

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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MICHAEL ECHEVARRIA and BEBI HANIFF, :

Debtors and Plaintiffs on behalf of themselves and all others similarly situated, :

v. :

BANK OF AMERICA CORPORATION; BANK OF AMERICA, NATIONAL ASSOCIATION; and FIA CARD SERVICES, N.A., :

Defendants. :

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ADV. PRO. NO. 14-08216

**SETTLEMENT AGREEMENT AND RELEASE**

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## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is entered into by and between (i) Plaintiffs Michael Echevarria and Bebi Haniff (collectively, the “Class Representatives”), individually and as class representatives on behalf of the Settlement Class, and (ii) Defendant Bank of America, N.A. (“BANA”) (collectively the “Parties”). The Parties intend and agree to resolve, discharge and settle fully, finally and forever certain claims of the Settlement Class asserted in the adversary class action captioned *Echevarria, et al. v. Bank of America Corporation, et al.*, Adv. Pro. No. 14-08216, pending in the United States Bankruptcy Court for the Southern District of New York (the “Action”), subject to approval of the Court.

### **RECITALS**

A. On or about April 30, 2013, Class Representative Michael Echevarria (“Mr. Echevarria”) filed for bankruptcy relief in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) at No. 13-22693 (the “Echevarria Bankruptcy”). A discharge order was signed on August 6, 2013 and entered on August 9, 2013. On or about February 7, 2014, Mr. Echevarria moved to reopen his bankruptcy, and the Bankruptcy Court granted that motion on March 18, 2014.

B. On or about November 20, 2013, Class Representative Bebi Haniff (“Ms. Haniff”) filed for bankruptcy relief in the Bankruptcy Court at No. 13-23898 (the “Haniff Bankruptcy”). The Bankruptcy Court entered a discharge order on May 7, 2014. On or about October 20, 2014, Ms. Haniff moved to reopen her bankruptcy, and the Bankruptcy Court granted that motion on November 12, 2014.

C. On or about March 31, 2014, Class Representative Michael Echevarria filed a Class Action Adversary Complaint in the Bankruptcy Court, Adv. Proc. No. 14-08216 (RDD)

entitled *Echevarria, et al. v. Bank of America Corporation, et al.* (the “Action”) against BANA, FIA Card Services, N.A., and Bank of America Corporation (collectively, “Defendants”). On or about May 30, 2014, Defendants filed a motion to withdraw the reference of the Action to the Bankruptcy Court. After full briefing and oral argument, on March 2, 2015, the United States District Court for the Southern District of New York denied that motion in Civil Action No. 14-cv-4171 (VB).

D. On or about June 2, 2014, Defendants filed a motion to dismiss the Complaint. Following full briefing and oral argument, the Bankruptcy Court granted the motion to dismiss on September 19, 2014.

E. On or about October 9, 2014, Class Representative Michael Echevarria filed a motion to consolidate the Action with three other putative class actions pending in the Bankruptcy Court and to appoint interim class counsel. After full briefing and oral argument, on November 24, 2014, the Bankruptcy Court issued orders coordinating the subject actions for pretrial proceedings and appointing interim class counsel.

F. On or about October 20, 2014, Class Representative Michael Echevarria filed a motion to amend the Complaint, seeking, among other things, to add Class Representative Bebi Haniff as a named plaintiff. Defendants consented to the filing of an amended complaint, reserving all rights. The Bankruptcy Court granted the motion to amend, and on November 11, 2014, the Class Representatives filed an Amended Complaint.

G. On or about December 2, 2014, Defendants filed a motion to dismiss the Amended Complaint and to strike the class action allegations. Defendants filed a subsequent motion to dismiss for lack of subject matter jurisdiction on March 18, 2015. Following full briefing and oral argument, the Bankruptcy Court denied those motions.

H. On or about December 4, 2014, the United States Trustee for Region 2 filed an application in the Echevarria Bankruptcy for an order authorizing the issuance of subpoena *duces tecum* and an order compelling Bank of America Corporation to appear for examination pursuant to Federal Rule of Bankruptcy Procedure 2004. The application was granted on January 26, 2015.

I. Defendants answered the Amended Complaint on or about April 29, 2015. The Amended Complaint alleges that Defendants violated the discharge injunction under Section 524(a) of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, by failing to update the credit information provided to Credit Reporting Agencies on sold accounts that were subsequently discharged in bankruptcy.

J. The Parties have engaged in extensive discovery, including the exchange of written discovery requests and responses, the production by Defendants of more than 100,000 pages of documents, and deposition activity. The Parties also have engaged in extensive briefing, including multiple motions to dismiss, a motion to withdraw the reference, a motion to consolidate, and discovery disputes.

K. Based upon their discovery, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, two full days of mediation before mediator Peter Woodin, and two settlement conferences before Bankruptcy Judge Robert D. Drain, the Parties have agreed to settle this Action pursuant to the provisions of this Agreement.

L. Defendants have denied and continue to deny each and every allegation of liability, wrongdoing, and damages, as they have substantial factual and legal defenses to all claims and class allegations asserted in the Action. Defendants have always maintained, and continue to maintain, that they have acted in accordance with all applicable orders and governing

law. Plaintiffs maintain the strength of their positions. This Agreement shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of the Parties with respect to any claim by any Class Member, any fault, liability, wrongdoing or damage, or any defenses that Defendants asserted. The Parties nonetheless have concluded that continuing to defend against the Action would be protracted, expensive and disruptive to their business. They therefore have decided that it is desirable to fully and finally settle the Action on the terms and conditions set forth herein to avoid the further expense, inconvenience and distraction of the Action and to dispel any related uncertainty.

M. By this Agreement, and recognizing the consideration provided for under this Agreement, the Class Representatives and Class Counsel intend to fully and finally resolve certain claims against Defendants in connection with the Action, as more fully set forth herein.

N. The Class Representatives and Class Counsel recognize the expense and length of proceedings necessary to continue the litigation through further discovery, motion practice, trial and any possible appeals. They have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. They are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. Based upon their evaluation, the Class Representatives and Class Counsel have determined that the settlement set forth in the Agreement is in the best interests of the Class Representatives and the Settlement Class and is fair, adequate and reasonable.

O. This Agreement and all associated exhibits or attachments are made for the sole purpose of attempting to consummate settlement of this Action on a class-wide basis. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because

the Action is pled as a class action, this settlement must receive preliminary and final approval by the Court. Accordingly, the Class Representatives and BANA enter into this Agreement and associated settlement on a conditional basis. In the event that BANA or the Class Representatives exercises a right herein to terminate or rescind this Agreement, the District Court does not execute and file the Order Granting Final Approval of Settlement, or the associated Judgment does not become Final for any reason, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever by anyone, and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, any and all state statutes of a similar nature, and the mediation privilege. Notwithstanding the foregoing, Defendants may use, offer, admit, or refer to the Agreement and to the settlement reached therein where necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding.

P. The Parties expressly reserve all rights, claims and defenses and do not waive any such rights, claims or defenses in the event that the Agreement is not approved for any reason. The Parties agree that they each retain and reserve all rights, and agree not to take a position to the contrary. The Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Defendants could not contest class certification and/or proceeding collectively on any grounds if the Action were to proceed or that this agreement is evidence of or constitutes an admission that class certification may be appropriate.

**1. Definitions.**

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meanings specified below:

1.1 “Action” means the adversary proceeding filed on or about March 31, 2014, in the United States Bankruptcy Court for the Southern District of New York, Adv. Proc. No. 14-08216 (RDD), entitled *Echevarria, et al. v. Bank of America Corporation, et al.* The Parties have agreed to move to withdraw the reference in connection with seeking approval of this Settlement, after the Bankruptcy Court considers and grants the motion for preliminary approval and enters the Order in the form of Exhibit 3 attached hereto.

1.2 “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release and all of its attachments and exhibits, which the Class Representatives and BANA understand and agree sets forth all material terms and conditions of the settlement of the Action between them and which is subject to Court approval. It is understood and agreed that BANA’s obligations under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date and other conditions set forth in this Agreement.

1.3 “Attorneys’ Fees and Expenses” means such funds as may be awarded to Class Counsel to compensate them for their fees and expenses incurred by Class Counsel in connection with the Action.

1.4 “BANA” means Bank of America, N.A., a defendant in the Action, and FIA Card Services, N.A., which merged into BANA on or about October 1, 2014.

1.5 “BANA Post-Discharge Payors” means Class Members whom, through a review of its records, BANA has identified as having made a payment or payments to BANA on a Credit Card Account after that account was sold on or after January 1, 2008 and after the Class Member obtained a Chapter 7 bankruptcy discharge order.

1.6 “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.

1.7 “Claim” means a written request, submitted via a Claim Form, submitted by a Settlement Class Member to the Settlement Administrator, pursuant to the instructions set forth in the Claim Form, in substantially the form of Exhibit 2 to this Agreement.

1.8 “Claim Deadline” means the last date by which a Claim submitted to the Settlement Administrator by a Settlement Class Member for Claim Settlement Relief must be postmarked and shall be 30 days before the Final Approval Hearing. All Claims postmarked on or before the Claim Deadline shall be timely and all Claims postmarked after the Claim Deadline shall be untimely and barred from entitlement to any Claim Settlement Relief.

1.9 “Claim Form” means the form attached to the Notice, in the same or substantially the same form attached hereto as Exhibit 2.

1.10 “Claim Form Type 1” means the section of the Claim Form (designated “Reimbursement Claim”) concerning Claim Settlement Relief available to Settlement Class Members who made a payment or payments on their Sold Discharged Credit Card Account after the debt was discharged in Chapter 7 bankruptcy, where such payment was made to BANA or to a third party Debt Buyer to whom the debt was sold.

1.11 “Claim Form Type 2” means the section of the Claim Form (designated “Distribution Claim”) concerning Claim Settlement Relief available to Settlement Class Members who suffered or allege to have suffered an injury, adverse impact or harm as a result of the acts or omissions of BANA with respect to credit reporting on their Sold Discharged Credit Card Account from and after the date the Settlement Class Member received a discharge in bankruptcy.

1.12 “Claim Settlement Relief” means the cash payment to be made to Settlement Class Members who are entitled to relief under this Agreement as BANA Post-Discharge Payors

or who submit properly completed and timely Claim Forms to the Settlement Administrator and who qualify for such relief under the terms of this Agreement.

1.13 “Class” means the collective group of those individual borrowers who (i) maintained a Credit Card Account with BANA that was charged off by BANA and sold to a third party Debt Buyer on or after January 1, 2008, and (ii) were discharged in Chapter 7 bankruptcy after such debt was sold to a third party Debt Buyer but before October 1, 2015.

1.14 “Class Counsel” means, collectively, all counsel of record representing the Class Representatives in the Action.

1.15 “Class Member” or “Member of the Class” means a natural person who is a member of the Class according to the Class definition herein.

1.16 “Class Representatives” or “the Class Representatives” means Michael Echevarria and Bebi Haniff, the named plaintiffs and proposed class representatives in the Action identified in the first Paragraph of this Agreement.

1.17 “Co-Borrower” means a joint borrower or obligor on a Sold Discharged Credit Card Account with another borrower Class Member.

1.18 “Complaint” and “Amended Complaint” refer to the Class Action Complaints filed by the Class Representatives in the Action.

1.19 “Consumer Credit Report” refers to an individual’s credit report as issued by any of the three major Credit Reporting Agencies (that is, Transunion, Experian and Equifax).

1.20 “Credit Card Account” means an open-end, unsecured credit account originated by BANA as the creditor and governed by United States domestic law, under which a consumer obtained credit primarily for personal, family or household purposes by use of a physical card or

associated account number, and excluding accounts for debit cards as defined in 12 CFR Section 1005.17(a).

1.21 “Credit Reporting Agency” or “Credit Reporting Agencies” refers to TransUnion, Experian, and Equifax.

1.22 “Debt Buyer” refers to an entity whose primary business purpose is to purchase defaulted debt, including consumer credit card debt, with the intent to pursue collection of the debt.

1.23 “Defaulted Credit Card Accounts” means personal consumer Credit Card Accounts for which BANA was a creditor, and that fell into default and were charged off by BANA. When used in section 3.2, Defaulted Credit Card Accounts may include accounts that fall into default or are charged off in the future.

1.24 “Defendants” refers collectively to Bank of America Corporation, Bank of America, N.A., and FIA Card Services, N.A.

1.25 “Defense Counsel” shall mean Defendants’ counsel of record in the Action.

1.26 “District Court” means the United States District Court for the Southern District of New York.

1.27 “Echevarria Bankruptcy” means the bankruptcy proceeding commenced on or about April 30, 2013 in the United States Bankruptcy Court for the Southern District of New York, No. 13-22693 (RDD) entitled In re Michael Echevarria.

1.28 “Effective Date” means the date when all of the conditions set forth in section 2 have occurred, provided, however, that Defendants have not exercised their right of termination under section 13 of this Agreement.

1.29 “Final” means five (5) business days after the latest of: (i) the date of final affirmance on an appeal of the Judgment; (ii) the date of final dismissal with prejudice of the last pending appeal from the Judgment; and (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal or writ review from the Judgment. If the Judgment is set aside, modified, or overturned by any court including on appeal and is not fully reinstated on appeal, the Judgment shall not become final.

1.30 “Final Approval Hearing” means a hearing set by the District Court to take place on or about the date which is thirty (30) days after the Opt-Out Deadline for the purpose of:

- (i) Determining the fairness, adequacy and reasonableness of the Agreement and associated settlement pursuant to class action procedures and requirements;
- (ii) Determining the good faith of the Agreement and associated settlement; and
- (iii) Entering Judgment.

1.31 “Final Approval Order” means the same as Order of Final Approval.

1.32 “Haniff Bankruptcy” means the bankruptcy proceeding commenced on or about November 20, 2013 in the United States Bankruptcy Court for the Southern District of New York, No. 13-23898 entitled In re Bebi Haniff.

1.33 “Judgment” means the Final Approval Order and judgment to be rendered by the District Court pursuant to this Agreement, in the form attached hereto as Exhibit 4, or in a similar form without material changes thereto.

1.34 “Mail Notice” means the Notice that is mailed by the Settlement Administrator to potential Settlement Class Members, in substantially the form attached as Exhibit 1 to this

Agreement and/or as ultimately approved by the Bankruptcy Court. Mail Notice shall be mailed not less than ninety (90) days before the date set by the Court for the Final Approval Hearing.

1.35 “Mr. Echevarria” means Class Representative Michael Echevarria.

1.36 “Ms. Haniff” means Class Representative Bebi Haniff.

1.37 “Notice” or “Class Notice” means a notice (and associated response forms) entitled “Notice of Proposed Settlement of Class Action” to be approved by the Court, substantially in the form attached hereto as Exhibit 1.

1.38 “Notice Approval Date” means the date of the Preliminary Approval Order when the Bankruptcy Court approves the Notice.

1.39 “Notice List” means a list, to be treated as Confidential pursuant to the terms of the Protective Order, listing the names and addresses of all Class Members, as prepared by BANA utilizing data from a third-party vendor.

1.40 The “Notice Mailing Date” shall be a date no later than forty-five (45) days after the Notice Approval Date when the Notice is mailed to the individuals on the Notice List.

1.41 “Objection Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections to the Settlement, if any, in accordance with section 12 of this Agreement to be able to object to the Settlement. The Objection Deadline shall be no later than thirty (30) days prior to the Final Approval Hearing or as the Court may otherwise direct.

1.42 “Opt-Out Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Request to Opt Out must be filed or submitted in writing to the Settlement Administrator in accordance with section 11 of this Agreement in order for a person who would otherwise fall within the definition of Settlement Class to be excluded from the

Settlement Class. The Opt-Out Deadline shall be no earlier than forty-five (45) days after the Mail Notice and not later than thirty (30) days prior to the Final Approval Hearing.

1.43 “Order of Final Approval,” “Final Approval Order,” or “Order Granting Final Approval of Settlement” shall mean an order to be entered and filed by the District Court entitled “Final Judgment and Order of Dismissal with Prejudice,” substantially in the form attached hereto as Exhibit 4.

