and litigation costs incurred in prosecuting, handling
16 and resolving the Action, and Bank of America agrees not to oppose such application. Bank of
17 America shall have no other or further liability for fees and costs of Plaintiff, any Settlement Class
18 Member, or any Class Counsel.

19 (a) If the Court awards attorneys' fees and litigation costs to Class
20 Counsel in an amount less than \$8.125 million, the difference between \$8.125 million and
21 the amount actually awarded shall be added to the Settlement Fund for distribution to
22 Settlement Class Members pursuant to Paragraph 10(a).

23 (b) Even though Class Counsel shall not seek Court approval for payment
24 by Bank of America of not more than \$8.125 million for attorneys' fees and litigation costs
25 incurred in prosecuting, handling and resolving the Action, in the event the Court were to
26 award attorneys' fees and litigation costs to Class Counsel in excess of \$8.125 million, Class
27 Counsel will waive any such amount awarded in excess of \$8.125 million.
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1 (c) Unless the Settlement is terminated as provided in the Settlement,
2 Bank of America shall pay the attorneys' fees and litigation costs awarded by the Court to
3 Class Counsel within 30 days of the Effective Date.

4 (d) Bank of America's obligation to pay attorneys' fees and litigation
5 costs to Class Counsel hereunder is conditioned upon Class Counsel's providing Bank of
6 America with W-9s and/or their respective taxpayer identification numbers no later than 10
7 business days prior to payment.

8 (e) Except as otherwise expressly set forth above, the Settlement shall not
9 be conditioned upon or subject to Court approval of an award of any particular amount of
10 attorneys' fees and litigation costs to Class Counsel.

11 **Releases**

12 13. As of the Effective Date, Plaintiff and each Settlement Class Member shall be
13 deemed to have fully released and forever discharged Bank of America, N.A., Bank of America
14 California, N.A, Bank of America Corp., any parent, affiliate or sister company of any of the
15 foregoing, any direct or indirect subsidiary of any of the foregoing, any successor to any of the
16 foregoing, and all of the past and present employees, agents, representatives, attorneys, insurers,
17 officers, and directors of each of them, of and from any and all rights, claims, actions, causes of
18 action, demands and remedies, known or unknown, liquidated or unliquidated, legal, statutory, or
19 equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or
20 matters alleged in the Complaint, including claims relating to any or all of the following matters,
21 provided such claims result from, arise out of, or are based upon the use of a Bank of America debit
22 card by the cardholder or by an authorized user of the debit card that led to the assessment of one or
23 more insufficient funds fees, overdraft fees, overlimit fees, returned item fees, or similar fees: (a)
24 the order or manner in which Bank of America debit card and other transactions are posted to and
25 debited from Bank of America accounts on days when a Bank of America debit card is used or a
26 Bank of America debit card transaction is posted; (b) the authorization, approval and handling of
27 any Bank of America debit card transactions; (c) any fees or charges resulting from or relating to
28 Bank of America debit card transactions; (d) any failure to warn when Bank of America debit card

1 transactions would cause a Bank of America account to be overdrawn or a fee assessed; (e) the
2 accuracy of any Bank of America account balance or other Bank of America account information
3 relating to a Bank of America debit card provided or shown online or through other means; (f) any
4 conduct, representations or statements (in Bank of America account agreements or otherwise)
5 encouraging the use of Bank of America debit cards or reliance on any Bank of America account
6 balance or other Bank of America account information relating to a Bank of America debit card
7 provided or shown online or through other means; (g) the timing and manner of distribution of Bank
8 of America account agreements as it relates to Bank of America debit cards; and (h) any advertising
9 or advertisements relating to any of the foregoing.

10 14. Plaintiff and each Settlement Class Member further waive and release any and all
11 provisions, rights, and benefits conferred by § 1542 of the California Civil Code or similar laws of
12 any other state or jurisdiction. Section 1542 of the California Civil Code reads:

13 §1542. Certain claims not affected by general release. A general release does not
14 extend to claims which the creditor does not know or suspect to exist in his favor at
15 the time of executing the release, which if known by him must have materially
affected his or her settlement with the debtor.

