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 13 *the Putative Class*

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERICO GALAVIS and ZAK
 KIRIAKOS, Individually and On Behalf
 of All Others Similarly Situated,

Plaintiffs,

vs.

BANK OF AMERICA, N.A. and VISA,
 INC.,

Defendants.

Case No.:

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF THE FEDERAL TRUTH IN LENDING ACT, 15 U.S.C. § 1601, *et seq.*;
- (2) BREACH OF CONTRACT;
- (3) TORTUOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
- (4) DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. § 2201

DEMAND FOR JURY TRIAL

1 Pursuant to Fed. R. Civ. P. 23, Plaintiffs Federico Galavis and Zak Kiriakos
2 bring this class action individually and on behalf of all other persons in the United
3 States who, upon purchasing a cryptocurrency from Coinbase.com or another Visa
4 credit card merchant, incurred cash advance fees and/or cash advance interest charges
5 on a consumer credit card issued by Defendant Bank of America, N.A. Plaintiffs
6 make the following allegations based on the investigation of their counsel, and based
7 upon personal knowledge as to themselves and their own acts and dealings with
8 Defendant Bank of America, N.A. Plaintiffs and their counsel believe that substantial,
9 additional evidentiary support will exist for the allegations set forth herein after a
10 reasonable opportunity for discovery.
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13 INTRODUCTION

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15 1. Bank of America, N.A. (“BOA” or “Defendant”) is one of the largest
16 credit card issuers in the United States. BOA partners with the nation’s two largest
17 credit card networks, Visa, Inc. (“Visa”) and MasterCard, Inc. (“MasterCard”), to
18 facilitate BOA’s payments to merchants on behalf of credit cardholders. Visa and
19 MasterCard, in turn, partner with merchants worldwide to allow them to receive credit
20 card payments from BOA and other credit card issuers.
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22
23 2. Upon opening a consumer credit card account, BOA provides the
24 consumer with a standard form, adhesive contract stating the terms under which BOA
25 will extend credit to the consumer. Among those terms are the types of transactions
26 that result in different finance charges.
27

1 3. BOA’s written contracts and account-opening disclosures to cardholders
2 (the “Written Contracts”) show that BOA will charge a particular interest rate for
3 credit card “Purchases,” and a higher rate for so-called “Cash Advances.” “Purchases”
4 and “Cash Advances” are defined terms under the Written Contracts. The Written
5 Contracts state that BOA will extend credit in the form of a Cash Advance in
6 exchange for a transaction fee, in the greater amount of \$10.00 or 5% of the
7 transaction amount. BOA will also assess interest charges of over 26% annually,
8 which accrue daily on both the transaction amount and the transaction fee, beginning
9 on the transaction date.
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13 4. By contrast, BOA’s Written Contracts provide that credit card
14 “Purchases” come with no transaction fees and lower interest rates. BOA begins
15 charging interest on Purchases only (if ever) after a cardholder’s payment due date has
16 passed without the cardholder paying off their balance. By paying off one’s entire
17 account balance before the payment due date, a cardholder can avoid paying interest
18 on their Purchases, and many consumers often do this to avoid interest charges. With
19 Cash Advances, however, this frugal practice is impossible; the cardholder is charged
20 heavily, starting the day of the transaction and continuing every day thereafter until the
21 balance is paid in full.
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25 5. Plaintiffs and thousands of Class members have used their BOA credit
26 cards to buy so-called “cryptocurrencies” (also called “virtual currencies” or
27 “cryptos”), such as Bitcoin, Litecoin and Ethereum. BOA’s Written Contracts do not
28

1 expressly address cryptos or the so-called “blockchain” technologies upon which
2 cryptos operate. The Written Contracts, however, make clear that the term “Purchase”
3 includes any “transaction that is not otherwise a Cash Advance.” And as detailed
4 herein, the buying of cryptos from a third-party credit card merchant does *not* fit
5 within any of the types of transactions which the Written Contracts enumerate as
6 “Cash Advances.”
7

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9 6. Moreover, beginning in 2016 or earlier, BOA properly designated,
10 disclosed, and charged Plaintiffs’ and other Class members’ crypto purchases as
11 “Purchase” transactions under their Written Contracts.
12