1.44 “Participating Claimant” means each Settlement Class Member who submits a Qualifying Claim Form.

1.45 “Parties” means the Class Representatives, on behalf of themselves and all Members of the Settlement Class, and BANA.

1.46 “Preliminary Approval Order” shall mean an order to be executed and filed by the Bankruptcy Court entitled “Order Preliminarily Approving Settlement and Providing for Notice” substantially in the form attached hereto as Exhibit 3.

1.47 “Protective Orders” shall mean the Stipulated Protective Order entered in the Action by the Honorable Robert D. Drain on or about October 21, 2014 and the Stipulated Protective Order entered in the Echevarria Bankruptcy by the Honorable Robert D. Drain on or about January 26, 2015.

1.48 A “Qualifying Claim Form” means a Claim Form that is (a) fully completed and properly executed showing the Participating Claimant is entitled to Claim Settlement Relief, including a fully completed and properly executed Form W-9, (b) timely returned to the Settlement Administrator, (c) validated by the Settlement Administrator pursuant to the procedures set forth in this Agreement, and (d) not successfully objected to pursuant to the procedures set forth in this Agreement.

1.49 “Released Claims” means any and all claims, defenses, demands, actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorneys’ fees, expenses, or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including monetary, sanctions or damage for contempt, injunctive, or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, interest, attorneys’ fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, and including any claims arising under the United States Bankruptcy Code, the Fair Credit Reporting Act, or state unfair trade practice laws, that in any way concern, arise out of, or relate to (1) the tradeline information BANA reported for a Sold Discharged Credit Card Account to any credit reporting agency at or after the time of the sale to any Debt Buyer and/or BANA’s alleged failure to request a change to that tradeline or to provide additional information to credit reporting agencies following a bankruptcy filing or discharge order, (2) BANA’s acceptance, processing, or forwarding to a Debt Buyer any payments on or with respect to a Sold Discharged Credit Card Account following a bankruptcy filing or discharge order or (3) the claims and allegations in the Complaint including any claim or allegation that the tradeline for a Sold Discharged Credit Card Account (a) violated a bankruptcy court order, (b) constituted collection activity in violation of a court order, (c) coerced or pressured a Class Member to make a payment on a Sold Discharged Credit Card Account to any person or entity following a bankruptcy filing or discharge, and/or (d) harmed or injured a Class Member following a bankruptcy filing or discharge order. Released Claims also include any allegation that any Defendant or Releasees conspired with, aided and abetted, or otherwise acted in concert with any

other Defendant, Releasees, or other third parties, with regard to any of the facts, acts, events, transactions, occurrences, courses of conduct or business practices within the scope of these Released Claims.

1.50 “Releasees,” “the Releasees” or “the Released Parties” means each of (1) Defendants; (2) each of Defendants’ past, present or future subsidiaries, parent companies, divisions, affiliates, partners or any other organizational units of any kind doing business under their names, or doing business under any other names, or any entity now or in the past controlled by, controlling, or under the common control with any of the foregoing and doing business under any other names, and each and all of their respective affiliates and subsidiaries, and each of their respective predecessors, successors, and assigns; and (3) each of the present and former officers, directors, partners, shareholders, agents, employees, attorneys (including any consultants hired by counsel), advisors, trustees and co-trustees, investment advisors, associates, investment bankers, independent contractors, representatives, beneficial owners, insurers, accountants, heirs, executors, and administrators, and each of their respective predecessors, successors, and assigns of any person or entities in subparts (1) or (2) hereof.

1.51 “Releasers” means the Class Representatives, all Settlement Class Members, and each of their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.

1.52 “Request to Opt Out” means the written request from a Class Member that seeks to exclude that person from the Settlement Class and that complies with the requirements set forth in section 11 of this Agreement.

1.53 “Settlement” means the settlement terms set forth in this Agreement.

1.54 “Settlement Administrator” means a third-party agent or administrator that BANA selects (with the consent of Class Counsel, which consent shall not be unreasonably withheld) to help implement and effectuate the terms of this Agreement.

1.55 “Settlement Class” means the collective group of all of the Class Members who do not properly and timely exclude themselves from the Settlement, and thus means the collective group of all of the Class Members who will become bound by the Judgment when the Effective Date occurs.

1.56 “Settlement Class Member” or “Member of the Settlement Class” means any person who is a member of the Settlement Class.

1.57 “Settlement Fund” means the 5.5 million dollars (\$5,500,000.00) that BANA shall pay pursuant to section 3 of the Agreement. The Settlement Fund is for the benefit of the Settlement Class and will be used to pay BANA Post-Discharge Payors and Participating Claimants.

1.58 “Settlement Website” means the website to be established by the Settlement Administrator as set forth in section 7.

1.59 “Sold Discharged Credit Card Account” refers to a Class Member’s Defaulted Credit Card Account that was sold by BANA to a third party Debt Buyer on or after January 1, 2008, was not repurchased by BANA, and was later subject to a bankruptcy discharge order pursuant to a Chapter 7 bankruptcy proceeding, where such discharge occurred before October 1, 2015.

1.60 “Unknown Claims” mean any Released Claims which any Releasor does not know or suspect to exist in his or her favor at the time of the entry of the Judgment, and which, if known by him or her might have affected his or her settlement with and release of the Releasees,

or might have affected his or her decision to opt out of the Settlement Class or to object to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the Class Representatives shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have to the fullest extent allowed by law, waived the provisions, rights, and benefits of any statute or principle of common law similar to California Civil Code § 1542, which provides:

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

Each Releasor may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but the Releasors, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released to the fullest extent allowed by law any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, contract, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material term of the settlement of which this release is a part.

**2. Conditions and Effectiveness of Agreement.**

2.1 This Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. The Effective Date of this Agreement shall be the date when all of the following listed below shall have occurred.

2.2 The Parties have signed the Agreement.

2.3 CAFA. This Settlement shall be administered as if governed by 28 U.S.C. § 1715. Defendants shall be responsible for providing the notice to government officials under that statute but in no event shall the Final Approval Hearing take place prior to the provision of effective notices and the expiration of the statutory time. The Final Approval Order shall make a finding that 28 U.S.C. § 1715 was fully complied with.

2.4 Court Approval. The Bankruptcy Court and the District Court approve this Agreement in accordance with the following steps:

2.4.1 Motion for Preliminary Approval. After good faith consultation with Defendants' Counsel, Class Counsel will present a Motion for Preliminary Approval to the Bankruptcy Court within 20 days of execution of this Agreement including the Class Notice, in substantially the form of Exhibit 1 hereto, and the Preliminary Approval Order, in substantially the form of Exhibit 3 hereto.

2.4.2 Certification of Class for Settlement Purposes. In connection with the proceedings for Preliminary and Final Approval, the Class Representatives shall seek orders (Preliminary and Final, respectively) certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure for purposes of this Settlement only.

2.4.3 Entry of Preliminary Approval Order. The Bankruptcy Court shall enter a Preliminary Approval Order in substantially the form of attached Exhibit 3 hereto, which shall among other things:

- a. Preliminarily certify the proposed Class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only;
- b. Preliminarily approve this Agreement as fair, reasonable and adequate under Rule 23 of the Federal Rules of Civil Procedure subject to final determination by the Court;
- c. Approve the appointment of the Class Representatives as representatives of the Class for the Settlement and the appointment of Class Counsel as counsel for the Class for the Settlement;
- d. Approve a form of Mail Notice substantially in the form of Exhibit 1 to be sent to the individuals on the Notice List;
- e. Direct the Settlement Administrator, promptly after entry by the Court of the Preliminary Approval Order, to mail the Notice to each individual on the Notice List by first-class mail;
- f. Schedule a Final Approval Hearing on final approval of this settlement;
- g. Establish a procedure for Members of the Class to exclude themselves and set a date, approximately thirty (30) days before the Final Approval Hearing, after which no Member of the Class shall be allowed to opt out of the Settlement and shall be bound to the terms of the Settlement;

- h. Establish a procedure for Settlement Class Members to appear and/or object to the Settlement and set a date, approximately thirty (30) days before the Final Approval Hearing, after which no Settlement Class Member shall be allowed to object;
- i. Require any attorneys representing Settlement Class Members, at the Settlement Class Member's expense, to file a notice of appearance;
- j. Stay all proceedings in the Action against Defendants, other than proceedings as may be necessary to carry out the terms and conditions of the Agreement;
- k. Stay all proceedings in the Echevarria and Haniff Bankruptcies, other than proceedings as may be necessary to carry out the terms and conditions of the Agreement;
- l. Pending Final Approval, and upon expiration of the Opt-Out Deadline, preliminarily enjoin each Settlement Class Member from maintaining, commencing, prosecuting or pursuing directly, representatively, or in any other capacity any Released Claim subsumed and covered by the Release in this Agreement in any court or arbitration forum;
- m. Contain such other and further provisions consistent with the terms and provisions of this Agreement as the Bankruptcy Court may deem advisable; and
- n. Authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the terms of this Agreement.

2.5 Motion to Withdraw the Reference. Within seven (7) days of the entry of an the Preliminary Approval Order by the Bankruptcy Court, the Parties understand and agree to file a joint motion to withdraw the reference in the District Court, so that the District Court may schedule and conduct the Final Approval Hearing. The District Court shall grant the motion to withdraw the reference to consider and approve the Settlement in accordance with Rule 23(c) of the Federal Rules of Civil Procedure.

2.6 Class Notice. The Settlement Administrator shall cause the Class Notice to be mailed pursuant to the Preliminary Approval Order and the terms of this Agreement.

2.7 Order of Final Approval and Judgment. The District Court shall enter the Order of Final Approval substantially in the form attached as Exhibit 4, which shall among other things:

- a. Find that (i) the District Court has personal jurisdiction over the Settlement Class Members, (ii) the District Court has personal jurisdiction over the claims asserted in the Action, and (iii) venue is proper;
- b. Finally approve the Settlement;
- c. Finally certify the Settlement Class for settlement purposes only;
- d. Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution, and find that the Parties and procedures used complied with federal law so as to give full effect to the Settlement;
- e. Enter Final Judgment with respect to the Released Claims of all Settlement Class Members and dismiss the Released Claims with prejudice;
- f. Close and direct the Clerk to close the Echevarria and Haniff Bankruptcies;
- g. Make the Releases in section 10 of this Agreement effective as of the date of the Final Judgment;
- h. Permanently bar and enjoin the Class Representatives and all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims;

i. Permanently bar and enjoin the Class Representatives and all Settlement Class Members from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action in any jurisdiction based on or relating to any of the Released Claims);

j. Find that, by operation of the entry of the Judgment, the Class Representatives and all of the Settlement Class Members shall be deemed to have forever released, relinquished, and discharged the Released Parties from any and all Released Claims;

k. Authorize the Parties to implement the terms of this Agreement;

l. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purposes;

m. Issue related orders to effectuate the Final Approval of the Settlement and its implementation; and

n. Find that if BANA sold or sells Defaulted Credit Card Accounts which are thereafter made subject to a bankruptcy discharge, and BANA has or thereafter requests that the Credit Reporting Agencies delete associated tradelines for such accounts, as permitted under section 3 of this Agreement, such request would be in compliance with applicable law and would remove any obligation to report on post-sale, bankruptcy-related information with respect to such accounts.

2.8 No Injunctive Relief. The Final Approval Order and Judgment shall not provide for any injunctive relief against Defendants.

2.9 Finality of Judgment. The Order of Final Approval has become Final, including expiration of the time for filing any appeal or other form of objection to the Order of Final Approval, full and final resolution of any appeal or objection that may be filed, and expiration of the time for seeking review of that disposition through an appeal, *en banc* hearing, or higher level of review.

### **3. Settlement Consideration.**

3.1 In consideration for the Releases set forth in section 10, BANA will provide the following benefits.

#### 3.2 Representations and Prospective Obligations.

3.2.1 BANA represents and warrants that in 2015, BANA asked the Credit Reporting Agencies to delete or suppress the tradelines for the Sold Discharged Credit Card Accounts it had identified at that time. BANA represents and warrants that the Credit Reporting Agencies have informed BANA that they have complied with BANA's request. The Class Representatives on behalf of themselves and the Settlement Class agree that the Credit Reporting Agencies are separate entities from BANA and that BANA does not and cannot guarantee, warrant, or take responsibility for the performance of the Credit Reporting Agencies with respect to changing, deleting, suppressing or making entries regarding any information previously reported to them by any Defendant concerning a Sold Discharged Credit Card Account.

3.2.2 BANA represents and warrants that it will not ask the Credit Reporting Agencies to reinstate the tradelines associated with the Settlement Class Members' Sold Discharged Credit Card Accounts.

3.2.3 BANA represents and warrants that if a Settlement Class Member identifies that BANA's tradeline associated with the Settlement Class Member's Sold Discharged Credit Card Account continues to appear on the Settlement Class Member's Consumer Credit Report from one or more of the Credit Reporting Agencies, and provides notice to Defendants' Counsel that the tradeline has not been deleted, BANA will request again that the Credit Reporting Agency(ies) delete the subject tradeline.

3.2.4 BANA represents and warrants that, notwithstanding the agreements in this section, if a Settlement Class Member requests reinstatement of the tradeline associated with his or her Sold Discharged Credit Card Account, BANA will request that the Credit Reporting Agency reinstate the tradeline as BANA had reported it and as it was being maintained immediately prior to the filing of the Action. To be effective, any such request to reinstate a tradeline must be made in writing, signed by the Class Member, mailed to Defense Counsel and post-marked no later than January 1, 2018.

3.2.5 BANA represents and warrants that since the filing of the Action, BANA has not sold Defaulted Credit Card Accounts to third-party Debt Buyers.

3.2.6 If BANA sells Defaulted Credit Card Accounts to a third-party Debt Buyer after the Effective Date and on or before September 1, 2021, BANA will: (1) request that the Credit Reporting Agencies delete the tradelines for the Defaulted Credit Card Accounts sold to a third-party Debt Buyer or (2) at the time of sale or thereafter, with respect to debts for which BANA receives a bankruptcy discharge notice from the Bankruptcy Court, request that the Credit Reporting Agencies delete the tradeline for such sold accounts. If a federal or state law is amended or adopted after the date of this Agreement or a court, administrative order, judgment, or government regulator, including but not limited to the Office of the Comptroller of the Currency

or the Consumer Financial Protection Bureau (“Regulator”), directs or requires (a “Requirement”) that BANA report or address tradelines for Defaulted Credit Card Accounts sold to a third-party Debt Buyer in a manner inconsistent with terms of this paragraph, BANA shall be in full compliance with and not in breach of any obligation set forth herein if it complies with the Requirement. For these purposes, an agreement or order or other action which is premised on or includes BANA’s consent or non-objection to its terms shall be treated as a Regulator Requirement. BANA further agrees that if BANA sells Defaulted Credit Card Accounts to a third-party Debt Buyer after the Effective Date and on or before September 1, 2021 and any Requirement prohibits deletion, that is prohibits options 1 and 2 as outlined in the first sentence of this paragraph, BANA agrees that at the time of sale or thereafter, with respect to debts for which BANA receives a bankruptcy discharge notice from the Bankruptcy Court, BANA will request that the Credit Reporting Agencies report “included in bankruptcy” or “discharged in bankruptcy” as the most current status event and request that this information be reflected as the most recent status superseding any prior current status events, unless a Requirement directs or requires otherwise. If a Requirement provides for a company-wide policy modifying BANA’s obligations as set forth in this paragraph, BANA shall notify Class Counsel and the District Court of BANA’s modification prior to implementing the change.

3.2.7 Notwithstanding anything in the previous paragraph, BANA shall have complied fully with all obligations under this Agreement if it follows a consumer’s request. BANA shall have no liability or responsibility for: (a) the action, or failure to act, of any Credit Reporting Agency; or (b) for bona fide errors which BANA takes reasonable action, as set forth herein, to try to cure.

3.2.8 Nothing in section 3.2.6 is an admission either about BANA’s current or

past practices, or an admission that the terms are mandated by law or other requirement.