16 15. Plaintiff or any Settlement Class Member may hereafter discover facts other than or
17 different from those that he/she knows or believes to be true with respect to the subject matter of the
18 claims released pursuant to the terms of Paragraphs 13 and 14, or the law applicable to such claims
19 may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date,
20 he/she shall have waived and fully, finally, and forever settled and released any known or unknown,
21 suspected or asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims
22 with respect to all of the matters described in or subsumed by Paragraphs 13 and 14. Further, each
23 of those individuals agrees and acknowledges that he/she shall be bound by this Settlement,
24 including by the releases contained in this paragraph and in Paragraphs 13 and 14, and that all of
25 their claims in the Action shall be dismissed with prejudice and released, whether or not such claims
26 are concealed or hidden; without regard to subsequent discovery of different or additional facts and
27 subsequent changes in the law; and even if he/she never receives actual notice of the Settlement,
28 never submits a Claim Form, or never receives a distribution of funds from the Settlement.

1 16. As of the Effective Date, Bank of America shall be deemed to have, and by operation
2 of the Judgment shall have, fully, finally and forever released and discharged Plaintiff, any
3 Settlement Class Member who actively assisted Plaintiff in initiating or prosecuting the Action, and
4 Class Counsel from any and all claims based upon the initiation, prosecution, or resolution of the
5 Action. Nothing herein shall operate or be construed to release any claims or rights by Bank of
6 America to recover any past, present, or future amounts that may be owed by Plaintiff or by any
7 Settlement Class Member or Class Counsel on his/her accounts, loans or debts with Bank of
8 America, pursuant to the terms and conditions of such accounts, loans or debts.

9 **Preliminary Court Approval**

10 17. The Plaintiff shall promptly make, and Bank of America shall not oppose, a motion
11 in the Action for entry of the Preliminary Approval Order by the Court, which order will:

12 (a) Preliminarily approve this Settlement;

13 (b) Approve the form of Notice to be provided to the Settlement Class, including
14 the form of Mailed Notice, the form of Electronic Notice, and the form of Published Notice;

15 (c) Direct that such Notice be provided to the Settlement Class, in accordance
16 with the Settlement;

17 (d) Establish a procedure for Settlement Class Members to object to the
18 Settlement or to exclude themselves from the Settlement Class, and set a date, not later than
19 45 days prior to the date set for the Final Hearing, after which no one shall be allowed to
20 object to the Settlement or to exclude himself/herself from the Settlement Class;

21 (e) Pending final determination of whether the Settlement should be approved,
22 stay all proceedings in the Action except those related to the effectuation of the Settlement;
23 and

24 (f) Schedule a date for the Final Hearing which is at least 270 days after the
25 filing of the Preliminary Approval Order by the Court.

26 Plaintiff will set the hearing on the motion for entry of the Preliminary Approval Order on a date
27 agreed to by Defendants.

1 **Notice to Settlement Class Members of Settlement**

2 18. Commencing no later than 45 days after the filing by the Court of the Preliminary
3 Approval Order, the Claims Administrator shall post on the Settlement Website a copy of the
4 Electronic Notice, the Web Claim Form in .html and .pdf format that can be completed and
5 submitted online, and any other documents agreed to by the Parties. These documents shall remain
6 available on the Settlement Website until at least the date set for the Final Hearing.