13 7. From 2016 until and including January 22, 2018, BOA *correctly* deemed,
14 and affirmatively disclosed and charged, such transactions as “Purchases” under its
15 Written Contracts. BOA assessed no transaction fees, and applied the same interest
16 charges that it applied for all other types of credit card Purchases. Plaintiffs made
17 numerous crypto purchases during 2017 and early 2018, which BOA affirmatively
18 designated, disclosed, and billed to them as “Purchases.”
19

20
21 8. Then, between January 23, 2018 and February 2, 2018 (inclusive),
22 Plaintiffs bought more cryptos using their same BOA credit cards, under the same
23 Written Contracts. BOA wrongly treated all crypto transactions occurring between
24 *those* dates as “Cash Advances”: contrary to the plain language of its Written
25 Contracts, and contrary to BOA’s prior dealings with Plaintiffs and the Class. BOA
26 has assessed hundreds of dollars in surprise Cash Advance fees and interest charges
27
28

1 against Plaintiffs, without any advance notice, and now refuses to undo them. BOA's
2 acts and omissions violated the Written Contracts, the federal Truth in Lending Act
3 ("TILA") and Regulation Z promulgated thereunder by the U.S. Consumer Financial
4 Protection Bureau ("Bureau"). As detailed *infra*, Defendant Visa, Inc. ("Visa") also
5 knowingly and tortuously interfered with Plaintiffs' and the Class's contractual
6 relationships with BOA.
7

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9 9. As a direct and proximate result of Defendants' wrongful conduct,
10 Plaintiffs estimate that they and the Class have incurred millions of dollars in Cash
11 Advance fees and interest charges on their BOA credit cards. The Class's actual
12 financial damages are readily quantifiable based on BOA's records of the credit card
13 transactions and finance charges in question. Plaintiffs and the Class seek, *inter alia*,
14 complete relief from all Cash Advance fees and interest charges levied against them
15 by BOA for their cryptocurrency purchases. Plaintiffs and the Class further seek a
16 declaratory judgment from this Court, clarifying the Class's legal obligations under the
17 Written Contracts, once and for all.
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21 JURISDICTION AND VENUE

22 10. With respect to Plaintiffs' claims under the Truth in Lending Act, 15
23 U.S.C. § 1601, *et seq.*, Regulation Z promulgated thereunder at Title 12, Part 1026 of
24 the Code of Federal Regulations, and the Declaratory Judgment Act, 28 U.S.C. §
25 2201, this Court has jurisdiction over the subject matter of this action pursuant to 28
26 U.S.C. § 1331, as this is a civil action arising under the laws of the United States.
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1 11. With respect to Plaintiffs' state law claims, the Court has jurisdiction
2 under 28 U.S.C. § 1332(d) because the aggregate amount in controversy exceeds
3 \$5,000,000 and Plaintiffs and many Class members are citizens of States different
4 from the Defendants. If, however, the Court determines that it lacks jurisdiction over
5 Plaintiffs' state law claims under 28 U.S.C. § 1332(d), then it may exercise
6 supplemental jurisdiction over such claims pursuant to 28 U.S.C. § 1367.
7

8
9 12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as
10 Plaintiff Galavis resides within this district, and a substantial part of the events and
11 property giving rise to the claims presented herein are located within this district. In
12 addition, Visa is headquartered in California and transacts substantial business within
13 this district. Many of the acts that constitute the violations of law complained of
14 herein occurred in substantial part in this District.
15

16
17 **PARTIES**

18 13. Plaintiff Zak Kiriakos is a resident of California and has been a Bank of
19 America credit cardholder since 2017 or earlier.
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21 14. Plaintiff Galavis is a resident of California and has been a Bank of
22 America credit cardholder since 2017 or earlier.
23

24 15. Defendant Bank of America, N.A. is domiciled in North Carolina and is
25 one of the largest national banks and credit card issuers in the United States.
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1 and ink, and a deposit is merely a book entry. Thus, money has no real “use case”
2 other than to serve as money. Thus, the ultimate value and viability of fiat currencies,
3 including the U.S. dollar and various foreign currencies, depend upon: (a) a
4 government which has a sovereign monopoly over the provision of its own fiat
5 currency; and (b) the fact that such fiat currency is the *only* unit which is acceptable
6 for payment of taxes and other financial demands of the government.
7