3.2.9 For purposes of sections 3.2.6 through 3.2.8 only, the term “BANA” shall include any present or future wholly owned subsidiary of Bank of America Corporation that is the seller of Defaulted Credit Card Accounts to a third-party Debt Buyer.

3.2.10 The agreements set forth in this section shall not operate as an injunction or otherwise provide any Class Member or governmental official or agency, or any other person or entity with any right or power to seek direct enforcement of its terms, except a Member of the Settlement Class may seek relief from the District Court as to a breach of the terms of the Settlement Agreement.

3.2.11 The Class Representatives represent and warrant that, following the closure of the Echevarria Bankruptcy and the Haniff Bankruptcy as provided for in the Order of Final Approval, the Class Representatives will not consent to the reopening of their respective bankruptcy proceedings for administrative purposes or for any other reason. They further represent and warrant that neither they nor Class Counsel are aware of any claims other than those alleged in the Complaint that they or the Class Members may have against BANA arising out of reporting credit information or the status or handling of Credit Card Accounts following a sale to a Debt Buyer. The Class Representatives and Class Counsel further represent that neither they nor any other potential plaintiff currently have any intention of filing another action against any Releasee asserting any claims alleged in the Complaint.

### 3.3 Settlement Monetary Consideration.

3.3.1 Within thirty days of the Effective Date, BANA will fund the Settlement Fund by depositing into an escrow account, the terms of which shall be subject to BANA’s approval, with the Settlement Administrator the sum of \$5,500,000.00 (5.5 million U.S. dollars).

There shall be no reverter of any part of the Settlement Fund, unless otherwise agreed to by Class Counsel with respect to *de minimis* funds, if any, remaining after distributions are completed. Except as set forth in the paragraph below, the Settlement Fund shall be used to pay the BANA Post-Discharge Payors and Participating Claimants.

3.3.2 BANA shall pay the Settlement Administrator's costs associated with disseminating the Class Notice, Claims processing, and any escrow, administrative and/or bank-related fees and costs associated with the Settlement Administrator's distribution of payments to Participating Claimants.

#### **4. Qualified Settlement Fund.**

4.1 The Settlement Fund shall constitute a "qualified settlement fund" ("QSF") within the meaning of Treasury Regulation Section 1.468B-1 promulgated under Section 468B of the Internal Revenue Code of 1986 as amended. The Settlement Administrator shall be the "administrator" within the meaning of Treasury Regulation § 1.468B-2(k)(3).

4.2 Upon or before establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4), and shall provide BANA with that employer identification number on a properly completed and signed IRS Form W-9.

4.3 If requested by either BANA or the Settlement Administrator, the Settlement Administrator and BANA shall fully cooperate in filing a relation-back election under Treasury Regulation § 1.468B-1 (j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

4.4 Following its remittances of the Settlement Fund monies as described in paragraph 3.3.1 of this Agreement, BANA shall have no responsibility, financial obligation or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of claims and opt out letters, the allowance or disallowance of claims by Class Members, payments to Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and any other taxes, penalties, interest or other charges related to taxes imposed on the QSF or its disbursements, payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge BANA's obligation to the Class Representatives, Settlement Class Members, Class Counsel and expenses of administration with respect to the disposition of the Settlement Fund.

4.5 The Settlement Administrator shall file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). Any contract, agreement or understanding with the Settlement Administrator relating to the QSF shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder.

**5. Payments from the Settlement Fund and Claims Process.**

5.1 Payment to BANA Post-Discharge Payors. Within ten days of the Effective Date, BANA shall provide a list to the Settlement Administrator of the name, last known address and amount of last payment made by each BANA Post-Discharge Payor. BANA represents and warrants that, to the best of its knowledge, this list is complete and accurate. Within sixty days of the Effective Date, the Settlement Administrator shall remit payment to Settlement Class Members who are also BANA Post-Discharge Payors from the Settlement Fund for the amount of the payments reflected on the list provided by BANA in a check made payable jointly to any and all Co-borrowers on the account associated with the payment. BANA Post-Discharge Payors will not need to submit a Claim Form in order to receive this payment. If a BANA Post-Discharge Payor made more than one post-discharge payment to BANA on a Sold Discharged Credit Card Account, the BANA Post-Discharge Payor will only receive an automatic payment from the Settlement Fund for the amount of the last payment made, but may submit a Claim Form Type 1 to be eligible to receive an award payment from the Settlement Fund representing any post-discharge payments made before the last post-discharge payment. BANA Post-Discharge Payors shall be notified that they are eligible to obtain a separate Claim Type 1 and Claim Type 2 payment, pursuant to the procedures outlined below.

5.2 Claims Process for Other Payments. Following payment to the BANA Post-Discharge Payors from the Settlement Fund, the remaining funds in the Settlement Fund shall be disbursed to Participating Claimants who submit a Qualifying Claim Form for Claim Type 1 and/or Claim Type 2 pursuant to the terms in this section. Settlement Class Members may submit claims for both Claim Type 1 and Claim Type 2 relief.

5.2.1 Settlement Class Members shall submit a claim for Claim Settlement Relief in the following ways: (1) Settlement Class Members may mail (either through posting with the United States Postal Service or through a private mail carrier, such as United Parcel Service or Federal Express, provided that proof of the mail date is reflected on the label of the mailing) a written Claim Form to the Settlement Administrator, postmarked or dispatched by the carrier on a date no later than the Claim Deadline, and a written Claim Form will be available on the Settlement Website for Settlement Class Members to download or print out, complete, and mail to the Settlement Administrator pursuant to this section; (2) Settlement Class Members may submit their Claim Forms by uploading scanned copies of the completed Claim Form, along with any required verification documents to the Settlement Website; or (3) Settlement Class Members may complete their Claim Form online within the Settlement Website, utilizing an electronic signature format, *provided however*, for those Claim Forms requiring verification documents, the Claimant must upload scanned copies of those verification documents to the Settlement Website, with the appropriate claim number to associate the upload with the completed Claim Form. Any Settlement Class Member who does not mail, or upload or complete online, a completed Claim Form by the Claim Deadline shall be deemed to have waived any claim to Claim Settlement Relief and any such Claim Form will be rejected but such Settlement Class Member shall otherwise be bound by this Agreement, including the Releases.

5.2.2 Claim Type 1 (Reimbursement Claim).

a. Claim Type 1 (also referred to as a “Reimbursement Claim”) is available to Settlement Class Members who made a payment or payments on their Sold Discharged Credit Card Account after the debt was discharged in Chapter 7 bankruptcy, where such payment was made to BANA or to a third party Debt Buyer to whom the debt was sold.

b. To receive a payment under Claim Type 1, a Settlement Class Member must fully complete, execute, and submit, per the instructions therein, the form entitled “Claim Form,” including the portion of the form designated “Reimbursement Claim.” The Claim Form will be mailed with the Notice and will be available upon request from the Settlement Administrator or on the Settlement Website. Per the instructions on the Claim Form, the Settlement Class Member must confirm subject to penalty for perjury:

- he or she is a Member of the Class;
- the amount(s), date(s), and recipient(s) of his or her payment(s) made on his or her Sold Discharged Credit Card Account after the debt was sold to a third party Debt Buyer and after the debt was discharged in Chapter 7 bankruptcy;
- the payment(s) were not refunded or returned to the Settlement Class Member or a Co-borrower on the Account;
- provide documentation supporting the claim in the form of cancelled checks, account statements, or similar proof, and swear that the documentation provided is original or a true and correct copy; and
- identify any Co-borrower(s) on the Sold Discharged Credit Card Account and confirm whether any settlement payment should be made payable jointly with the Co-borrower(s).

c. Each Settlement Class Member who submits a Qualifying Claim Form demonstrating entitlement to a payment under Claim Form Type 1, including documentation of payments made, as determined by and in the sole discretion of the Settlement

Administrator, shall be eligible to receive an award payment from the Settlement Fund. The amount to be paid to the Class Member shall be the full amount of payment(s) the Settlement Class Member made on his or her Sold Discharged Credit Card Account to BANA or such third party Debt Buyer after the discharge. However, any Claim Type 1 award based upon the Class Member's payments to BANA shall be reduced by the amount of any automatic payment the Class Member receives as a BANA Post-Discharge Payor under paragraph 5.1.

d. Following the automatic payment to the BANA Post-Discharge Payors from the Settlement Fund, the remaining funds in the Settlement Fund shall be disbursed to Participating Claimants who submit a Qualifying Claim Form for Claim Type 1. If the total amount of Claims submitted by Participating Claimants who submit a Qualifying Form for Claim Type 1 exceeds the remaining funds in the Settlement Fund, the Participating Claimants who submit a Qualifying Claim Form for Claim 1 shall each receive their *pro rata* share of the remaining funds in the Settlement Fund (based on the amount of their Claim as a share of total remaining Settlement Funds).

e. Within 30 days following distribution of the automatic payments to the BANA Post-Discharge Payors, the Settlement Administrator shall make payments from the Settlement Fund to the Participating Claimants who submit a Qualifying Claim Form Type 1. The Participating Claimants who submit a Qualifying Claim Form for Claim 1 shall each receive their *pro rata* share (per Sold Discharged Credit Card Account) of the remaining funds in the Settlement Fund.

#### 5.2.3 Claim Type 2 (Distribution Claim).

To receive a payment under Claim Type 2 (also known as a "Distribution Claim"), a Settlement Class Member must fully complete, execute, and submit, per the instructions therein,

the form entitled “Claim Form,” including the portion of the form designated “Distribution Claim.” The Claim Form will be mailed with the Notice and will be available upon request from the Settlement Administrator or on the Settlement Website. BANA represents and warrants that the list of Class Members to whom notice is sent is a complete and accurate list of Class Members to the best of its knowledge and which number is less than 450,000. Per the instructions on the Claim Form, the Settlement Class Member must confirm that he or she:

- is a Member of the Class;
  - has read the representations in the claim form and in the Notice, including the reasons the credit reporting may have harmed him or her; and
  - believes that he or she is entitled to monetary compensation.
- a. After deducting payments to Participating Claimants who submit a

Qualifying Claim Form for Claim Type 1 and the Incentive Awards, the Settlement Administrator shall distribute payments from the Settlement Fund to those Participating Claimants who submit a Qualifying Claim Form for Claim Type 2. The Participating Claimants who submit a Qualifying Claim Form for Claim Type 2 shall each receive their *pro rata* share of the remaining funds in the Settlement Fund.

b. In providing benefits under this section, checks shall be issued on a “per borrower” basis and no Participating Claimant who submits a Qualifying Claim Form for Claim Type 2 shall be entitled to more than one Claim Type 2 payment.

5.3 Claim Review and Deficiency Process. Following Final Approval of the Settlement or such earlier time as the Parties agree, the Settlement Administrator shall confirm that each Claim Form submitted was facially valid, in that it is in the form required, that each

Claim Form includes the required affirmations and information, that each Claim Form was submitted in a timely fashion, that the claimant is a Member of the Settlement Class, and that the Claim otherwise meets the requirements of this Agreement. Full compliance with the requirements of the terms of this Agreement and the Claim Form shall be necessary for the submission of a valid Claim, and the absence of any of these requirements shall invalidate the proffered claim. All such claim criteria shall be strictly enforced. Any Settlement Class Member's failure to provide any of the required affirmation and information shall result in the putative claim being deemed invalid. Claim Forms that do not meet the requirements as set forth in this Agreement and in the Claim Form instructions shall be rejected. This shall include but is not limited to any failure to provide complete and accurate information, any failure to make the required representations and attestations, any failure to provide required supporting documentation, any failure to fully execute the Claim Form, and any failure to timely submit the Claim Form. The Settlement Administrator shall have the authority to determine whether the submission of a Claim Form is complete and timely. The Settlement Administrator's determinations in this regard shall be final and non-appealable. Any Settlement Class Member whose claim is rejected shall be barred from receiving payment under the Settlement for that Claim Type 1 or 2 but shall in all other respects be bound by the terms of this Agreement and by the Order of Final Approval entered in the Action. No person shall have any claim against Defendants, Defendants' counsel, the Class Representatives, Class Counsel, or the Settlement Administrator based on any eligibility determinations made in accordance with the Agreement. The Settlement Administrator shall promptly send a notice to any claimant that submitted a deficient Claim, identifying the deficiency. To be considered, any revised Claim or attempted

cure of a Claim must be mailed to the Administrator within 45 days after the date of the original notice of deficiency.

5.4 The Settlement Administrator shall pay each Participating Claimant his or her respective payment according to the terms, conditions, and procedures set forth in this Agreement. Each participating Claimant must properly and timely submit a Qualifying Claim Form, including a fully completed and properly executed Form W-9, in order to be eligible to receive a payment under this Paragraph. Notwithstanding the foregoing, no payments will be due and payable until thirty (30) days after the Effective Date.

5.5 For each payment made pursuant to this Agreement, BANA, itself or through the Settlement Administrator, may report each payment to government authorities including the Internal Revenue Service as required by law, and it shall make all required deductions and/or withholdings. The Settlement Administrator further will issue a Form 1099 to each Participating Claimant. Participating Claimants shall be solely responsible for the reporting and payment of any federal, state, and/or local income or other tax or any other withholdings, if any, on any of the payments made pursuant to this Agreement. Defendants make no representations and it is understood and agreed that Defendants have made no representations as to the taxability of any portions of the settlement payments to any Participating Claimants, the payment of any costs or an award of attorney fees, or any payments to the Class Representatives. The Notice will advise Class Members to seek their own tax advice prior to acting in response to the notices, and the Class Representatives and Class Counsel agree that Class Members will have an adequate opportunity to seek tax advice prior to acting in response to the notices.

5.6 The Releasees shall have no responsibility for, interest in, or liability whatsoever with respect to or arising out of the determination, administration, calculation, investment,

allocation, distribution, or payment of award amounts or claims, the payment or withholding of taxes, or any losses incurred in connection therewith. No person shall have any claim against the Releasees, Class Counsel or any other agent designated pursuant to this Agreement based upon the distributions made substantially in accordance with this Agreement or any order of Court.

5.7 Incentive Awards. Within sixty (60) days of the Effective Date and upon the Class Representatives' submission of a Form W-9 to the Settlement Administrator, the Settlement Administrator shall remit incentive awards to the Class Representatives from the Settlement Fund in the amount of \$5,000 for each Class Representatives ("Incentive Award").

**6. Retention and Duties of Settlement Administrator.**

6.1 The Settlement Administrator shall administer the Settlement pursuant to the terms of this Agreement. The Settlement Administrator shall be responsible for Mail Notice (including data standardization and de-duplication of the Notice List including updating addresses through NCOA, reasonable efforts to update addresses for undeliverable notices, and printing and mailing the Class Notice and Claim Forms), drafting and submitting the CAFA notice, processing Claims, evaluating documentation for claims including Claim Type 1 claims, status reporting, creating and hosting a settlement website able to accept online filing for online Claim Forms, deploying and operating an automated toll-free contact center, including Interactive Voice Response (which does not provide a live operator) to obtain documents and answer questions, and disbursing the Settlement Funds including payments for Participating Claimants. BANA may direct the Settlement Administrator to assist with various additional administrative tasks in implementing the Settlement as BANA shall deem appropriate in its sole discretion. The Settlement Administrator shall also be responsible for additional tasks the Parties jointly agree are necessary to accomplish administration of the Settlement.

6.2 The Settlement Administrator shall not have any duties with respect to settlement administration apart from those expressly provided for in this Agreement. BANA shall not be responsible for any costs of the Settlement Administrator for additional services provided outside the scope of this Settlement Agreement.

6.3 BANA will coordinate with the Settlement Administrator to provide Mail Notice to the Settlement Class, as provided in this Settlement Agreement. Because the information about Settlement Class members that will be provided to the Settlement Administrator will consist of confidential information, non-public personal information, and other information protected by privacy laws, the Settlement Administrator will execute a non-disclosure agreement and will take all reasonable steps to ensure that any information provided to it by BANA will be used solely for the purpose of effecting this Settlement and otherwise shall comply with BANA vendor and information security requirements. Any such information provided to the Settlement Administrator will not be provided to the Class Representatives or Class Counsel. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and, without limiting the foregoing, shall treat any and all documents, communications and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity except as provided for in this Settlement Agreement or by court order.