7 19. Within 135 days from the beginning of the calendar month after the filing by the
8 Court of the Preliminary Approval Order, Bank of America shall mail, or cause to be mailed, the
9 Mailed Notice to all persons having a Bank of America account for which a Bank of America debit
10 card has been issued and who, as of the time of such mailing, have mailing addresses in the United
11 States for purposes of communicating with Bank of America and receive their periodic account
12 statements from Bank of America by mail. Bank of America may insert the Mailed Notice into and
13 as part of the regular account statement mailing to such accountholders, as a statement insert or
14 similar document, as long as the insert is clearly marked to indicate that it is a legal notice which
15 may affect the recipient's legal rights. The Mailed Notice will be sent to such accountholders at the
16 last known address as shown on Bank of America's computerized records with respect to their
17 accounts. At least 15 days before the Final Hearing, Bank of America or the Claims Administrator
18 shall file with the Court and serve on Class Counsel and Defendant's Counsel one or more
19 declarations stating that the Mailed Notice was provided in accordance with the requirements of the
20 Preliminary Approval Order.

21 20. Within 135 days from the beginning of the calendar month after the filing by the
22 Court of the Preliminary Approval Order, Bank of America shall give the Electronic Notice to all
23 persons having a Bank of America account for which a debit card has been issued and who, as of
24 the time of giving such notice, receive their periodic account statements from Bank of America
25 electronically on-line. The Electronic Notice will be available through a designated link on the
26 same webpage from which such accountholders may click to view their monthly account
27 statements. In the same email in which such accountholders are notified by Bank of America that
28 their recent account statement is available to view online (which email is sent to such

1 accountholders at the last known email address as shown on Bank of America's computerized
2 records with respect to their accounts), they will also be notified that the statement is accompanied
3 by a legal notice which may affect the recipient's legal rights. At least 15 days before the Final
4 Hearing, Bank of America or the Claims Administrator shall file with the Court and serve on Class
5 Counsel and Defendant's Counsel one or more declarations stating that the Electronic Notice was
6 provided in accordance with the requirements of the Preliminary Approval Order.

7 21. In addition to the Mailed Notice and the Electronic Notice, Bank of America shall
8 provide Notice of this Settlement by publishing a ¼ page Published Notice in a national edition of
9 USA Today on the first available Friday and then again on a Monday, Tuesday, Wednesday or
10 Thursday at least ten days after the date the first notice was published. Both instances of
11 publication of the Published Notice shall occur during the same account statement mailing cycle in
12 which Mailed Notice is provided pursuant to Paragraph 19. At least 15 days before the Final
13 Hearing, Bank of America or the Claims Administrator shall file with the Court and serve on Class
14 Counsel and Defendant's Counsel one or more declarations stating that the Published Notice was
15 provided in accordance with the requirements of the Preliminary Approval Order.

16 **Exclusion from the Settlement Class and Bank of America's Right to Terminate Settlement**

17 22. If a Settlement Class Member wishes to be excluded from the Settlement Class, the
18 Settlement Class Member's written request for exclusion must be mailed to and received by the
19 Claims Administrator no later than 45 days prior to the date set for the Final Hearing. The request
20 for exclusion must refer to *Closson v. Bank of America N.A.* and must list the account number(s) of
21 the Settlement Class Member's Bank of America account(s) linked to a Bank of America debit card.
22 In addition, the request for exclusion must include, for each account listed: (1) the full names and
23 current addresses of everyone whose name is on the account; (2) a statement that everyone whose
24 name is on the account satisfies the criteria set forth in Paragraph 8 to be a Settlement Class
25 Member; (3) a statement of intention to exclude everyone whose name is on the account from the
26 Settlement Class; and (4) the signature of everyone whose name is on the account.

27 23. Bank of America shall have the right to terminate the Settlement by serving on Class
28 Counsel and filing with the Court a notice of termination within ten court days of its receipt from

1 the Claims Administrator of the report specified in Paragraph 26(g)(ii) if the number of Settlement
2 Class Members who timely request exclusion from the Settlement Class equals or exceeds the
3 number specified in a Supplemental Agreement executed concurrently with this Settlement by the
4 Parties.