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9 19. Governments create money principally through the mechanism of a
10 central bank: in the U.S., the Federal Reserve System, which interacts with public-
11 facing depository institutions. The actual process of money creation takes place
12 primarily in banks, with major control over the process ultimately resting in the
13 central bank. If one examines a piece of actual U.S. currency, such as a Series 2009
14 \$20 bill, one can see evidence of both the “fiat” nature, and central bank origin, of our
15 nation’s currency. It is labeled as a “Federal Reserve Note,” displays the official seal
16 of the United States Federal Reserve System, displays copies of the personal
17 signatures of the Treasurer of the United States and the U.S. Secretary of the
18 Treasury, and states, “THIS NOTE IS LEGAL TENDER FOR ALL DEBTS,
19 PUBLIC AND PRIVATE.”
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23 **What is a “Cryptocurrency” or “Virtual Currency”?**
24

25 20. In short: not money. Virtual currencies are not legal tender for *any* (let
26 alone “all”) debts, whether public or private. Nor do virtual currencies represent
27 *claims on* legal tender.
28

1 21. The government does not accept payment for taxes or other obligations,
2 such as traffic tickets or student loans, in “virtual currency.” The overwhelming
3 majority of *private* businesses and individuals will also not accept payment for the sale
4 of goods, services, or real or financial assets in “virtual currency.”
5

6 22. No government has a sovereign monopoly on the creation of
7 cryptocurrencies. In fact, no person or entity has a monopoly: or any control at all for
8 that matter. Literally anyone can create their own cryptocurrency at any time, so long
9 as they are sufficiently skilled at programming computers. Indeed, stripped down of
10 rhetoric, cryptocurrencies are — at their core — arbitrary computer codes generated
11 through the use of popular computer programming languages, such as “C++.”
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14 23. “Blockchain” software is the technological foundation of
15 “cryptocurrencies,” which are named as such because of a blockchain’s heavy usage
16 of “cryptographic functions.”¹ Basically, blockchain software consists of a lot of
17 computer code used to store data, somewhat like a traditional database, yet
18 substantially different in the way it functions.
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21 24. Bitcoin, the first ever cryptocurrency, was released as open-source
22 software in 2009 by an anonymous person, or group of persons, under the pseudonym
23

24 ¹ A “cryptographic function” can be described as a mathematical algorithm which
25 maps data of arbitrary size to a bit string (hence, the name “*bitcoin*”) of a fixed size,
26 called a “hash value” or “hash.” Cryptographic functions are designed to be one-way
27 mathematical functions: that is, a function which is practically impossible to solve in
28 reverse. Generally speaking, the only way to recreate the *input* data from a proper
cryptographic function’s *output* data (the “hash”) is to try *all possible inputs* to see if
they produce a matching output. The input data of a cryptographic function is often
called the “message,” and the output hash value is often called the “message digest” or
“digest.”

1 “Satoshi Nakamoto.” Since 2009, several other cryptocurrencies have been invented
2 by private persons seeking to improve upon, or offer alternatives to, Bitcoin software.
3 Some of the most popular cryptos available for “mining” or purchase today include
4 Litecoin, Ethereum, and Ripple.²

6 25. In 2011, a computer scientist named Charlie Lee created Litecoin as
7 another open source software project. In technical details, Bitcoin and Litecoin
8 software are largely the same: people can create and transfer “coins” (*i.e.*, arbitrary
9 computer codes) to each other based on an open source, cryptographic protocol. All
10 transfers are recorded and stored on the “blockchain” that corresponds to the given
11 “coin.” In 2012, someone else invented Ripple. Someone else invented Ethereum in
12 2013. Ripple and Ethereum are less similar to Bitcoin in their technical functions than
13 is Litecoin. Ripple and Ethereum are also different from each other in their technical
14 functions.

18 26. Nobody has a monopoly, control or oversight on the invention of
19 cryptocurrencies. Additionally, once a new crypto-blockchain project is invented and
20 publicly distributed, it may well change into something else later. This is because the
21 blockchain upon which a given virtual currency operates is maintained through a
22 consensus of private computers running the given blockchain’s software; these private
23 computers are called “mining nodes.”