6.4 The Settlement Administrator shall complete and provide to BANA any W-9 forms necessary for BANA to pay for the settlement administration costs and to otherwise implement this Settlement.

**7. Notice to the Class and Settlement Website.**

7.1 Subject to the Bankruptcy Court's approval, the form of Notice shall be substantially in the form of Exhibit 1 attached hereto.

7.2 Within fourteen (14) days of the Bankruptcy Court's entry of the Preliminary Approval Order, BANA shall provide the Settlement Administrator with the Notice List. The Settlement Administrator shall treat the Notice List as Confidential pursuant to the terms of the Protective Orders and paragraph 6.3 of this Agreement. Class Counsel shall not be entitled to a copy of the Notice List. BANA represents and warrants that the Notice List includes all Class Members to the best of its knowledge.

7.3 If, by entering an order approving the final form of the Notice, the Bankruptcy Court provides authorization to send the Notice to the individuals on the Notice List, the Settlement Administrator will mail the Notice (including the Claim Form) to the individuals on the Notice List via first class mail through the United States Postal Service, postage pre-paid, no later than the Notice Mailing Date. The Agreement, Notice, and Claim Form shall also be posted on the Settlement Website, as outlined in this section.

7.4 Following the mailing of the Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing.

7.5 Unless the Settlement Administrator receives a Notice returned from the United States Postal Service for reasons discussed below in this Paragraph, that Notice shall be deemed mailed and received by the individual to whom it was sent five (5) days after mailing. In the event that subsequent to the first mailing of a Notice, and prior to seven (7) days before the Opt-Out Deadline, the Notice is returned to the Settlement Administrator by the United States Postal Service with a forwarding address for the recipient, the Settlement Administrator shall re-mail

the notice to that address, and the Notice will be deemed mailed at that point. The Notice shall be deemed received by the individual once it is mailed for the second time. Nothing in this Paragraph shall be construed to extend the Opt-Out Deadline for any Class Member.

7.6 No later than thirty (30) days after the Effective Date, the Settlement Administrator, upon the approval of the District Court to file under seal pursuant to the Protective Order (to protect the names, addresses, and other personal information of Class Members), will cause to be filed with the District Court a list of the names and addresses of all Class Members to whom the Notice was sent.

7.7 No later than the mailing of the Class Notice, the Settlement Administrator shall establish the Settlement Website, which shall contain copies of this Agreement and Exhibits including the Class Notice and Claim Forms to be downloaded or printed from the Website. The Settlement Website shall remain open and accessible through the Effective Date. Settlement Class Members may complete, sign and upload a Claim Form to the Settlement Website, provided that for Claim Form Type 1, scanned copies of verification documents are uploaded to the Settlement Website with the appropriate Claim number to associate the upload with the Claim. Settlement Class Members shall also have the option of completing their Claim Form online with the Settlement Website utilizing an electronic signature format.

## **8. Covenants Not to Sue.**

8.1 The Class Representatives, on behalf of themselves and the Settlement Class Members, covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Parties, or the facts and circumstances relating thereto, against any of the Released Persons; (ii) not to organize or solicit the participating of Settlement Class Members, or persons

who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action in any jurisdiction) based on or relating to any of the Released Claims or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any of the Released Claims against any of the Releasees.

**9. Representations and Warranties.**

9.1 The Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties, and further covenant that they will not assign or otherwise transfer any interest in any of the Class Representatives' Released Claims.

9.2 The Class Representatives represent and warrant that they have no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

9.3 The Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations among their counsel, that in executing the Settlement Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing the Settlement Agreement by representations, statements or

omissions pertaining to any of the foregoing matters by any Party or by any person representing any party to the Settlement Agreement. Each of the parties assumes the risk of mistake as to facts or law.

**10. Releases.**

10.1 On the Effective Date, Releasors, including but not limited to the Class Representatives, on their own behalf and on behalf of each Settlement Class Member, by operation of this Release and the Judgment set forth in the Order of Final Approval, do hereby and shall be deemed to have fully, finally, conclusively, irrevocably, and forever released, settled, compromised, relinquished, and discharged any and all of the Releasees of and from any and all Released Claims and, without further action by any person or the District Court, will be deemed: (a) to have consented to dismissal of the Action and the dismissal with prejudice of any and all Released Claims; (b) to have released and forever discharged any and all Released Claims; and (c) to be forever barred and enjoined from instituting or further prosecuting, in any forum whatsoever, including but not limited to any state, federal, or foreign court, or regulatory agency, or any arbitration forum, each and every Released Claim. The Parties agree that the Releasees will suffer irreparable harm if any Settlement Class Member takes action inconsistent with this paragraph, and that in that event, the Releasees may seek an injunction as to such action without further showing of irreparable harm in this or any other forum.

10.2 The Releasors acknowledge and agree that they are aware that they may hereafter discover material or immaterial facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Release, that it is possible that unknown facts, losses or claims exist, and that known losses may have been underestimated in amount or severity. This was explicitly taken into account in connection with this Agreement. It

is the Releasers' intention to, and they do hereby, upon the Effective Date of this Agreement, fully, finally, and forever settle and release each and every one of the Releasees from each and every Released Claim.

10.3 Subject to District Court approval, each Settlement Class Member shall be bound by this Agreement and all of their Released Claims shall be dismissed with prejudice and released even if they never received actual, prior notice of the Action or its settlement in the form of the Notice or otherwise. The Release and agreements contained in this section 10 shall apply to and bind all Settlement Class Members, including those Settlement Class Members whose Notices are returned as undeliverable, and those for whom no current address can be found, if any.

10.4 On the Effective Date, Releasers hereby release the Releasees from each and every Released Claim.

10.5 Promptly after the Effective Date, Settlement Class Members shall dismiss with prejudice all claims, actions or proceedings that are released pursuant to this Agreement. In the event any such actions or proceedings are not dismissed and BANA learns of the action, BANA may provide notice to the Settlement Class Member of this Settlement and request dismissal of the action.

## **11. Opt Out Rights.**

11.1 A Settlement Class Member who wishes to be excluded from the Settlement Class must do so in writing. In order to opt out, the Class Member must complete and send to the Settlement Administrator, at the address listed in the Class Notice and on the Settlement Website for this Settlement, a Request to Opt Out that is postmarked no later than the Opt-Out Deadline, as specified in the Class Notice. The Request to Opt Out must: (a) identify the case name; (b)

identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as “I hereby request that I be excluded from the proposed Settlement Class in the Action.” Mass or class opt outs shall be void.

11.2 Any Settlement Class Member who does not opt out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class upon the expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments.

11.3 Any Settlement Class Member who desires to opt out must take timely affirmative written action pursuant to this section, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative or actual class member in any other class action filed against any of the Released Parties.

11.4 Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

11.5 The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests to Opt Out within seven (7) business days after the Opt-Out Deadline.

11.6 Notwithstanding the foregoing, a Class Member shall have the right to revoke a properly and timely submitted request for exclusion if a notice of the Class Member’s election to revoke his or her exclusion is sent to the Settlement Administrator, postmarked on or before the Opt-Out Deadline.

## **12. Objections**

12.1 Overview. Any Settlement Class Member may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Agreement.

12.2 Process. Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Clerk of Court, and mailed (with the requisite postmark) to Class Counsel and Defense Counsel (at the addresses identified in section 19), no later than the Objection Deadline.

12.3 The requirements to assert a valid written objection shall be set forth in the Class Notice and on the Settlement Website, and, to be valid, the written objection must include: (a) the case name and number; (b) the name, address, telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the basis for objection; and (d) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel.

12.4 Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

12.5 Appearance. Subject to approval of the District Court, any Class Member who files and serves a written objection in accordance with this section and the Class Notice may appear, in person or by counsel, at the Final Approval Hearing held by the District Court, to

show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Clerk of the District Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice of Intention to Appear”); and (b) serves the Notice of Intention to Appear on all counsel designated in the Class Notice by the Objection Deadline.

12.6 The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

12.7 Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

### **13. Termination**

13.1 In the event that the settlement set forth in this Agreement is not approved without changes by both the Bankruptcy Court and the District Court or, if one of the conditions upon which the Agreement is based is not satisfied, or if the Bankruptcy Court and the District Court determines that they lack jurisdiction to approve the Settlement, or if there is court order from another court that takes jurisdiction over some or all of the Claims, or if there is a regulator determination that frustrates the purpose of and protection of the Settlement, or in the event that the Effective Date does not occur, no further payments shall be made by BANA to anyone in accordance with the terms of this Agreement, the Parties will bear their own costs and fees with regard to the efforts to obtain court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever. Reductions in the amount of the requested Attorneys’

Fees and Expenses shall not be deemed a substantial change necessitating termination of the settlement.

13.2 Failure of the Court to enter the Preliminary Approval or Final Approval Order in its entirety or in a similar form without material changes thereto as determined by BANA, Class Counsel or the Class Representatives will be grounds for BANA, Class Counsel or the Class Representatives to terminate the settlement and the terms of this Agreement. If any material portion of the Agreement or the Order of Final Approval is vacated, modified, or otherwise altered on appeal, BANA, Class Counsel or the Class Representatives may, in their sole discretion, within fourteen (14) calendar days of such appellate ruling, declare that the Agreement has failed to become effective, and in such circumstances the Agreement shall cease to be of any force and effect.

13.3 In the event that 2% or more Class Members exclude themselves from the Settlement Class, Defendants shall have the absolute discretionary right to terminate this settlement and Agreement and in such case, each and every one of BANA's obligations under this Agreement shall cease to be of any force and effect, and this Agreement and any orders entered into in connection therewith shall be vacated, rescinded, cancelled, and annulled (except for any provision included in the Preliminary Approval Order substantially similar to Paragraph 24 of the Preliminary Approval Order attached as Exhibit 3). If BANA exercises this option, the Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement. In addition, in such event, the Agreement and all negotiations, court orders, and proceedings relating thereto shall be without prejudice to the rights of the Parties, and each of them, and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in the Action or in any other proceeding. BANA must exercise this option pursuant

to this Paragraph at least fifteen (15) days prior to the Final Approval Hearing, by giving written notice of such exercise to Class Counsel.

13.4 If one of the Parties exercises a right herein to terminate or rescind this Agreement or this Agreement is not approved by the District Court pursuant to the proposed Order of Final Approval, this Agreement, the conditional Class certification provided herein, the settlement proposed herein (including any modifications made with the consent of the Parties), and any action taken or to be taken in connection therewith shall be terminated and shall become null and void and have no further force or effect, the Preliminary Approval Order shall be vacated (except for any provision included in the Preliminary Approval Order substantially similar to Paragraph 20 of the Preliminary Approval Order attached as Exhibit 3), the Parties shall be restored to their respective positions existing prior to the execution of this Agreement, and the Parties' rights and obligations with respect to the use of this Agreement and the settlement contemplated hereby will be subject to section 14 hereof. In addition, neither this Agreement, the preliminary certification of the Class, the Preliminary Approval Order, nor any other document in any way relating to any of the foregoing, shall be relied on, referred to, or used by anyone in any way for any purpose in connection with any further proceedings in this Action and/or any action, lawsuit, arbitration, or proceeding involving a Released Claim.

**14. Certification of Settlement Class For Settlement Purposes**

14.1 After the Preliminary Approval Order and no later than 14 days before the Final Approval Hearing, the Class Representatives shall move for Final Approval of the Settlement and entry of Final Judgment and shall request that the preliminary certification of the Settlement Class for settlement purposes be made final.

14.2 If the Settlement is not granted final approval and the Final Approval Order is not entered in substantially the form attached hereto as Exhibit 4, the certification of the above-described Settlement Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class for any other purposes in this or any other action can be or have been satisfied. In such circumstances, Defendants reserve and shall have all rights to challenge certification of a Settlement Class or any other class for any other purpose in the Action or any other action on all available grounds as if no Settlement Class had been certified.

**15. Attorneys' Fees and Litigation Costs**

15.1 Except as provided in paragraph 15.6, any application for Attorneys' Fees and Expenses shall not exceed \$1,000,000.

15.2 Except as provided in paragraph 15.6, Class Counsel may seek preliminary approval from the Bankruptcy Court and final approval from the District Court for an award of Attorneys' Fees and Expenses in the Action in an amount not to exceed \$1,000,000. Class Counsel agree that the amounts of such costs and fees awarded shall compensate them for all legal work in the Action and in the Echevarria and Haniff Bankruptcies up to and including the date of Final Judgment, including any appeal of the Judgment, as well as for all legal work and costs that may be incurred in the Action or the Echevarria or Haniff Bankruptcies after the date of Final Judgment. BANA shall pay the Attorneys' fees and Expenses allowed by the District Court in the Final Judgment within thirty (30) days after the Effective Date up to the amount of \$1,000,000. In the event the District Court awards Class Counsel less than \$1,000,000 in Attorneys' Fees and Expenses, this Settlement Agreement shall nonetheless remain in full force and effect and the other benefits or payments due or to become due shall not be increased or

changed. In no event shall Defendants be obligated to pay Attorneys' Fees and Expenses in an amount greater than \$1,000,000 in connection with the Action or the underlying Bankruptcies.

15.3 The procedure for and the grant or denial or disallowance by the District Court of the application for Attorneys' Fees and Expenses is to be considered by the District Court separately from the District Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the applications for Attorneys' Fees and Expenses or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Finality of Judgment approving the Agreement and the Settlement, except as provided for in section 13.

15.4 Within thirty (30) days after the Effective Date or entry of the an order approving the application for attorneys' fees (whichever is later), BANA shall make payment of the Attorneys' Fees and Expenses awarded by the District Court (not to exceed \$1,000,000) to Class Counsel, pursuant to payment instructions in writing from Class Counsel. Except as provided in section 15.6, in accepting this payment, the Class Representatives and Class Counsel, on behalf of themselves and all Settlement Class Members, acknowledge that the payment and method of payment under this Agreement are in full satisfaction of any and all claims, rights, and demands that Class Counsel, the Class Representative, or the Settlement Class had, have, or may claim to have in the future for attorneys' fees, costs, expenses, or any other payment in connection with this Action or this Agreement, up to the date of final judgment. Defendants shall have no responsibility for allocation or distribution of the award among Class Counsel.

15.5 A Form 1099 for this payment will be filed. Class Counsel shall cooperate with Defendants to provide all information necessary to process the payment including completing any requested tax forms (*e.g.*, IRS Form W-9 and applicable tax identification numbers). BANA

shall have no responsibility for, and no liability whatsoever with respect to any tax obligations or any allocation among the Class Representatives and Class Counsel, and/or any other person who may assert some claim thereto, of any award or payment made in this Action or pursuant to this Agreement, including but not limited to any award or payment pursuant to this section 15. Class Counsel and the Class Representatives shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this section 15. No party shall be deemed the prevailing party for any other purposes of the Action.

15.6 Notwithstanding the limitations set forth in this section, Class Counsel may seek preliminary approval from the Bankruptcy Court and final approval from the District Court for an award of additional fees and costs to Class Counsel to be paid solely and only from the Settlement Fund, in an amount no greater than \$500,000, and under no circumstances will Defendants or the Releasees be liable to pay the additional fees and costs requested and awarded by the District Court. The possibility of this additional request, including use of the Settlement Fund, shall be set forth in the Class Notice. Any fees awarded to Class Counsel to be paid from the Settlement Fund shall be paid first and prior to determining distribution to the Settlement Class Members.

**16. Stay of Discovery and Other Proceedings.**

16.1 To the extent the Action has not already been stayed by the Bankruptcy Court, upon execution of this Agreement, the Parties shall discontinue all discovery activity or related proceedings in the Action and the underlying Bankruptcies, provided that if this Agreement is terminated pursuant to section 13, the Parties may pursue discovery or related proceedings against Defendants.

16.2 To the extent the Action and the Echevarria and Haniff Bankruptcies have not already been stayed by the Bankruptcy Court, upon the entry of the Preliminary Approval Order, the Parties agree that the Court should stay and suspend all proceedings in the Action and the Echevarria and Haniff Bankruptcies, including any examination by the United States Trustee but excluding proceedings that may be necessary to carry out the terms and conditions of the Agreement.