5 **Objections to Settlement**

6 24. Any Settlement Class Member who does not opt out of the Settlement Class may
7 object to the Settlement by filing with the Court and delivering to Class Counsel and Defendant's
8 Counsel, by first class mail, postmarked not later than 45 days prior to the date set for the Final
9 Hearing (unless such time is extended for such Settlement Class Member in a writing signed by
10 Class Counsel and Defendant's Counsel), a written statement of objection and information showing
11 the objector satisfies the criteria set forth in Paragraph 8 to be a Settlement Class Member. The
12 written statement of objection must set forth (i) the name of this Action; (ii) the Settlement Class
13 Member's full name, address, telephone number, and (iii) the specific reasons for the objection. All
14 Settlement Class Members or their attorneys who intend to appear at the Final Hearing must file
15 with the Court and serve upon Class Counsel and Defendant's Counsel, not later than 45 days prior
16 to the date set for the Final Hearing (unless such time is extended for such Settlement Class
17 Member in a writing signed by Class Counsel and Defendant's Counsel), a notice of their intention
18 to appear.

19 **Settlement Administration**

20 25. Bank of America shall retain Rust Consulting Inc. as the Claims Administrator.
21 Bank of America shall pay the fees and costs of the Claims Administrator and the fees and costs of
22 any other third-party vendors performing tasks necessary for the implementation or effectuation of
23 the Settlement as provided in Paragraph 10(e)(1).

24 26. The duties of the Claims Administrator, in addition to any other duties that may be
25 specifically described herein, are as follows:

- 26 (a) Receive and process all Claims Forms and all requests for exclusion from the
27 Settlement Class;

1 (b) Establish and operate an “800” number to receive and respond to requests for
2 Claim Forms and questions about the Settlement;

3 (c) If requested by Bank of America, prepare, print and mail the Mailed Notice
4 and Mailed Claim Forms, prepare, place and cause to be published the Published Notice, and
5 prepare and transmit the Electronic Notice and Web Claim Form;

6 (d) Establish and maintain a Post Office box for requests for exclusion from the
7 Settlement Class and shall handle all requests for exclusion;

8 (e) Create, host and maintain the Settlement Website

9 (f) Receive and process Claim Forms, and prepare and transmit payments to
10 Settlement Class Members pursuant to Paragraph 10(a);

11 (g) Provide the following lists to Bank of America, Class Counsel, and
12 Defendant’s Counsel (except that on the lists provided to Class Counsel and Defendant’s Counsel
13 any account numbers or partial social security numbers shall be redacted), starting on the Effective
14 Date and periodically thereafter:

15 (i) a list identifying (by the available information regarding name,
16 address, and/or account number) those persons who have returned a Mailed or Web
17 Claim Form; and

18 (ii) a list identifying those persons who have submitted a request
19 for exclusion pursuant to Paragraph 22 and the terms of the Preliminary Approval
20 Order, and copies of all such requests for exclusion, with a complete list of all
21 persons requesting exclusion from the Settlement Class being provided to Bank of
22 America, Class Counsel, and Defendant’s Counsel no later than 35 days prior to the
23 date set for the Final Hearing;

24 (h) Provide, if necessary, any or all of the declarations required by Paragraphs
25 19-21; and

26 (i) Maintain and oversee data storage relating to the Settlement and claims
27 process, and engage in account reconciliation, and general administration incidental to the
28 foregoing.

1 The Claims Administrator's fees, costs and expenses in performing the foregoing duties will be
2 included in the notice and administrative costs of this Settlement provided for in Paragraph 10(e)(1).