26 _____
27 ² Bitcoins and other cryptos are “mined” through the use of private computers to solve
28 complex math problems. Upon solving a given math problem, the “miner” is awarded
units of Bitcoin or whatever other crypto is being “mined.”

1 27. There is no central authority to validate transactions or ownership. In
2 fact, the widely known “Bitcoin” cryptocurrency of today is not the same “Bitcoin”
3 that existed as recently as 2017. They are, today, two distinct virtual currencies
4 operating on two distinct blockchains, with two different records of transactions and
5 ownership. Likewise, the “Ethereum” cryptocurrency of today is not the same
6 “Ethereum” cryptocurrency of 2015; they are today two distinct virtual currencies,
7 operating on two distinct blockchains with two different records of transactions and
8 ownership. In both cases, a “forking” of the blockchain and corresponding
9 cryptocurrency occurred because of significant changes to the blockchain’s software
10 that not all users (or “mining nodes”) agreed upon. Consequently, in each case, there
11 are now two distinct cryptocurrencies instead of one.
12

13 28. All that to say: private computer programmers create cryptos, and private
14 computer programmers can *and do* change the nature, function and ownership of
15 cryptos on the fly. And such “forking” is not considered scandalous or unlawful.
16

17 29. Cryptos can also have use cases beyond serving as digital units of
18 “currency.” Ethereum, for example, is a blockchain software platform focused on
19 providing “smart contracts.” Smart contracts are computer programs that are stored on
20 the Ethereum blockchain, and can be accessed by Ethereum users. Smart contracts are
21 capable of, *inter alia*, managing agreements between users, storing information about
22 a particular application (such as domain registration information or membership
23 records), and interacting with other “smart contracts” (*i.e.*, computer programs).
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1 30. Ultimately, despite cryptos' lack of government endorsement, economic
2 status, centralized oversight, acceptability as payment, or even cognitive accessibility
3 in the minds of laypersons, cryptocurrencies have gained broad-based public attention
4 for their potential *applications* in the future of business and finance. Many consumers
5 have come to view cryptos and blockchain software as the future of money, or the
6 future of financial technology. Even major banks like BOA see valuable, potential
7 applications for this *technology* in future monetary transactions and economic
8 transactions. *See, e.g.,* [https://www.ccn.com/big-banks-are-investing-heavily-in-](https://www.ccn.com/big-banks-are-investing-heavily-in-blockchain-and-crypto-364-billion-investment-firm/)
9 [blockchain-and-crypto-364-billion-investment-firm/](https://www.ccn.com/big-banks-are-investing-heavily-in-blockchain-and-crypto-364-billion-investment-firm/) (last visited August 15, 2018).

10 31. As of today, though, cryptos are not money: not even close. Nor do
11 cryptos represent claims on, or derivatives of, money. Whatever their “coin”-sounding
12 names might portend, virtual currencies and their blockchain systems are,
13 fundamentally, private-sector technologies, arbitrary computer codes, and software
14 applications. Accordingly, the U.S. Internal Revenue Service deems cryptos to be
15 personal “property” (not “currency,” or money) for federal tax purposes. With court
16 approval, the U.S. Commodity Futures Trading Commission regulates the purchase
17 and sale of cryptos as transactions in “commodities.” *See, e.g., C.F.T.C. v.*
18 *McDonnell*, 287 F.Supp.3d 213, 228 (E.D.N.Y. 2018) (“Virtual currencies are ‘goods’
19 exchanged in a market for a uniform quality and value.”) (emphasis added).
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Crypto Sellers As Credit Card Merchants

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2 32. In recent years, as virtual currencies began to spread from a small
3 segment of computer science gurus, into the media, and ultimately into the public
4 consciousness, tech-savvy entrepreneurs began to develop new infrastructures to
5 support the buying and selling of cryptos to consumers. Among such “infrastructure”
6 businesses was a now-prominent website called “Coinbase” (www.coinbase.com).
7
8 Coinbase serves as one of the largest cryptocurrency dealers in the United States.
9
10 Coinbase.com is owned and operated by San Francisco-based Coinbase, Inc., a
11 privately held company that buys and sells cryptocurrencies to consumers through a
12 user-friendly web interface.
13