16.3 Upon the Effective Date, and notwithstanding any of the other provisions in this Agreement, the Defendants shall have no obligation to preserve documents and evidence with respect to Released Claims, and the Class Representatives and Class Counsel shall not pursue any spoliation claims or other actions or sanctions against Defendants with respect to documents or evidence related to the Released Claims.

## **17. Return/Destruction of Discovery Materials**

17.1 The Parties agree that the terms of the Protective Orders govern the dealings of the Parties with respect to materials produced in discovery in this Action and shall continue in force after the Effective Date of the settlement. Accordingly, within thirty (30) business days of the Effective Date, the Parties and their counsel of record, and any consultants or experts retained by the Parties or their counsel of record, shall use their best efforts to locate all Confidential Information (as the term is defined in the Protective Order) produced in the Action and return such Confidential Information to counsel of record for the producing party or destroy all originals or reproductions (whether in electronic, hard copy, or other form) of the Confidential Information.

17.2 Within sixty (60) days of the Effective Date, counsel of record shall make written certification that they have used their best efforts to search for all Confidential Information, that

they have instructed the Class Representatives, Defendants, and all consultants or experts to return or destroy Confidential Information, and that, to the best of their knowledge, they have retained no originals or copies of any Confidential Information. The Parties acknowledge that their duty to return or destroy all Confidential Information is a continuing duty and the Parties agree to return or destroy any such information found in the future.

17.3 Notwithstanding this section, the parties shall be excused from any duty to return or destroy Confidential Information to the extent necessary to comply with outstanding court orders or with judicial and non-judicial subpoenas, civil investigative demands or other compulsory process.

17.4 The Bankruptcy Court shall retain jurisdiction to ensure compliance with the Protective Orders.

## **18. Media and Confidentiality**

18.1 The Parties, including their Counsel, agree that the terms of this Settlement shall remain confidential and not be disclosed by any party until the Settlement Agreement is filed in connection with the Class Representatives' Motion for Preliminary Approval.

18.2 The Parties, including their counsel, agree that they shall not at any time publish or issue a press release including but not limited to the media or on the Internet concerning the Settlement. The Parties further agree that they shall not make any statement, with or without attribution, in response to any media inquiries concerning the Action, Defendants or the Settlement. In response to any such inquiries, the Parties shall refer the inquiring media to the papers filed in the court docket.

18.3 To the extent that Class Counsel settles other actions raising similar claims against other banks including the actions pending against other banks that were consolidated

with the Action, Class Counsel shall not reference this Settlement or Defendants in any public comments including to the media.

**19. Notices**

19.1 All notices (other than the Class Notice) required by the Agreement shall be made in writing and communicated by mail and email to the following addresses:

All notices to Class Counsel shall be sent to Class Counsel c/o:

George Carpinello  
Adam Shaw  
BOIES SCHILLER & FLEXNER LLP  
30 South Pearl Street  
Albany, NY 12207  
Telephone: (518) 434-0600

Charles Juntikka  
CHARLES JUNTIKKA & ASSOCIATES  
1250 Broadway, 24th Floor  
New York, NY 10001  
Telephone: (212) 315-3755

All notices to Defense Counsel shall be sent to Defense Counsel c/o:

Mary J. Hackett  
Jarrod D. Shaw  
MCGUIREWOODS LLP  
Tower Two-Sixty  
260 Forbes Avenue, Suite 1800  
Pittsburgh, PA 15222

**20. Miscellaneous Provisions**

20.1 Cooperation. The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

20.2 No Admission. The Agreement compromises claims which are contested in good faith, and it shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. The Parties agree that the amounts paid in settlement and the other terms of the Agreement were negotiated in good faith by the Parties and at arms length and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. Neither the Agreement nor the Settlement, nor any act performed or document executed pursuant to, or in furtherance of, the Agreement or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Releasees, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Defendants could not contest (or are estopped from contesting) class certification and/or proceeding collectively on any grounds if this Action were to proceed; this Agreement shall not be deemed an admission by, or ground for estoppel against, Defendants that class certification and/or proceeding collectively in the Action is proper or cannot be contested on any grounds.

20.3 Exhibits. All of the exhibits to the Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

20.4 Amendment/Modification. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement. Class Counsel,

on behalf of the Class, are expressly authorized by the Class Representatives to take all appropriate action required or permitted to be taken by the Class pursuant to the Agreement to effect its terms, and also are expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Class which they deem appropriate.

20.5 Entire Agreement. The Agreement and the related documents entered at this time of this Agreement or referenced herein constitute the entire agreement among the Parties hereto concerning the settlement of the Action. No representations, warranties, or inducements have been made to any party concerning the Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs and attorney fees.

20.6 Authority. Each person executing the Agreement or any of its exhibits on behalf of any Party hereto hereby warrants that such person has the full authority to do so.

20.7 Counterparts. The Agreement may be executed in one or more counterparts, including by signature transmitted by facsimile or by email in PDF format. All executed counterparts and each of them shall be deemed to be one and the same instrument.

20.8 Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, successors, and assigns of the Parties hereto; but this Agreement is not designed to and does not create any third-party beneficiaries.

20.9 No Third-Party Rights or Beneficiaries. Except as expressly provided for herein, no government agency or official can claim any rights under this Agreement or Settlement, whether with respect to the conduct that is the subject of the Releases, the restrictions in section 3, or the funds (or remainder of funds) paid or used in the Settlement. There are no third party beneficiaries created or implied.

20.10 Jurisdiction. The District Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement, and all Parties hereto submit to the jurisdiction of the District Court for purposes of implementing and enforcing the settlement embodied in the Agreement until such time that the District Court enters an order dismissing the action with prejudice.

20.11 Governing Law. The Agreement and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of New York, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles.

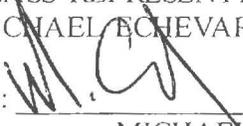
20.12 Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any party and the canon of contract interpretation to the contrary shall not be applied.

20.13 Recitals. The recitals set forth above shall be and hereby are terms of this Agreement as if set forth herein. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

20.14 No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of notices of the Settlement after the Final Judgment is entered.

Dated: 2-22, 2017

CLASS REPRESENTATIVE  
MICHAEL ECHEVARRIA

By:   
MICHAEL ECHEVARRIA

Dated: \_\_\_\_\_, 2017

CLASS REPRESENTATIVE  
BEBI HANIFF

By: \_\_\_\_\_  
BEBI HANIFF

Dated: \_\_\_\_\_, 2017

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

20.14 No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of notices of the Settlement after the Final Judgment is entered.

Dated: \_\_\_\_\_, 2017

CLASS REPRESENTATIVE  
MICHAEL ECHEVARRIA

By: \_\_\_\_\_  
MICHAEL ECHEVARRIA

Dated: August 17, 2017

CLASS REPRESENTATIVE  
BEBI HANIFF

By: Bebi A. Haniff  
BEBI HANIFF

Dated: \_\_\_\_\_, 2017

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_

20.14 No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of notices of the Settlement after the Final Judgment is entered.

Dated: \_\_\_\_\_, 2017

CLASS REPRESENTATIVE  
MICHAEL ECHEVARRIA

By: \_\_\_\_\_  
MICHAEL ECHEVARRIA

Dated: \_\_\_\_\_, 2017

CLASS REPRESENTATIVE  
BEBI HANIFF

By: \_\_\_\_\_  
BEBI HANIFF

Dated: 8/24, 2017

BANK OF AMERICA, N.A.

By: 

Name: CESAR OSORIO

Title: Collection Executive

# Exhibit 1

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION**

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

***Michael Echeverria, et al. v. Bank of America Corporation, et al.,***  
**[DC Case No.]**

**United States District Court for the Southern District of New York**

**If You Had a Bank of America Credit Card and Your Debts Were Discharged in a Chapter 7 Bankruptcy, You Could Get Money from a Class Action Settlement.**

- This Notice will explain what the class action is about, what the Settlement will be if it is approved by the United States District Court for the Southern District of New York (the “District Court”), how you qualify to submit a claim for a cash award, and what to do if you want to (i) submit a claim; or (ii) object to the Settlement; or (iii) not participate in the Settlement and instead “opt out” of the class action. These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The District Court still has to decide whether to approve the settlement. Payments will be distributed if the District Court approves the settlement and after appeals, if any, are resolved in favor of the settlement. Please be patient.
- **Your legal rights may be affected whether you act or don’t act. Read this notice carefully because it explains decisions you must make and actions you must take now.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>DO NOTHING</b>	You get no payment. You give up your rights.
<b>SUBMIT A CLAIM FORM</b>	This is the only way to get a payment. The Claim Form, which is attached to this notice and can be found at [web address], must be completed and <b>postmarked, or submitted online at [web address], on or before [DATE]</b> , subject to the qualifications and requirements addressed below.
<b>EXCLUDE YOURSELF</b>	You get no payment under the settlement. This is the only choice that will allow you to sue Defendants on your own about the claims discussed in this notice. An exclusion request must be completed on the Claim Form which is attached to this notice and can be found at [web address], and <b>postmarked, or submitted online at [web address], on or before [DATE]</b> .
<b>OBJECT TO THE SETTLEMENT</b>	You can write to the Court about why you do not agree with any aspect of the settlement. An objection must be in writing and <b>filed</b> on or before [DATE].
<b>GO TO A HEARING</b>	You can ask to speak to the Court about the “fairness” of the settlement, after you submit your objection. A Notice of Intention to Appear must be in writing, <b>filed</b> , and <b>postmarked</b> on or before [DATE] <u>in addition to</u> submitting a timely objection.

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

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**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

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**PART I: WHY YOU HAVE RECEIVED THIS NOTICE**

**1. WHY DID I RECEIVE THIS NOTICE?**

A Bankruptcy Court authorized this notice because you have a right to know about the proposed settlement of a class action lawsuit known as *Michael Echeverria, et al. v. Bank of America Corporation, et al.*, Adv. Pro. No. 14-08216, and about all of your options, before the District Court decides whether to approve the settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

The Courts in charge of this case are the United States District Court for the Southern District of New York and the United States Bankruptcy Court for the Southern District of New York. The people who sued are called the “Plaintiffs,” and Bank of America Corporation, FIA Card Services, N.A. (the “Bank”), and Bank of America, N.A. (“BANA”) are the “Defendants.”

The essential terms of the settlement are summarized below. The Settlement Agreement sets forth in greater detail the rights and obligations of the parties. If there is any conflict between this notice and the Settlement Agreement, the Settlement Agreement governs.

**2. WHAT IS THIS LAWSUIT ABOUT?**

This lawsuit alleges that Defendants failed to update credit reporting information for credit card accounts sold to third parties where the accountholder’s debts were discharged in Chapter 7 bankruptcy after they were sold. As a result, the tradelines continued to reflect that the debts were sold, charged off, and \$0 balance, and did not indicate that the debts were included in bankruptcy.

Based on these allegations, Plaintiffs claim that Defendants’ tradeline reporting practices have harmed consumers by adversely affecting their ability to get credit and their credit scores. Plaintiffs also allege that Defendants’ tradeline reporting practices have pressured some consumers into paying those discharged debts because they feared that not doing so would negatively impact the perception of their creditworthiness to prospective creditors and employers.

Defendants deny any and all allegations of wrongdoing and do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged in this lawsuit or in any similar action. Defendants deny that they attempted to collect discharged debts or otherwise violated bankruptcy discharge injunctions.

For more detailed information as to Plaintiffs’ allegations, you may review a copy of Plaintiffs’ complaint at [**web address**]. You also may request from the Settlement Administrator a copy of the complaint.

**3. WHY DID THIS LAWSUIT SETTLE?**

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

Plaintiffs have agreed to a settlement of this Action after considering, among other things: (1) the substantial benefits to Plaintiffs and the proposed Class under the terms of the Settlement Agreement; (2) the risks, costs and uncertainty of protracted litigation, especially in complex actions such as these, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating the Settlement Agreement promptly in order to provide effective relief to Plaintiffs and the proposed Class.

The District Court has not decided whether Plaintiffs' claims or Defendants' defenses have any merit, and it will not do so if the proposed settlement is approved. The proposed settlement does not suggest that Defendants have or have not done anything wrong, or that the Plaintiffs and the proposed Class would or would not win their case if it were to go to trial.

#### **4. WHY IS THIS A "CLASS ACTION"?**

In a class action, one or more people, called named plaintiffs or class representatives, sue on behalf of people who have similar claims. All these people constitute the Class or are Class Members. One Court resolves the issues for all Class Members, except for those who exclude themselves from the Class or are otherwise not part of the Class.

## **PART II: DESCRIPTION OF THE SETTLEMENT CLASS**

#### **5. AM I A MEMBER OF THE SETTLEMENT CLASS?**

With some limited exceptions, described below, the Settlement Class includes all individual borrowers who (i) maintained a credit card account with BANA that was charged off by BANA and sold to a third party Debt Buyer on or after January 1, 2008, and (ii) were discharged in Chapter 7 bankruptcy after such debt was sold to a third party Debt Buyer but before October 1, 2015. According to Bank of America's records, you may be one of those individual borrowers.

#### **6. ARE THERE EXCEPTIONS TO BEING INCLUDED?**

The Settlement Class does not include persons who timely and validly request exclusion from the Class or employees of any Defendant.

#### **7. I'M STILL NOT SURE IF I'M INCLUDED.**

If you do not understand whether or not you are a Settlement Class Member, you can visit our web site, [**web address**], or you can contact Class Counsel.

## **PART III: DECISIONS YOU MUST MAKE NOW**

#### **8. WHAT DO I NEED TO DO NOW?**

**FIRST**, you must decide now whether you wish to remain in the Settlement Class or to exclude yourself from the Settlement Class. If you want to be excluded from the Settlement Class, you must notify the Settlement Administrator as described below in Part VI **no later than [DATE]**. If you

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

exclude yourself:

- You will **not** be eligible for payment under the settlement.
- You will **not** be able to object to the proposed settlement and to appear at the Final Approval Hearing.
- You will **not** be bound by any orders or judgments entered in this case, if the proposed settlement is approved.

**SECOND**, if you remain in the Settlement Class, you may object to any part of the proposed settlement by filing a written objection with the District Court as described below in Part VII. You must **file** your objection with the District Court **on or before [DATE]**.

Additionally, if you file an objection, you may also decide to appear and speak at the District Court's Final Approval Hearing regarding the settlement of this lawsuit. If you wish to appear and speak at the District Court's Final Approval Hearing, you must have first submitted an objection (as described in Part VII) and, in addition, file and serve a Notice of Intention to Appear at the Final Approval Hearing that is postmarked by **[date]** as described in response to Question 27, below.

**THIRD**, if you remain a Settlement Class Member, you are eligible for certain automatic payments and you also can complete and submit a Claim Form postmarked **no later than [date]**.

The Parties make no representations about the tax implications of any payments made in connection with the settlement. You should seek your own tax advice prior to acting in response to this Notice.

## **9. WHAT IF I DO NOTHING?**

**If you do nothing, you will not get benefits from the settlement, unless you are a BANA Post-Discharge Payor, as described in response to Question 11 below. Whether you complete a Claim Form or not, if you are a Settlement Class Member, you will be bound by the settlement's release.** You must complete and submit a Claim Form on or before the deadline, which is **[DATE]**, in order to be considered for payment under the settlement.

Unless you exclude yourself from the Settlement Class, if the settlement is approved, all of the Bankruptcy Court and District Court's orders will apply to you and you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against any Defendant in regard to the claims in this lawsuit, ever again, regardless of whether you submit a Claim Form.

## **PART IV: SETTLEMENT BENEFITS – WHAT YOU CAN GET**

### **10. WHAT DOES THE SETTLEMENT PROVIDE?**

The Settlement Agreement provides that BANA will pay the following to resolve the case:

- (a) payments to Participating Claimants for timely, valid, and approved claims and to Class Representatives for incentive awards as ordered by the District Court in an amount not to exceed \$5,500,000;

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

- (b) claims administration costs, including, but not limited to, notice costs and escrow and banking fees and costs; and
- (c) payments to Class Counsel for attorney's fees and litigation costs as ordered by the District Court in an amount not to exceed \$1,000,000, though Class Counsel may seek an award of additional fees and costs up to \$500,000, to be paid solely and only from the Settlement Fund, as further discussed in the response to Question 16 below.