3 **Effective Date of Settlement**

4 27. The Effective Date of the Settlement shall be 10 days after all of the following
5 conditions have occurred and been satisfied:

6 (a) This Settlement has been signed by the Parties, Class Counsel and
7 Defendant's Counsel;

8 (b) The Court has entered the Preliminary Approval Order substantially in the
9 form of Exhibit A attached hereto;

10 (c) Notice has been provided to the Settlement Class as required by the
11 Preliminary Approval Order and Bank of America or the Claims Administrator has filed one
12 or more declarations attesting that such notice was provided;

13 (d) The Court has entered the Judgment and Order of Dismissal with Prejudice
14 substantially in the form of Exhibit F attached hereto;

15 (e) Notice of Entry of the Judgment and Order of Dismissal with Prejudice has
16 been served in accordance with §664.5 of the California Code of Civil Procedure to the
17 Parties and to any persons, or their counsel, who objected to the Settlement in the manner
18 provided for in the Preliminary Approval Order; and

19 (f) The Judgment and Order of Dismissal with Prejudice has become Final. The
20 Judgment and Order of Dismissal with Prejudice shall be deemed to have become Final: (i)
21 70 days after Notice of Entry of the Judgment and Order of Dismissal with Prejudice has
22 been served, if no notice or other document is filed within that time seeking appeal, review,
23 rehearing, reconsideration, vacation, or any other action regarding the Judgment; or (ii) if
24 any such notice or document is filed, then 15 days after the date upon which all appellate
25 and/or other proceedings resulting from the notice or document have been finally terminated
26 or resolved in such a manner as to permit no further judicial action, challenge, modification
27 or review of the Judgment.

28 **No Admission of Liability**

1 28. Bank of America expressly denies any and all liability in this Action. By entering
2 into this Settlement, Bank of America is not admitting any liability whatsoever to Plaintiff, any
3 Settlement Class Member or any other person or entity or the truth of any allegations or
4 circumstances, nor is Bank of America waiving any claim, counterclaim, defense, or affirmative
5 defense except to the extent otherwise expressly provided by this Settlement.

6 **Termination of Settlement**

7 29. This Settlement may be terminated as provided in Paragraphs 9, 12(b), and 23. This
8 settlement may also be terminated by either Party by providing written notice to counsel for the
9 opposing Party and the Court within 10 days after any of the following occurrences:

10 (a) Any court rejects, modifies, amends, or declines to approve the Settlement;

11 (b) Any court incorporates into, or deletes or strikes from, the Preliminary
12 Approval Order, Judgment, or the Settlement, any provision which the Party seeking to terminate
13 the Settlement regards as material; or

14 (c) Any court makes any order precluding Plaintiff or Bank of America from
15 proceeding in whole or in part with the Settlement.

16 30. In the event of a termination in accordance with the provisions of this Settlement:

17 (a) This Settlement, except for this paragraph and Paragraphs 9, 11, 23, and 28,
18 shall be null and void and of no further effect;

19 (b) Any certification of the Settlement Class by the Court will be vacated;

20 (c) The Parties will be returned to their positions *quo ante* with respect to all
21 facets of the Action, including, without limitation, with respect to the appropriateness of class
22 certification, as if the Settlement had not been entered into;

23 (d) Neither the Settlement terms nor any publicly disseminated information
24 regarding the Settlement, including, without limitation, the Mailed, Electronic, and Published
25 Notices, court filings, orders and public statements relating to the Settlement, may thereafter be
26 used as evidence for any purpose whatsoever; and

27 (e) The fact of, and any documents, findings, decisions, or orders relating to, any
28 failure of a court to approve the Settlement or any modification or amendment of the Settlement by

1 a court, as well as the fact and contents of any objections which may have been filed to the
2 Settlement, may not be used as evidence for any purpose whatsoever.

3 31. However nothing in the preceding paragraph is intended or will be construed to limit
4 a Party's right to use or to offer the Settlement in evidence in any action or proceeding in any court
5 or other tribunal to enforce or implement its terms, to support or defend the Settlement Agreement,
6 including on any appeal from the Judgment, or to enforce or assert a claim or defense of *res*
7 *judicata*, collateral estoppel, claim or issue preclusion, settlement, release, merger and bar, or any
8 similar claim or defense against a Settlement Class Member.