14 33. For those consumers who think it prudent to acquire a virtual currency for
15 investment or other purposes, but who lack the computing power to “mine” (or invent)
16 cryptos themselves, Coinbase is one of the easiest and most cost-effective options for
17 acquiring a crypto. Upon creating an online account with Coinbase, a user may login
18 to their account, select a type and quantity of virtual currency to buy, enter their
19 payment information, click “Buy,” and become the owner of a virtual currency.
20
21 Coinbase itself buys cryptos from, and sells cryptos to, its customers, rather than
22 facilitating transactions between customers.³
23
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26
27 ³ Coinbase is sometimes referred to as a cryptocurrency “exchange,” but Coinbase is
28 not an exchange in the mold of stock exchanges or other securities and commodities
exchanges.

1 34. In mid-2016, Coinbase began accepting credit card payments from its
 2 customers for cryptos. Many consumers took advantage of the opportunity to buy
 3 cryptos with their credit cards, not because they needed to borrow money to make the
 4 purchase, but because using a credit card was the most *convenient* way to acquire
 5 cryptos instantly via Coinbase and other merchants. Buying virtual currencies with a
 6 bank account number would require days of processing time, so many consumers used
 7 credit cards to buy cryptos from Coinbase and other merchants to avoid delays in
 8 delivery, or for other reasons.
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11 **SUBSTANTIVE ALLEGATIONS**

12 **BOA's Written Contracts and Disclosures to Its Credit Cardholders**

13 35. BOA issues a number of different credit cards to consumers nationwide,
 14 such as the Bank of America Cash Rewards Visa, Bank of America Travel Rewards
 15 Visa, and the BankAmericard Platinum Plus MasterCard, which differ primarily
 16 according to their “introductory offers” and “rewards” features. These include
 17 account-opening bonus offers, as well as other forms of compensation that vary
 18 according to a card member’s spending levels.
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22 36. As far as is relevant to this case, all BOA-issued consumer credit cards
 23 come with substantially identical Written Contracts. *E.g.*, Ex. A. At all relevant
 24 times, each Written Contract has set forth the applicable interest rates and fees that
 25 apply to different types of credit card transactions. Each Written Contract provides for
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1 some variable annual percentage rate (“APR”) for “Purchases,” and a substantially
2 higher APR for “Cash Advances.”

3 37. At all relevant times, BOA’s Written Contracts with Plaintiffs and the
4 Class defined “Cash Advances” as follows:
5

6 *A Cash Advance means the use of your account for a loan in the following*
7 *ways:*
8

9 *1. Direct Deposit: by a transfer of funds via an ACH (Automated*
10 *Clearing House) transaction to a deposit account initiated by us at your*
11 *request. A Direct Deposit does not include an Overdraft Protection Cash*
12 *Advance or a Same-Day Online Cash Advance.*
13

14 *2. Check Cash Advance: by an access check you sign as drawer.*
15

16 *3. Bank Cash Advance: by loans accessed in the following*
17 *manner:*
18

19 *a. ATM Cash Advance: at an automated teller machine;*

20 *b. Over the Counter (“OTC”) Cash Advance: at any*
21 *financial institution (e.g., to obtain cash, money orders, wire*
22 *transfers, or travelers checks);*
23

24 *c. Same-Day Online Cash Advance: by a same day online*
25 *funds transfer to a deposit account;*
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d. Overdraft Protection Cash Advance: by a transfer of funds to a deposit account pursuant to an overdraft protection program (see the section titled Overdraft Protection below);

e. Cash Equivalents: by the purchase of foreign currency, money orders, travelers checks, or to obtain cash, each from a non-financial institution, or person-to-person money transfers, bets, lottery tickets purchased outside the United States, casino gaming chips, or bail bonds, with your card or account number (including through the use of an enabled mobile device).

Cash Advances include Transaction Fees and adjustments associated with any Cash Advance.