BANA has also asked the three primary credit reporting agencies (TransUnion, Equifax, and Experian) to delete or suppress the tradelines associated with the Class Members' credit card accounts at issue. If a Class Member identifies that BANA's tradeline for the credit card account at issue continues to appear on his or her credit report, and provides notice to BANA's counsel that the tradeline has not yet been deleted, BANA will request again that the credit reporting agencies delete the tradeline. If a Class Member requests reinstatement of the tradeline associated with the credit card account at issue, BANA will request that the credit reporting agencies reinstate it. Such requests must be made in writing, signed, mailed to BANA's counsel, and postmarked by January 1, 2018.

In return for the benefits in this settlement, and if the settlement is implemented, all Settlement Class Members will release Defendants from the claims discussed in the Agreement, and this Action will be dismissed with prejudice, among other terms.

## 11. WHAT CAN I GET FROM THE SETTLEMENT?

If you made a payment on your account after you received a bankruptcy discharge, you may be entitled to a **full refund** of that amount (subject to *pro rata* reduction in the unlikely event that such claims exceed the Settlement Fund). In addition, all Class Members, whether or not they paid on a discharged account, may be entitled to receive a *pro rata* portion of the remaining Settlement Fund.

Three types of payments will be made under the settlement. It is possible for you to receive all three types of payments to the extent you qualify for each type of payment.

**Automatic Payments to BANA Post-Discharge Payors:** If you made a payment(s) to the Bank or BANA on your credit card account after it was sold to a Debt Buyer and after you received a Chapter 7 bankruptcy discharge (a "post-discharge payment"), you will receive an automatic payment in the amount of the **last** payment you made. You do not need to do anything to claim this payment. A check will be sent to you automatically, made payable jointly to you and all co-borrowers (if any) on your account. If you made **more than one** post-discharge payment to the Bank or BANA, you may submit a Reimbursement Claim, described below, to receive those other payments.

Whether or not you paid on a discharged debt, you may also submit a claim to receive one or both of the following types of payments.

**Reimbursement Claim:** If you made a payment(s) on your credit card account after you received a Chapter 7 bankruptcy discharge (a "post-discharge payment"), then you may receive a cash payment up to the full amount of your post-discharge payment(s) (subject to *pro rata* reduction in the unlikely event that such claims exceed the Settlement Fund). To receive this payment, you must fully complete, sign, and mail the Reimbursement Claim form. **You must also submit documentation**

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

**supporting the claim in the form of cancelled checks, account statements, or similar proof and swear that the documentation you provide is original or a true and correct copy. If you do not complete and submit the Reimbursement Claim form with accompanying documentation, you will not receive a Reimbursement Claim payment under the settlement (though you may still receive an automatic payment as described above).**

**Distribution Claim:** To receive a Distribution Claim payment, you must submit a Claim affirming that you fit the definition of a Class Member, that you have read the representations in the Claim Form, including the reasons the credit reporting may have harmed the Class, and that you believe you are entitled to monetary compensation. You must fully complete, sign, and mail the Distribution Claim form. The amount that you may ultimately receive will depend, among other things, on payments made to other claimants. Eligible claimants for a Distribution Claim payment will receive a *pro rata* share of the remaining funds in the payment fund after payment of other claimants. **If you do not complete and submit the Distribution Claim form, you will not receive a Distribution Claim payment under the settlement. You do not need to submit any supporting documentation in order to be eligible for a Distribution Claim payment.**

## **12. HOW CAN I MAKE A CLAIM?**

To receive a payment under the settlement, you must send in a Claim Form, which is attached to this Notice. You may also obtain a Claim Form by visiting [**web address**] or by calling toll-free [**number**]. Please read the instructions and certification carefully, fill out the forms completely and accurately, and submit the forms and any documents, as applicable. Claim Forms must be **postmarked** no later than [**DATE**].

You must complete the entire Claim Form and submit any required documentation when first submitting the Claim Form. Failure to do so may result in the denial of your Claim which means that you will receive no cash payment from this settlement.

## **13. WHAT IS THE CLAIM PROCESS?**

You will be eligible for payment provided that you are a Settlement Class Member and you complete and timely submit the Claim Form, with any additional documentation as applicable, to the Settlement Administrator. **Claim Forms must be sent to the Settlement Administrator, postmarked no later than [DATE] or submitted online pursuant to the instructions at [website], by [DATE].**

Failure to complete and submit the Claim Form and/or inability to timely comply with requests from the Settlement Administrator will result in disqualification of your Claim Form, and you will be ineligible to receive a cash payment from the settlement.

Shortly after receiving your Claim Form, the Settlement Administrator will review and assess it. If a Claim Form is valid, timely, completed, including any necessary documentation as applicable, and approved, the Settlement Administrator will pay that Participating Claimant in accordance with the terms of the Settlement Agreement. If a Claim Form is deficient, the Settlement Administrator will reject the Claim Form, and you will be notified.

## **14. WHEN WILL I GET MY PAYMENT, IF ANY?**

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

Payments to Class Members who file eligible claims will be made only after the District Court grants Final Approval to the Settlement and after any appeals are resolved. (See Part VIII, “The Court’s Final Approval Hearing,” below). If there are appeals, resolving them can take time. Finally, there remains a possibility that this settlement may be terminated for other reasons. Please be patient.

You may visit [[website address](#)] for updates on the progress of the settlement.

## **PART V: THE LAWYERS REPRESENTING THE SETTLEMENT CLASS**

### **15. DO I HAVE A LAWYER IN THIS CASE?**

The Bankruptcy Court has designated attorneys at the law firms of **Boies Schiller & Flexner LLP** and **Charles Juntikka & Associates** to represent you and the other Class Members in this lawsuit. The lawyers representing you and the Class Members are called “Class Counsel.” **Class Counsel will apply to the District Court for payment from the Settlement Fund. You will not otherwise be charged for the services of Class Counsel.**

You may contact Class Counsel about this lawsuit and proposed settlement as follows:

#### **BOIES SCHILLER & FLEXNER LLP**

George Carpinello  
30 South Pearl Street  
Albany, NY 12207  
Telephone: (518) 434-0600  
Attention: Annabel Felton

#### **CHARLES JUNTIKKA & ASSOCIATES**

Charles Juntikka  
1250 Broadway, 24<sup>th</sup> Floor  
New York, NY 10001  
Telephone: (212) 315-3755

You have the right to retain your own lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the District Court without a lawyer.

### **16. HOW WILL THE LAWYERS AND CLASS REPRESENTATIVES IN THESE ACTIONS BE PAID?**

Class Counsel have prosecuted this case on a contingent fee basis and have not been paid anything to date for their services. Class Counsel will make an application to the District Court for an award of attorneys’ fees, plus reimbursement of litigation costs, which shall be the sole aggregate compensation from Defendants for all attorneys representing Plaintiffs and the Settlement Class.

Defendants have agreed to make a payment to Class Counsel for attorney’s fees and litigation costs as ordered by the District Court in an amount not to exceed \$1,000,000. Class Counsel may ask for

**QUESTIONS? VISIT [[WEB ADDRESS](#)] OR CALL TOLL-FREE [[NUMBER](#)]**

and the District Court, in its discretion, may award additional fees and costs to Class Counsel, to be paid solely and only from the Settlement Fund, in an amount no greater than \$500,000. Any fees awarded to Class Counsel to be paid from the Settlement Fund shall be paid first and prior to determining distribution to the Settlement Class Members.

## PART VI: EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, and you want to keep the right to sue or continue to sue Defendants on your own with regard to the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself or "opting out" of the Class.

### 17. HOW DO I GET OUT OF OR EXCLUDE MYSELF FROM THE SETTLEMENT?

If you want to be excluded from the Class, you must notify the Settlement Administrator. To exclude yourself from the settlement, you must complete and send to the Settlement Administrator a written request that includes the case name (*Echevarria, et al. v. Bank of America Corp., et al.*), your name and address, and a statement that indicates a desire to be excluded from the Settlement Class, such as "I hereby request that I be excluded from the proposed Settlement Class in the Action." The request also must be personally signed by you (the person requesting exclusion). Your exclusion request must be **postmarked** no later than **[DATE]**. Send your exclusion request to:

*Echevarria, et al. v. Bank of America Corp., et al.*  
Settlement Administrator  
c/o \_\_\_\_\_  
**[ADDRESS]**

### 18. WHAT HAPPENS IF I EXCLUDE MYSELF FROM THE CLASS?

If you request exclusion from the Class, then:

- You will **not** be eligible for payment under the proposed settlement;
- You will **not** be allowed to object to the terms of the proposed settlement; and
- You will **not** be bound by any subsequent rulings entered in this case if the proposed settlement is finally approved.

**However, if your request for exclusion is late or deficient, you will still be considered a part of the Settlement Class, you will be bound by the settlement and by all other orders and judgments in this lawsuit, and you will not be able to participate in any other lawsuits based on the claims in this case.**

### 19. IF I DON'T EXCLUDE MYSELF, CAN I SUE DEFENDANTS LATER?

**No.** If the District Court approves the proposed settlement and you do not exclude yourself from the Settlement Class, you release (give up) all claims released in the Claim Form.

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

**20. WHAT DO I GIVE UP IF I CHOOSE TO STAY IN THE SETTLEMENT CLASS?**

Unless you exclude yourself from the Settlement, you cannot sue or be part of any other lawsuit against the Defendants about the issues in this case, including any existing litigation, arbitration, or proceeding. Unless you exclude yourself, all of the decisions, orders and judgments by the Bankruptcy Court and the District Court will bind you. If you file a Claim Form for benefits or do nothing at all, you will be releasing the Defendants and the Released Parties from all of the claims described and identified in Section 10 of the Settlement Agreement. The Settlement Agreement is available at [website] and provides more detail regarding the Release and describes the Released Claims with specific descriptions.

**21. CAN I FILE A LATER LAWSUIT MAKING SIMILAR CLAIMS?**

**No. If you remain a member of the Settlement Class and the settlement is finally approved, you will be enjoined and barred from initiating or continuing any lawsuit or other proceeding against Defendants if those claims are included among those released in the Settlement.**

As part of this settlement, the Bankruptcy Court has preliminarily enjoined all Class Members and/or their representatives (who do not timely exclude themselves from the Class) from maintaining, commencing, prosecuting, or pursuing any Released Claim as Class Members or otherwise against Defendants (or against any of their related parties or affiliates).

Upon final approval of the settlement, Plaintiffs and Defendants will ask the District Court to enter a permanent injunction enjoining all Settlement Class Members and/or their representatives and/or personnel from engaging in the activities described above. All Settlement Class Members will be bound by this permanent injunction.

**PART VII: OBJECTING TO THE SETTLEMENT**

You have the right to tell the Court that you do not agree with the settlement or any or all of its terms.

**22. HOW CAN I OBJECT TO THE PROPOSED SETTLEMENT?**

If you choose to remain a Settlement Class Member, you have a right to object to any parts of the proposed settlement. The District Court will consider your views.

Your written objection must include:

- (1) the case name and number: *Echevarria, et al. v. Bank of America Corp., et al.*, [DC Case No.];
- (2) your name;
- (3) your address;
- (4) your telephone number;
- (5) if you are represented by counsel, the name, address, and telephone number of your counsel;

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

- (6) a written statement of the basis for your objection(s); and
- (7) a statement of whether you intend to appear and argue at the Final Approval Hearing, with or without counsel.

Your written objections must be **filed with the District Court no later than [DATE]**:

Clerk of the Court  
**United States District Court for the Southern District of New York**  
Federal Building and United States Courthouse  
300 Quarropas Street  
Courtroom 620  
White Plains, NY 10601-4150

You must also mail your objection to Class Counsel and Defense Counsel, at their addresses specified in Section 19 of the Settlement Agreement.

If you file objections, but the District Court approves the settlement as proposed, you can still complete a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions discussed in this Notice and in the Settlement Agreement.

**23. WHAT IS THE DIFFERENCE BETWEEN “OBJECTING” AND “EXCLUDING”?**

Objecting is simply a way of telling the District Court that you don’t like something about the Settlement. You can only object if you stay in the Settlement Class.

If you object to the Settlement, you still remain a member of the Settlement Class and you will still be eligible to submit a Claim Form. You will also be bound by any subsequent rulings in this case and you will not be able to file or participate in any other lawsuit or proceeding based upon or relating to the claims, causes of action, facts, or circumstances of this case.

Excluding yourself is telling the District Court that you don’t want to be a part of the Settlement Class. If you exclude yourself, you have no basis to object to the Settlement or appear at the Final Approval Hearing because it no longer affects you.

**PART VIII: THE COURT’S FINAL APPROVAL HEARING**

The District Court will hold a final hearing (called a Final Approval Hearing) to decide whether to finally approve the settlement.

**24. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

On [DATE], at [TIME], the District Court will hold a Final Approval Hearing at the United States District Court for the Southern District of New York, before the Honorable Vincent L. Briccetti, in Courtroom 620, 300 Quarropas Street, White Plains, NY 10601-4150.

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

At the hearing, the Court will consider whether to grant final certification to the Settlement Class for settlement purposes, whether to approve the proposed settlement as fair, reasonable and adequate, whether to award attorneys' fees and costs, whether to award the Class Representatives an award for their help, and consider related settlement issues. We do not know how long the hearing will take or whether the Court will make its decision on the day of the hearing or sometime later.

**25. DO I HAVE TO COME TO THE HEARING?**

No. Class Counsel will answer questions the District Court may have at the Final Approval Hearing. But you are welcome to come at your own expense. Please note that the District Court has the right to change the date and/or time of the Final Approval Hearing without further notice. If you are planning to attend the hearing, you should confirm the date and time before going to the Court.

**26. MAY I SPEAK AT THE FINAL APPROVAL HEARING?**

Yes, if you have filed an objection, you may ask the District Court for permission to speak at the hearing. To do so, you must submit an objection and also file a document called a "Notice of Intention to Appear" as described in response to Question 27, below.

**27. WHAT DO I HAVE TO DO TO SPEAK AT THE FINAL APPROVAL HEARING?**

If you are a member of the Settlement Class, and you (or your attorney) want to appear and speak at the Final Approval Hearing, you (or your attorney) must have submitted an objection and must file a **Notice of Intention to Appear at the Final Approval Hearing. Your Notice of Intention to Appear at the Final Approval Hearing, along with any papers, exhibits, or other evidence you intend to present, must be filed with the District Court at the address specified in Question 22, and served on Class Counsel and Defense Counsel (at their addresses specified in Section 19 of the Settlement Agreement) no later than [DATE].**

If you file objections and appear at the Final Approval Hearing, but the District Court approves the settlement as proposed, you can still complete a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions discussed in this Notice and in the Settlement Agreement.

**PART IX: GETTING ADDITIONAL INFORMATION**

**28. HOW DO I GET MORE INFORMATION?**

This Notice and the accompanying documents summarize the proposed settlement. More details are contained in the Settlement Agreement. The full Settlement Agreement is on file with the Clerk of the Court and is also available at [web address] or by calling toll-free [number]. For a more detailed statement of the matters involved in this case, you may review the complaint and the other papers and Court orders on file in the Clerk's office at any time during normal business hours, Monday through Friday, 8:30 a.m. to 5:00 p.m. Eastern Time.

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

If you have questions after reading this notice, you can visit [**web address**] to obtain additional information about the proposed settlement and to request a Claim Form, or you may call toll-free [**number**], where responses to common questions are available and Claim Forms may be requested. You may also direct your questions about the settlement to Class Counsel, whose name and address is listed in response to Question 15 of this Notice.