9 **Media or Internet Communications**

10 32. No Party, Class Counsel or Defendants' Counsel, or anyone else acting on behalf of
11 any of them may issue any press release, or make any comments to the news media (either on or off
12 the record) or on any blog or online forum or website, or instigate any Party or third party to make
13 any comments to the news media (either on or off the record) or on any blog or online forum or
14 website, except that a press release may be issued upon joint written agreement of Class Counsel
15 and Defendants' Counsel, and except that in response to inquiries by the press or otherwise, a Party,
16 Class Counsel, or Defendants' Counsel may say that the Settlement was arrived at after extensive
17 negotiations; the Settlement is fair and reasonable and in the best interests of all Parties and
18 Settlement Class Members; the Settlement was entered into in order to end costly, burdensome and
19 lengthy litigation; and/or the Settlement does not constitute any admission of any wrongdoing by
20 Defendants, which continue to assert that they acted lawfully at all times, and except that in
21 response to inquiries or requests by the press or otherwise, Class Counsel and Defendants' Counsel
22 may send copies of the Complaint and settlement documents. Class Counsel shall explain to
23 Plaintiff her obligations and commitments under this paragraph but, if despite Class Counsel's best
24 efforts, there is a violation of this paragraph by the Plaintiff, Class Counsel shall have no liability
25 for such violation and such violation shall not result in a termination of this Settlement.

26 **General Provisions**

27 33. This Settlement constitutes the entire agreement between and among the Parties with
28 respect to the settlement of the Action. This Settlement shall not be construed more strictly against

1 one party than another merely because it may have been prepared by counsel for one of the Parties,
2 it being recognized that, because of the arms-length negotiations resulting in the Settlement, all
3 Parties hereto have contributed substantially and materially to the preparation of the Settlement.
4 This Settlement supersedes all prior negotiations and agreements and may not be modified or
5 amended except by a writing signed by the Parties, Class Counsel and Defendant's Counsel.

6 34. Each Party to the Settlement warrants that he, she or it is acting upon his, her or its
7 independent judgment and upon the advice of his, her or its own counsel and not in reliance upon
8 any warranty or representation, express or implied, of any nature or kind by any other person, other
9 than the warranties and representations expressly made in the Settlement.

10 35. All of the Exhibits to this Settlement are material and integral parts hereof and are
11 fully incorporated by reference. All captions used in the Settlement are for reference and
12 convenience only and shall not be used in interpreting the Settlement.

13 36. The Parties, Class Counsel, and Defense Counsel shall execute all documents and
14 perform any additional acts necessary and proper to effectuate the terms of the Settlement and to
15 obtain the benefit of the Settlement for the Parties and Settlement Class Members.

16 37. The Parties, Class Counsel, and Defense Counsel shall not engage in any conduct or
17 make any statements, directly or indirectly, (a) to encourage, promote, or solicit Settlement Class
18 Members or their counsel to request exclusion from the Settlement Class or to object to the
19 Settlement, or (b) to facilitate, induce or cause the non-fulfillment of a condition or the occurrence
20 of an event giving rise to a Party's right to terminate this Settlement.

21 38. The Settlement shall be binding upon, and shall inure to the benefit of, the Parties,
22 the Settlement Class Members, the persons released in Paragraphs 13-16, and the respective heirs,
23 administrators, successors, and assigns of each of them. Except as provided in the foregoing
24 sentence, nothing in this Settlement is intended to create any legally enforceable rights in any other
25 person or to make any other person, including, but without limitation, an agreed upon recipient of *cy*
26 *pres* funds pursuant to Paragraph 10(b), a beneficiary of this Settlement.

27 39. This Settlement shall be construed, enforced and administered in accordance with the
28 laws of the State of California without reference to its conflict of laws principles.