38. The Written Contracts do not enumerate any other type of credit card transaction as a “Cash Advance.”

39. At all relevant times, BOA’s Written Contracts defined “Purchases” as follows:

Purchase means the use of your card or account number (including through the use of an enabled mobile device) to:

- 1. buy or lease goods or services;*
- 2. buy wire transfers from a non-financial institution (Wire Transfer Protection);*
- 3. make a transaction that is not otherwise a Cash Advance.*

1 *Purchases include Account Fees, as well as Transaction Fees and adjustments*
2 *associated with any Purchase.*

3 40. Accordingly, unless buying cryptos constitutes a “Cash Advance”
4 transaction under BOA’s definition in ¶37, *supra*, then buying cryptos *necessarily*
5 constitutes a “Purchase” transaction under Plaintiffs’ and the Class’s Written Contracts
6 because such transactions are “not otherwise a Cash Advance.” ¶39, *supra*.

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9 41. At no point did buying cryptocurrencies directly from a third-party credit
10 card merchant constitute a “Cash Advance” under BOA’s longstanding definition in
11 ¶37, *supra*.

12
13 (a) Such transactions did not constitute “***Direct Deposits***” because they
14 did not involve “a transfer of funds via an ACH (Automated Clearing House)
15 transaction” or “a deposit account.”

16
17 (b) Such transactions did not constitute a “***Check Cash Advance***”
18 because they did not involve an “access check” signed by the cardholder.

19 (c) Such transactions did not constitute an “***ATM Cash Advance***”
20 because they did not involve “an automated teller machine.”

21
22 (d) Such transactions did not constitute an “***Over the Counter***
23 ***(“OTC”) Cash Advance***” because at all relevant times, Coinbase was not “a
24 financial institution,” and cryptos did not constitute “cash,” money, or any other
25 financial instrument that represents a claim on money or “cash.”
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1 (e) Such transactions did not constitute a “*Same-Day Online Cash*
2 *Advance*” because such transactions did not involve a transfer of funds “to a
3 deposit account,” but instead to Coinbase, as with any other online merchant, in
4 exchange for a product.

6 (f) Such transactions did not constitute an “*Overdraft Protection Cash*
7 *Advance*,” in part because they had nothing to do with overdraft protection.

9 (g) Such transactions did not constitute the purchase of “*Cash*
10 *Equivalents*” because cryptos are not “*foreign currency*,” “*money orders*,”
11 “*travelers checks*,” “*cash*,” “*lottery tickets*,” “*casino gaming chips*,” or “*bail*
12 *bonds*,” nor did such transactions constitute “*person-to-person money*
13 *transfers*,” such as those that may be executed through PayPal or Venmo.

15 42. In sum, buying a cryptocurrency directly from Coinbase or another Visa
16 merchant has *never* constituted a “Cash Advance” under BOA’s Written Contracts.
17 Moreover, from 2016 through January 22, 2018, Defendants themselves consistently
18 and correctly recognized this, as evidenced by their own multi-year treatment of these
19 transactions.
20

22 **BOA’s Unpredictable Course of Dealing With Plaintiffs and the Class**

23 43. Prior to January 23, 2018, Plaintiff Kiriakos bought cryptocurrencies
24 from Coinbase on several different occasions using his BOA credit card. Prior to
25 January 23, 2018, BOA affirmatively designated, disclosed, and charged Mr.
26 Kiriakos’s crypto purchases as “Purchase” transactions under his Written Contract.
27

1 44. On and after January 23, 2018, Plaintiff Kiriakos bought cryptocurrencies
2 from Coinbase on several other occasions using his BOA credit card, reasonably
3 understanding these transactions to be “Purchase” transactions as they had been in the
4 past. At no point did BOA amend its Written Contract with Mr. Kiriakos, or otherwise
5 disclose any change to the terms of Mr. Kiriako’s Written Contract, or to the actual
6 credit terms on his account. Nevertheless, on and after January 23, 2018, BOA
7 affirmatively designated and charged Plaintiff Kiriakos’s crypto purchases as “Cash
8 Advance” transactions under his Written Contract. BOA assessed substantial, never-
9 disclosed Cash Advance fees and interest charges against Plaintiff Kiriakos for these
10 transactions, and refuses to remove them.

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14 45. At no point did BOA attempt to notify Mr. Kiriakos — neither before nor
15 immediately after he executed his post-January 23 crypto purchases — that such
16 purchases would be deemed “Cash Advance” transactions rather than “Purchase”
17 transactions under his Written Contract. Had Mr. Kiriakos known that BOA was
18 going to treat his virtual currency Purchases as Cash Advances, Mr. Kiriakos would
19 not have used his BOA credit card to buy virtual currencies on or after January 23,
20 2018, and would not have incurred the Cash Advance fees and interest charges that
21 BOA has imposed upon him.