**PLEASE DO NOT CALL THE COURT OR THE CLERK OF THE COURT**

Dated: [**DATE**], 2017

Clerk of the Court  
United States Bankruptcy Court for the Southern  
District of New York

**QUESTIONS? VISIT [WEB ADDRESS] OR CALL TOLL-FREE [NUMBER]**

# Exhibit 2

**UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK**

---

MICHAEL ECHEVARRIA and BEBI HANIFF, :

Debtors and Plaintiffs on behalf of themselves and all others similarly situated, :

v. :

BANK OF AMERICA CORPORATION; BANK OF AMERICA, NATIONAL ASSOCIATION; and FIA CARD SERVICES, N.A., :

Defendants. :

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[DC Case No.]

**CLAIM FORM**

**Echevarria, et al. v. Bank of  
America Corp., et al.**  
Settlement Administrator

RESPONSE DUE DATE:

POSTMARKED BY  
\_\_\_\_\_, 2017

Official Use Only

c/o \_\_\_\_\_  
[Address]

[web address]

**CLAIM FORM**

**Important Information About Making a Claim –  
Read the Class Notice If You Need Further Information**

Dear Potential Class Member:

You have been identified as a potential member of the Class in the Settlement of the *Echevarria, et al. v. Bank of America Corp., et al.* class action litigation. This Class includes people who had a Bank of America or FIA Card Services credit card, who failed to make full payment on the amount due on the card, and the balance due was discharged in bankruptcy. This Claim Form should be accompanied by a Notice of Proposed Settlement of Class Action (“Notice”). This action has been settled subject to the final approval of the District Court and you may be entitled to a monetary payment.

Depending on the circumstances, you may be entitled to receive money on two types of claims:

A **Distribution Claim** is a claim that you wish to be compensated for the fact that your credit report was not updated to reflect the fact that the debt associated with your Bank of America or FIA Card Services credit card was discharged in bankruptcy. Bank of America’s records indicate that this may apply to you. Depending upon how many persons submit claims, **Distribution Claim** awards may be between \$20 and \$120 per card holder (but may be higher or lower).

A **Reimbursement Claim** is a claim that you paid some or all of a debt that was actually discharged in bankruptcy. If you believe that you made such a payment, you should fill out the **Reimbursement Claim Form**.

If you had a credit card issued by Bank of America, N.A. (“Bank of America”), or FIA Card Services, N.A. (“FIA Card Services”), and your debts were discharged in a Chapter 7 bankruptcy, you may be entitled to a payment depending on certain conditions. If you want to participate in the settlement and receive a payment from the Settlement Fund, then you need to:

- (a) Read this form and the Notice;
- (b) Note that you may be entitled to an automatic payment from the Settlement Fund without submitting this Form if you made payment to Bank of America or FIA Card Services after receiving a bankruptcy discharge;
- (c) Note that you may also be entitled to payment from the Settlement Fund if you submit a **Distribution Claim**, a **Reimbursement Claim**, or both, even if you will be receiving an automatic payment;

- (b) Decide whether you wish to submit a **Distribution Claim**, a **Reimbursement Claim**, or both;
- (c) If you wish to submit a Claim, fill out a **Distribution Claim**, a **Reimbursement Claim**, or both;
- (d) Sign at the bottom of the Form(s) you wish to submit;
- (e) Complete and sign an IRS Form W-9; and
- (f) Mail the Claim Form(s), a completed IRS Form W-9, and any supporting documentation described below to the Settlement Administrator at the above address, **OR** submit these materials online following the instructions provided at [**web address**], by [**DATE**].

A signed Claim Form must be mailed to the Settlement Administrator at the above address and **postmarked, or submitted online following the instructions provided at [**web address**], by [**DATE**].**

**If you are a Settlement Class Member and you do not complete, sign, and return a Claim Form, or submit these materials online following the instructions provided at [**web address**], by the deadline, you will not receive Distribution Claim for Reimbursement Claim payment, but you will still be bound by all orders of the Court in this action, including that you will be deemed to have fully, finally, conclusively, irrevocably, and forever released, settled, compromised, relinquished, and discharged any and all of the Releasees of and from any and all Released Claims. If you have any questions or would like further information about the terms of the settlement, your eligibility for a payment, or how to make a claim for relief, you may read the Notice or visit [**web address**].**

**DISTRIBUTION CLAIM**  
**(Credit Reporting Harm)**

*Please complete this Form only if you are submitting a **Distribution Claim**. You can submit a Claim Form for **Distribution Claim** and **Reimbursement Claim** if both are applicable to you.*

You should complete this **Distribution Claim** only if:

- (1) you had a Bank of America or FIA Card Services credit card on which you defaulted and which was sold to a third-party Debt Buyer,
- (2) you obtained a Chapter 7 bankruptcy discharge on or after January 1, 2008 but before October 1, 2015,

AND

- (3) you have read the representations in the Notice and reproduced immediately below in italics, and you believe you are entitled to monetary compensation.

*This lawsuit alleges that Defendants failed to update credit reporting information for credit card accounts sold to third parties where the account holder's debts were discharged in Chapter 7 bankruptcy after they were sold. As a result, the tradelines continued to reflect that the debts were sold, charged off, and \$0 balance, and did not indicate that the debts were included in bankruptcy.*

*Based on these allegations, Plaintiffs claim that Defendants' tradeline reporting practices have harmed consumers by adversely affecting their ability to get credit and their credit scores. Plaintiffs also allege that Defendants' tradeline reporting practices have pressured some consumers into paying those discharged debts because they feared that not doing so would negatively impact the perception of their creditworthiness to prospective creditors and employers.*

If the above situation applies to you, you may be eligible for a **Distribution Claim** payment. **You do not need to submit any supporting documentation in order to be eligible for a Distribution Claim payment.** **Distribution Claim** payments will be distributed as a *pro rata* share of remaining funds in the Settlement Fund after all other Claims are paid.

**To be completed by you:**

- 1. Claimant(s)' Name(s) \_\_\_\_\_
- 2. Claimant(s)' Current Address \_\_\_\_\_  
(if different from the address \_\_\_\_\_  
on the envelope enclosing \_\_\_\_\_  
the claim form)
- 3. Claimant(s)' Date of Birth \_\_\_\_\_
- 4. Claimant(s)' Home Telephone Number \_\_\_\_\_
- 5. Claimant(s)' Social Security Number \_\_\_\_\_  
(Last four digits only for each Claimant)

**Check the boxes – and only those boxes – below that are true for you.**

- I would like to be considered for a *Distribution Claim* payment.
- I had a Bank of America or FIA Card Services credit card on which I defaulted.
- I obtained a Chapter 7 bankruptcy discharge between January 1, 2008 and October 1, 2015.
- I have read the representations in the Class Notice and reproduced above in italics, and I believe I am entitled to monetary compensation.

**If you checked all of the boxes above and your Claim submission is otherwise complete and timely, you will be considered for a Distribution Claim payment.**

**CERTIFICATION**

Definitions

All capitalized terms used but not defined herein shall have the same meanings as in the Settlement Agreement dated as of [DATE] (“the Agreement”), which is posted on the Settlement Administrator’s website at [web address].

Submission to Jurisdiction of Court and Acknowledgements and Affirmations

I submit this Claim Form under the terms of the Agreement described in the Notice. I further acknowledge that I am bound and subject to the terms of any judgment that may be entered in the Action. By submitting this Claim Form, I state that I have not previously entered into an individual settlement agreement with Bank of America and/or the Releasees in which I released any Released Claims against the Releasees; and that I have read and understand the Notice. The documentation I have provided (if any) to support my claim is original or a true and correct copy. I agree to furnish additional information to the Settlement Administrator to support this claim if requested to do so.

I certify that the foregoing information supplied by the undersigned is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name

**REIMBURSEMENT CLAIM**  
**(Post-Discharge Payments)**

Please complete this Form only if you are submitting a **Reimbursement Claim**. You can submit a Claim Form for a **Distribution Claim and Reimbursement Claim** if both are applicable to you.

You should complete this **Reimbursement Claim** only if:

- (1) you had a Bank of America or FIA Card Services credit card on which you defaulted,
  - (2) you obtained a Chapter 7 bankruptcy discharge on or after January 1, 2008 but before October 1, 2015,
- AND
- (3) you made a payment(s) on such credit card account *after* obtaining the bankruptcy discharge, and such payment(s) were not refunded or returned to you or a co-borrower on the credit card account (“post-discharge payments”).

If the above situation applies to you, you may be eligible for a cash payment up to the total amount of your post-discharge payments, subject to *pro rata* reduction as described in the Agreement and the Class Notice.

**PLEASE NOTE:** If you made a post-discharge payment(s) to Bank of America or FIA Card Services, you will receive an automatic payment in the amount of the **last** payment you made. You do not need to do anything to claim this payment. A check will be sent to you automatically, made payable jointly to you and all co-borrowers (if any) on your account. **However, if you made more than one post-discharge payment to Bank of America or FIA Card Services, you must submit this Reimbursement Claim Form to be eligible to receive a payment for all post-discharge payments you made before your last post-discharge payment.**

**To be completed by you:**

- 1. Claimant(s)' Name(s) \_\_\_\_\_
- 2. Claimant(s)' Current Address \_\_\_\_\_  
(if different from the address \_\_\_\_\_  
on the envelope enclosing \_\_\_\_\_  
the claim form)
- 3. Claimant(s)' Date of Birth \_\_\_\_\_
- 4. Claimant(s)' Home Telephone Number \_\_\_\_\_
- 5. Claimant(s)' Social Security Number \_\_\_\_\_  
(Last four digits only for each Claimant)

**Check the boxes – and only those boxes – below that are true for you.**

- I would like to be considered for a **Reimbursement Claim** payment.
- I had a Bank of America or FIA Card Services credit card on which I defaulted.

- I obtained a Chapter 7 bankruptcy discharge between January 1, 2008 and October 1, 2015.
- I made post-discharge payment(s) on the following date(s) \_\_\_\_\_.
- I made post-discharge payment(s) to the following recipient(s) \_\_\_\_\_.
- The total amount of the post-discharge payment(s) I made was \_\_\_\_\_.
- The post-discharge payment(s) were not refunded or returned to me or to a co-borrower on the credit card account.

**If you checked all of the boxes above, you may be eligible for a Reimbursement Claim payment. In order to be considered for a Reimbursement Claim payment, you MUST also submit documentation confirming the amount of your post-discharge payments listed above, in the form of cancelled checks, account statements, or other similar proof. The documents you submit must be originals or accurate copies.**

If you had any co-borrower(s) on your Bank of America or FIA Card Services credit card account, please list their full names below. Check the box to indicate whether the **Reimbursement Claim** payment for which you may be eligible should be made payable jointly with the co-borrower(s):

- The co-borrowers on my Bank of America, N.A. or FIA Card Services, N.A. credit card account are:  
\_\_\_\_\_.
- Payment of any **Reimbursement Claim** payment for which I may be eligible should be made payable jointly to the above-listed co-borrower(s).

### **CERTIFICATION**

#### Definitions

All capitalized terms used but not defined herein shall have the same meanings as in the Settlement Agreement dated as of [DATE] (“the Agreement”), which is posted on the Settlement Administrator’s website at [web address].

#### Submission to Jurisdiction of Court and Acknowledgements and Affirmations

I submit this Claim Form under the terms of the Agreement described in the Notice. I further acknowledge that I am bound and subject to the terms of any judgment that may be entered in the Action. By submitting this Claim Form, I state that I have not previously entered into an individual settlement agreement with Bank of America and/or the Releasees in which I released any Released Claims against the Releasees; and that I have read and understand the Notice. The documentation I have provided (if any) to support my claim is original or a true and correct copy. I agree to furnish additional information to the Settlement Administrator to support this claim if requested to do so.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name

# Exhibit 3



and

WHEREAS, all defined terms herein have the same meanings as set forth in the Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement.** Plaintiffs Michael Echevarria and Bebi Haniff, on behalf of themselves and all members of the Class, and Defendants Bank of America Corporation, Bank of America, N.A. (“BANA”), and FIA Card Services, N.A. (“Defendants”) have negotiated a potential settlement to the Action to avoid the expense, uncertainties, and burden of protracted litigation, and to resolve the Released Claims (as defined in the Agreement) against each Defendant and the Releasees.

2. **Review.** At the preliminary approval stage, the Court’s task is to evaluate whether the settlement is within the “range of reasonableness.” 4 Newberg on Class Actions § 11.26 (4th ed. 2010). “The court owes a duty to class members to ensure that the proposed settlement is ‘fair, reasonable and adequate.’” *In re Initial Public Offering Litig.*, 226 F.R.D. 186, 190 (S.D.N.Y. 2005) (quoting Fed. R. Civ. P. 23(e)(C)). “Ultimately, the approval of the proposed settlement is a matter of discretion for the trial court. In exercising that discretion, though, ‘it is axiomatic that the law encourages settlement of disputes.’” *Id.* (quoting *Bano v. Union Carbide Corp.*, 273 F.3d 120, 129 (2d Cir. 2001)). Settlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *See Manual for Complex Litigation*, Third, § 30.42 (West 1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arms’-length negotiations between experienced, capable counsel after meaningful discovery.”) (internal quotation marks omitted). The Court has carefully reviewed the Agreement, as well as the files, records, and proceedings to date in the Action. The terms and conditions in the Agreement are hereby incorporated as though fully set forth in this Order, and, unless otherwise indicated, capitalized terms in this Order shall have the meanings attributed to them in the Agreement.

3. **Jurisdiction.** This Court and the District Court have jurisdiction over the subject matter of the Action and over all parties to the Action, including all Members of the Class, and venue in this Court is proper.

4. **Preliminary Approval.** The Court does hereby preliminarily approve the Agreement and the Settlement set forth therein as fair, reasonable, and adequate, subject to further consideration at the Final Approval Hearing described below. The Court finds on a preliminary basis that the Settlement as set forth in the Agreement falls within the range of reasonableness and was the product of informed, good-faith, arms'-length negotiations between the Parties and their counsel, and therefore meets the requirements for preliminary approval.

5. **Settlement Class.** The Court conditionally certifies, for settlement purposes only (and for no other purpose and with no other effect upon the Action, including no effect upon the Action should the Agreement not receive final approval or should the Effective Date not occur), a class defined as the collective group of those individual borrowers who (i) maintained a credit card account with BANA that was charged off by BANA and sold to a third party Debt Buyer on or after January 1, 2008, and (ii) were discharged in Chapter 7 bankruptcy after such debt was sold to a third party Debt Buyer but before October 1, 2015. The Court finds, for settlement purposes only, that class certification under Fed. R. Civ. P. 23(b)(3) is appropriate in that, in the settlement context: (a) the Members of the Class are so numerous that joinder of all Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual question; (c) the claims of the Class Representatives are typical of the claims of the Class; (d) the Class Representatives and their counsel will fairly and adequately represent and protect the interests of the Class Members; (e) the Class is ascertainable; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

6. **Designation of Class Representatives and Class Counsel.** The Court appoints the Plaintiffs Michael Echevarria and Bebi Haniff as Class Representatives, and the law firms of Boies Schiller & Flexner LLP and Charles Juntikka & Associates LLP as Class Counsel.

7. **Final Approval Hearing.** A hearing (the “Final Approval Hearing”) shall be held before the District Court on \_\_\_\_\_, 2017, at \_\_\_\_\_.m., at the United States District Court for the Southern District of New York, 300 Quarropas Street, Courtroom 620, White Plains, NY 10601, to determine, among other things: (i) whether the proposed Settlement of the Action on the terms and conditions provided for in the Agreement is fair, reasonable, and adequate to the Class and should be approved by the Court; (ii) whether a Judgment as provided in Paragraph 1.33 of the Agreement should be entered; (iii) whether Class Members should be bound by the Release set forth in the Agreement; and (iv) any amount of fees and expenses that should be awarded to Class Counsel.

8. **Class Notice.** The Court approves the form, substance and requirements of the Notice of Proposed Settlement of Class Action (“the Notice”) and the Claim Form annexed hereto as Exhibits 1-A and 1-B, respectively. The Court further finds that the form, content and mailing of the Notice, substantially in the manner and form set forth in Paragraphs 7 and 8 of this Order, meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The Court further finds that this is the best notice practicable under the circumstances and is reasonably calculated, under all the circumstances, to apprise potential Class Members of the pendency of the Action, to apprise persons who would otherwise fall within the definition of the Class of their right to exclude themselves from the proposed Class, and to apprise Class Members of their right to object to the proposed Settlement and their right to appear at the Final Approval Hearing. The Court further finds that the Notice constitutes due and sufficient notice to all persons entitled thereto.