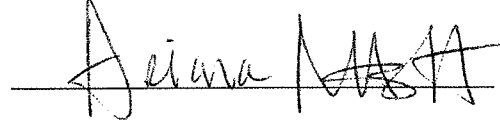
1 40. The Court shall retain jurisdiction with respect to the implementation and
2 enforcement of the terms of the Settlement, and all Parties and Settlement Class Members submit to
3 the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

4 41. This Settlement may be executed in counterparts, each of which shall be deemed to
5 be an original, but all of which together constitute one and the same instrument.

6
7 **AGREED AND ACCEPTED:**

8
9 DATED: 7/30/08, 2008

ARIANA NASH



10
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12
13 DATED: _____, 2008

BANK OF AMERICA, N.A.

14
15 By: _____

16 Title: _____
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7 **AGREED AND ACCEPTED:**


8
9 DATED: _____, 2008 ARIANA NASH

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11 _____

12
13 DATED: July 30, 2008

BANK OF AMERICA, N.A.

14
15 By: David Rudis

16
17  _____

18 Title: SVP

1 **APPROVED AS TO FORM:**

2
3 WHATLEY DRAKE & KALLAS LLP

4 By: *Michelle Breit*

5 Attorneys for Plaintiff
6 and Settlement Class

7 DAVIS, COWELL & BOWE, LLP

8 By: _____

9 Attorneys for Plaintiff
and Settlement Class

10 MCCUNE & WRIGHT

11 By: _____

12 Attorneys for Plaintiff
and Settlement Class

13 ROSNER & MANSFIELD, LLP

14 By: *Alan Mansfield by permission*

15 Attorneys for Plaintiff
16 and Settlement Class

17 ARNOLD & PORTER, LLP

18 By: _____

19 Laurence J. Hutt
20 Attorneys for Defendant

1 **APPROVED AS TO FORM:**

2
3 **WHATLEY DRAKE & KALLAS LLP**

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6 Attorneys for Plaintiff
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7 **DAVIS, COWELL & BOWE, LLP**

8 By: Elizabeth A. Lawrence by permission of
9 Attorneys for Plaintiff
and Settlement Class

10 **MCCUNE & WRIGHT**

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13 Attorneys for Plaintiff
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14 **ROSNER & MANSFIELD, LLP**

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16 Attorneys for Plaintiff
and Settlement Class

17 **ARNOLD & PORTER, LLP**

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19 By: _____
20 Laurence J. Hutt
Attorneys for Defendant

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APPROVED AS TO FORM:

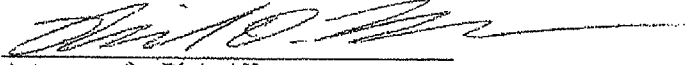
WHATLEY DRAKE & KALLAS LLP

By: _____
Attorneys for Plaintiff
and Settlement Class

DAVIS, COWELL & BOWE, LLP

By: _____
Attorneys for Plaintiff
and Settlement Class

MCCUNE & WRIGHT

By:  _____
Attorneys for Plaintiff
and Settlement Class

ROSNER & MANSFIELD, LLP

By: _____
Attorneys for Plaintiff
and Settlement Class

ARNOLD & PORTER, LLP

By: _____
Laurence J. Hutt
Attorneys for Defendant

1 **APPROVED AS TO FORM:**

2
3 WHATLEY DRAKE & KALLAS LLP

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5 By: _____
6 Attorneys for Plaintiff
and Settlement Class

7
8 DAVIS, COWELL & BOWE, LLP

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10 By: _____
11 Attorneys for Plaintiff
and Settlement Class

12
13 MCCUNE & WRIGHT

14
15 By: _____
16 Attorneys for Plaintiff
and Settlement Class

17
18 ROSNER & MANSFIELD, LLP

19
20 By: _____
21 Attorneys for Plaintiff
and Settlement Class

22
23 ARNOLD & PORTER, LLP

24
25 By: Lawrence J. Hutt / F.B.
26 Laurence J. Hutt
27 Attorneys for Defendant
28

Additional Counsel Continued From First Page

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8 Attorneys for Plaintiff

9 Of Counsel:

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15 Attorneys for Defendants