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25 46. Similarly, prior to January 23, 2018, Plaintiff Galavis bought
26 cryptocurrencies from Coinbase on several occasions using his BOA credit card. Prior
27

1 to January 23, 2018, BOA affirmatively designated, disclosed, and charged Mr.
2 Galavis's Coinbase purchases as "Purchase" transactions under his Written Contract.

3 47. On and after January 23, 2018, Plaintiff Galavis bought cryptocurrencies
4 from Coinbase on several other occasions using his BOA credit card, reasonably
5 understanding these transactions to be "Purchase" transactions as they had been in the
6 past. At no point did BOA amend its Written Contract with Mr. Galavis, or otherwise
7 disclose any change to the terms of Mr. Galavis's Written Contract, or to the actual
8 credit terms on his account. Nevertheless, on and after January 23, 2018, BOA
9 affirmatively designated and charged Plaintiff Galavis's crypto purchases as "Cash
10 Advance" transactions under his Written Contract. BOA assessed substantial, never-
11 disclosed Cash Advance fees and interest charges against Plaintiff Galavis for these
12 transactions, and refuses to remove them.

13 48. At no point did BOA attempt to notify Mr. Galavis — neither before nor
14 immediately after he executed his post-January 23 crypto purchases — that such
15 purchases would be deemed "Cash Advance" transactions rather than "Purchase"
16 transactions under his Written Contract. Had Mr. Galavis known that BOA was going
17 to treat his virtual currency Purchases as Cash Advances, Mr. Galavis would not have
18 used his BOA credit card to buy virtual currencies on or after January 23, 2018, and
19 would not have incurred the Cash Advance fees and interest charges that BOA has
20 imposed upon him.

1 49. It was Defendants' affirmative decisions and actions, not any merchant's
2 decision or action, that caused BOA to improperly assess these Cash Advance fees and
3 interest charges against Plaintiffs and the Class without notice.

4
5 **Defendants Improperly "Re-Categorize" Crypto Transactions**
6 **on the Visa Credit Card Network**

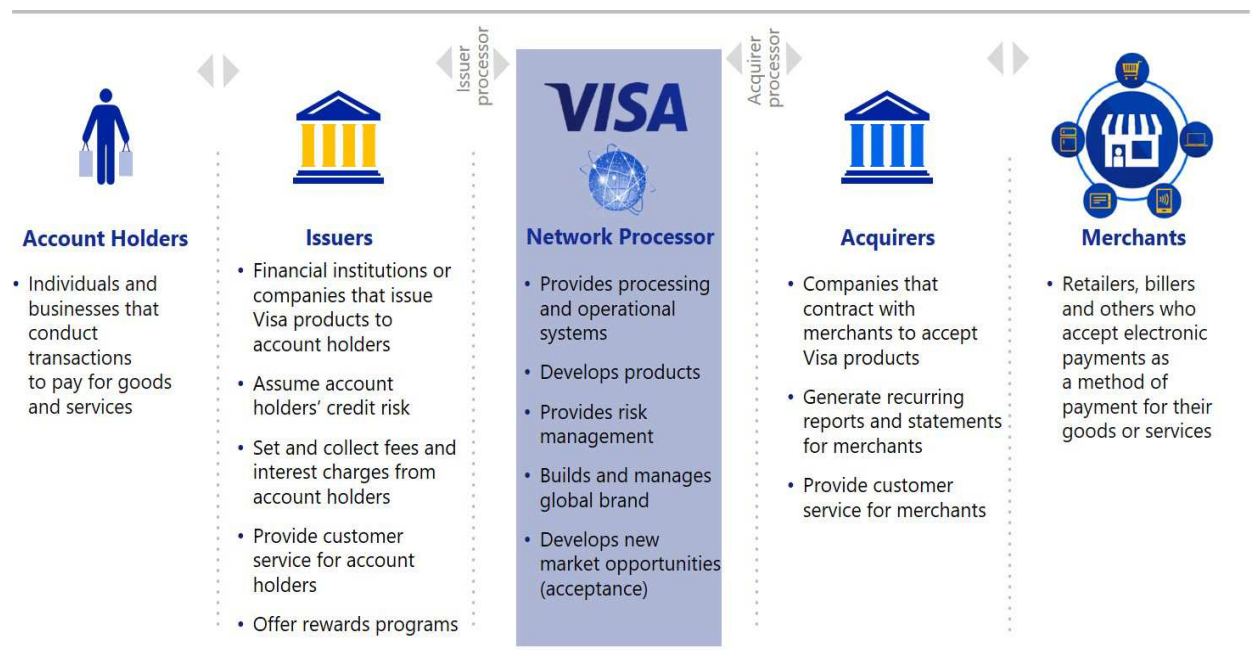
7 50. A typical Visa credit card transaction, between a consumer and a
8 merchant, implicates multiple third parties. The transaction begins when a *cardholder*
9 presents his or her Visa credit card to the *merchant* as payment for goods or services.
10 Transaction data is sent by the merchant to the merchant's financial institution (often
11 called the "*acquirer*"), and then routed by Visa's payment processing system
12 ("*VisaNet*") to the consumer's credit card *issuer* (in this case, BOA). *BOA* either
13 approves or denies the transaction, and then sends its decision back through the
14 *VisaNet* system to the *acquirer* and *merchant*, usually within a matter of seconds.