9. **Settlement Administrator.** Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure, the Court appoints Epiq Class Action & Claims Solutions, Inc. (“Settlement Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

(a) No later than forty-five (45) days from the entry of this Order (the “Notice Mailing Date”), the Settlement Administrator shall cause a copy of the Notice, substantially in the

form annexed as Exhibit 1-A hereto, together with the Claim Form, substantially in the form annexed as Exhibit 1-B hereto, to be mailed by first class mail to each individual on the Notice List;

(b) No later than the Notice Mailing Date, the Settlement Administrator shall establish a website at \_\_\_\_\_, and shall post on the website the Agreement, the Class Notice, and the Claim Form;

(c) Following the mailing of the Notice, the Settlement Administrator shall provide counsel with written confirmation of the mailing; and

(d) The Settlement Administrator shall otherwise carry out its duties as set forth in Section 7 of the Agreement.

10. **Submission of Claim Forms.** Class Members who wish to receive a Claim Type 1 or Claim Type 2 payment under the Settlement shall complete, sign and return their Claim Forms in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be submitted electronically or postmarked no later than thirty (30) days before the Final Approval Hearing. Any Class Member who does not timely and validly submit a Claim Form within the time provided shall be barred from receiving a Claim Type 1 or Claim Type 2 payment under the Settlement, unless otherwise ordered by the Court, but shall nevertheless be bound by any Final Judgment entered by the Court.

11. **Exclusion from the Class.** Any Class Member may, upon request, be excluded from the Class. Any such Class Member must submit a written Request to Opt Out no later than thirty (30) days before the Final Approval Hearing. The written Request to Opt Out must be sent to the Settlement Administrator: *Echevarria, et al. v. Bank of America Corp., et al.*, Settlement Administrator, [Address]. To be valid, the Request to Opt Out must include the Class Member's name, address, original signature, and a statement that indicates a desire to be excluded from the Settlement Class. All Class Members who submit valid and timely Requests to Opt Out in the manner set forth in this Paragraph shall have no rights under the Agreement, shall not receive a Settlement payment, and shall not be bound by the Agreement or any Final Judgment. Mass or

class opt outs shall not be allowed. A Class Member who desires to opt out must take timely affirmative written action pursuant to this Order and the Agreement, even if the person desiring to opt out of the Class (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of the Release Parties.

12. **Copies of Requests to Opt Out.** The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests to Opt Out within seven (7) business days after the Opt-Out Deadline.

13. **Entry of Appearance.** Any member of the Class who does not exclude himself or herself from the Settlement Class may enter an appearance in the Action, at his or her own expense, individually or through counsel of his or her own choice. If he or she does not enter an appearance, he or she will be represented by Class Counsel.

14. **Binding Effect on Class.** All Members who do not exclude themselves from the Settlement Class by properly and timely submitting an exclusion form shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class.

15. **Objections.** Any Class Member who does not timely and validly exclude himself or herself from the Settlement Class may appear and show cause, if he or she has any reason why the proposed Settlement of the Action should not be approved as fair, reasonable and adequate, why a Final Judgment should not be entered thereon, why attorneys' fees and expenses should not be awarded to Class Counsel; provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Final Judgment to be entered thereon approving the same, or any attorneys' fees and expenses to be awarded to Class Counsel or award made to the Class Representatives, unless a written objection is filed with the Clerk of the United States District Court for the Southern District of New York, 300 Quarropas Street, White Plains, NY 10601, on or before thirty (30) days before the Final Approval Hearing. A copy of the objection must also be mailed to Class Counsel and

Defense Counsel, postmarked on or before thirty (30) days before the Final Approval Hearing. To be valid, the objection must set forth, in clear and concise terms: (a) the case name and number (*Echevarria, et al. v. Bank of America Corp., et al.*, Adv. Pro. No. 14-08216); (b) the name, address, and telephone number of the objector objecting and, if represented by counsel, of his or her counsel; (c) the basis for objection; and (d) a statement of whether the objector intends to appear at the Final Approval Hearing, either with or without counsel. Any Class Member who does not make his or her objection in the manner provided shall be deemed to have waived such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Agreement, and to the award of attorneys' fees and expenses to Class Counsel and the payment of an award to the Class Representatives for their representation of the Class, unless otherwise ordered by the Court.

16. **Appearance of Objectors at Final Approval Hearing.** Any Class Member who files and serves a written objection in accordance with Paragraph 15 of this Order may appear, in person or by counsel, at the Final Approval Hearing held by the District Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, but only if the objector: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline ("Notice of Intention to Appear"); and (b) serves the Notice of Intention to Appear on Class Counsel and Defense Counsel by the Objection Deadline. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objector will present to the District Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing and raise any objections.

17. **Service of Motion for Final Approval.** The motion in support of final approval of the Settlement and Class Counsel's application for Attorneys' Fees and Expenses shall be filed and served no later than fourteen (14) calendar days prior to the Final Approval Hearing and any

responsive papers shall be filed and served no later than seven (7) calendar days prior to the Final Approval Hearing.

18. **Fees, Expenses, and Awards.** Neither Defendants nor the Releasees shall have any responsibility for any application for Attorneys' Fees and Expenses submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. At or after the Final Approval Hearing, the District Court shall determine whether any application for Attorneys' Fees and Expenses, and any award to the Class Representatives for their representation of the Class, should be approved.

19. **Releases.** If the Settlement is finally approved, the Releasers shall release the Releasees from all Released Claims.

20. **Use of Order.** Neither this Order, the fact that a settlement was reached and filed, the Agreement, nor any related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Defendants. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered, admitted, or referred to in the Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only the Parties in a proceeding to enforce the Agreement.

21. **Adjournment of Final Approval Hearing.** This Court and the District Court reserve the right to adjourn the date of the Final Approval Hearing without further notice to the Members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The District Court may approve the Settlement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

22. **Stay of Proceedings.** All proceedings in this Action are stayed until further Order of this Court, including all proceedings in the Echevarria Bankruptcy and the Haniff Bankruptcy, including any examination by the United States Trustee, except as may be necessary to implement the Settlement or comply with the terms of the Agreement.

23. **Preliminary Injunction.** Pending final determination of whether the Settlement should be approved, and upon expiration of the Opt-Out Deadline, all Class Members who do not timely and validly exclude themselves from the Settlement Class, and each of them, and anyone who purports to act on their behalf, are preliminarily enjoined from directly or indirectly maintaining, commencing, prosecuting, or pursuing directly, representatively, or in any other capacity, any Released Claim subsumed and covered by the Release in the Agreement, including in any court or arbitration forum.

24. **Termination of Settlement.** If: (a) the Agreement is terminated as provided in Section 13 of the Agreement; or (b) any specified material term or condition of the Settlement as set forth in the Agreement is not satisfied as provided in Section 13 of the Agreement, then this Order may not be introduced as evidence or referred to in any actions or proceedings by any person or entity and shall be treated as vacated, *nunc pro tunc* (except Paragraph 20 of this Order shall remain in effect), and each party shall be restored to his, her, or its respective position in this Action as it existed prior to the execution of the Agreement.

25. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

26. **Authority.** The Court hereby authorizes the Parties to take such further steps as necessary and appropriate to establish the means necessary to implement the terms of the Agreement.

27. **Jurisdiction.** This Court and the District Court retain jurisdiction over the Action to consider all further matters arising out of or connected with the Agreement and the Settlement.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

# Exhibit 4

**UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK**

---

MICHAEL ECHEVARRIA and BEBI HANIFF, :  
: :  
: :  
Debtors and Plaintiffs on :  
behalf of themselves and all :  
others similarly situated, :  
: :  
v. :  
: :  
BANK OF AMERICA CORPORATION; :  
BANK OF AMERICA, NATIONAL :  
ASSOCIATION; and FIA CARD :  
SERVICES, N.A., :  
: :  
Defendants. :  
:

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No. [DC Case No.]

**[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE**

This matter came before the Court for hearing pursuant to the Order of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) dated \_\_\_\_\_, 201\_, on the application of the Parties for approval of the Settlement set forth in the Settlement Agreement and Release dated \_\_\_\_\_, 2017 (the “Agreement”). On \_\_\_\_\_, 201\_, the Bankruptcy Court granted preliminary approval to the proposed class action settlement set forth in the Agreement between Plaintiffs Michael Echevarria and Bebi Haniff (“Class Representatives”), on behalf of themselves and all members of the Class, and Bank of America, N. A. (“BANA”). The Bankruptcy Court also provisionally certified the Class for settlement purposes, approved the procedure for giving Class Notice to the members of the Settlement Class, and set a Final Approval Hearing to take place on \_\_\_\_\_, 2017. This Court finds that the Class Notice substantially in the form approved by the Bankruptcy Court in the Preliminary Approval Order was given in the manner ordered by the Bankruptcy Court, constitutes the best practicable notice, and was fair, reasonable, and adequate.

On \_\_\_\_\_, 2017, this Court held a duly noticed Final Approval Hearing to

consider: (1) whether the terms and conditions of the Agreement are fair, reasonable and adequate; (2) whether a judgment should be entered dismissing the Class Representatives' Released Claims on the merits and with prejudice; and (3) whether and in what amount to award attorneys' fees and expenses to Class Counsel for the Class.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. **Definitions.** This Judgment incorporates by reference the definitions in the Agreement, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Agreement.

2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Members of the Class, and venue in this Court is proper.

3. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.

4. **Settlement Class.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies this Action as a class action, with the Class defined as those individual borrowers who (i) maintained a credit card account with BANA that was charged off by BANA and sold to a third party Debt Buyer on or after January 1, 2008, and (ii) were discharged in Chapter 7 bankruptcy after such debt was sold to a third party Debt Buyer but before October 1, 2015. The Court finds, for settlement purposes only, that class certification under Fed. R. Civ. P. 23(b)(3) is appropriate in that, in the settlement context: (a) the Members of the Class are so numerous that joinder of all Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual question; (c) the claims of the Class Representatives are typical of the claims of the Class; (d) the Class Representatives and their counsel will fairly and adequately represent and protect the interests of the Class Members; (e) the class is ascertainable; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. **Designation of Class Representatives and Class Counsel.** The Court confirms the prior appointments of the Plaintiffs Michael Echevarria and Bebi Haniff as Class Representatives, and the law firms of Boies Schiller & Flexner LLP and Charles Juntikka & Associates LLP as Class Counsel.

6. **Settlement Approval.** Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the Settlement set forth in the Agreement and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Parties. The Court further finds that the Settlement set forth in the Agreement is the result of good faith arm's-length negotiations between experienced counsel representing the interests of the Parties. Accordingly, the Settlement embodied in the Agreement is hereby finally approved in all respects, there is no just reason for delay, and the Parties are hereby directed to perform its terms.

7. **Credit Reporting.** The Court further finds that insofar as BANA has directed the Credit Reporting Agencies to delete any BANA-reported tradelines with respect to the Discharged Credit Card Accounts (as those terms are defined in the Agreement), it has cured any violation of a discharge order or noncompliance with applicable law, including the Fair Credit Reporting Act, and that BANA's request was consistent with BANA's obligations, if any, to report on post-sale, bankruptcy-related information with respect to such accounts. If in the future BANA sells Discharged Credit Card Accounts that are thereafter made subject to a bankruptcy discharge, and BANA requests the deletion of associated tradelines, as permitted under section 3 of the Agreement, such request would be in compliance with applicable law, including the Fair Credit Reporting Act, and remove any obligation to report on post-sale, bankruptcy-related information with respect to such accounts.

8. **Dismissal with Prejudice.** Final Judgment is hereby entered with respect to the Released Claims of all Settlement Class Members, and the Released Claims in the Action are hereby dismissed in their entirety with prejudice and without costs. All claims in the Action are dismissed, and the case shall be closed pursuant to Paragraph 23 of this Order. Nothing herein is

intended to waive or prejudice the rights of Class Members who have timely excluded themselves from the Class, as identified on Exhibit 1 hereto.

9. **Releases.** The releases as set forth in Section 10 of the Agreement together with the definitions in Sections 1.1-1.60 relating thereto are expressly incorporated herein in all respects and made effective by operation of this Judgment. The Court hereby approves the release provisions as contained and incorporated in Section 10 of the Agreement, including but not limited to the definitions of Released Claims, Releasors, Releasees and Unknown Claims. The Releasors shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all Released Claims (including Unknown Claims) against the Releasees.

10. **Permanent Injunction.** The Releasors, including the Class Representatives and all Settlement Class Members, and anyone claiming through or on behalf of any of them, are forever barred and enjoined from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind (whether within the United States or not), either directly, representatively or in any other capacity, asserting any of the Released Claims (including Unknown Claims) against any of the Releasees. The Releasors further are forever barred and enjoined from organizing Settlement Class Members, or soliciting the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Members but who have requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action (including by seeking to amend a pending complaint or counterclaim to include class allegations, or seeking class certification in a pending action in any jurisdiction based on or relating to any of the Released Claims).

11. **Approval of Class Notice.** The form and means of disseminating the Class Notice as provided for in the Order Preliminarily Approving Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all

Members of the Class who could be identified through reasonable effort. Said Notice provided the best notice practicable under the circumstances of the proceedings and the matters set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said Notice fully satisfied the requirements of Federal Rule of Civil Procedure 23 and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution.

12. **Attorneys' Fees and Expenses.** Any order entered regarding the Attorneys' Fees and Expenses application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

13. **Use of Order.** Neither this Order, the fact that a settlement was reached and filed, the Agreement, nor any related negotiations, statements or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Defendants. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered, admitted, or referred to in the Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only the Parties in a proceeding to enforce the Agreement.

14. **Continuing Jurisdiction.** Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment, and for any other necessary purpose, including to ensure compliance with the Protective Orders.

15. **Termination of Settlement.** In the event that the Settlement does not become effective in accordance with the terms of the Agreement, or the Agreement is terminated pursuant to Section 13 of the Agreement, the Parties shall be restored to their respective positions in the Action prior to the execution of the Agreement, the certification of the Settlement Class

shall be automatically vacated, and this Judgment shall be rendered null and void (except Paragraph 13 of this Order shall remain in effect) to the extent provided by and in accordance with the Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

16. **Implementation of the Agreement.** The Parties are hereby authorized to implement the terms of the Agreement.

17. **Claim Review and Deficiency Process.** The Settlement Administrator shall validate each Claim Form as directed in Section 5 of the Agreement. Full compliance with the requirements of the terms of the Agreement and the Claim Form shall be necessary for the submission of a valid Claim. The Settlement Administrator shall have the authority to determine whether the submission of a Claim Form is complete and timely. The Settlement Administrator's determinations in this regard shall be final and non-appealable. Any Settlement Class Member whose claim is rejected shall be barred from receiving payment under the Settlement for that Claim Type 1 or 2 but shall in all other respects be bound by the terms of the Agreement and by this Order.

18. **Reasonable Extensions.** Without further order of this Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Agreement.

19. **CAFA Notice.** Defendants have provided notification to all appropriate federal and state officials regarding the Settlement as required by 28 U.S.C. § 1715.

20. **Class Notice List.** No later than thirty (30) days after the Effective Date (as defined in the Agreement), the Settlement Administrator shall file with this Court, under seal pursuant to the Protective Order entered in this litigation (in order to protect the names and addresses of Class Members), a list of the names and addresses of all Members of the Class to whom the Class Notice was sent.

21. **Preservation.** Upon the Effective Date, the Defendants shall have no obligation to preserve documents and evidence with respect to Released Claims, and the Class

Representatives and Class Counsel may not pursue any spoliation claims or other actions or sanctions against Defendants with respect to documents or evidence related to the Released Claims.

22. **Entry of Final Judgment.** There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is hereby directed.

23. **Action Closed.** The Clerk of the Court is hereby directed to close the Action and to close the Echevarria and Haniff Bankruptcies.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE VINCENT L. BRICCETTI  
UNITED STATES DISTRICT JUDGE