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18 51. Visa is not a creditor. Visa does not issue credit cards (*i.e.*, lend money)
19 to consumers. Visa does not determine the interest rates, fees or other finance charges
20 on consumer credit cards. As in any consumer credit transaction — whether an auto
21 loan, mortgage, or personal loan — the lender (BOA) sets the credit terms for every
22 credit card transaction with its customers.

23
24 52. Visa is primarily a payment technology company. VisaNet authorizes,
25 clears and settles consumer credit card transactions processed by Visa. VisaNet
26 consists of multiple synchronized processing centers that are linked by a global
27

1 telecommunications network. It is Visa’s vast VisaNet system that connects
 2 consumers, their banks, merchants and merchants’ banks, all at the swipe (or insert) of
 3 a credit card.

53. In a recent filing with the U.S. Securities and Exchange Commission,
 6 Visa depicted the parties involved in a credit card transaction as follows:



54. So while issuers carefully control whether and how to process credit card
 20 transactions (*i.e.*, whether and how to extend credit to the cardholder), Visa carefully
 21 controls the data issuers use to make those decisions. Visa meticulously regulates the
 22 transaction data that merchants and their acquirers’ must provide to issuers (through
 23 the VisaNet system) for purposes of obtaining issuer approval. The issuer’s (in this
 24 case, BOA’s) transaction processing system then makes decisions based upon the
 25 transaction data provided. The transaction data provided includes, among many other

1 data points, the cardholder's account number (and by extension, identity), the
2 merchant's identity, the merchant's location, and the dollar amount of the particular
3 transaction.

4
5 55. Another data point that Visa requires from merchants and their acquirers
6 before the merchant can accept a credit card payment is a merchant category code (or
7 "MCC"). The MCC tells issuers like BOA the type of business that is requesting
8 payment from the issuer on the consumer's behalf. Visa has established and defined
9 several hundred MCCs to be assigned to different business types across the economic
10 spectrum. An MCC is a four-digit number that is assigned by the merchant's acquirer,
11 and approved by Visa, at the time that the merchant business begins accepting Visa
12 credit cards from consumers. For example, MCC 5812 represents "Eating Places and
13 Restaurants," and MCC 7832 represents "Movie Theaters."

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17 56. BOA's payment processing system uses MCCs for a variety of purposes,
18 such as determining the type of credit card transaction being requested through
19 VisaNet, and in turn, determining whether and how to charge that transaction to the
20 cardholder's account.

21
22 57. In or about January 2018, Defendant BOA — as creditor — made a
23 decision that consumer credit card purchases of cryptocurrencies from third party
24 merchants should be treated as "Cash Advance" transactions, rather than "Purchase"
25 transactions, under BOA's Written Contracts with cardholders. This was a new
26 decision by BOA, which as of January 2018, knew that BOA had long designated,

1 disclosed and charges such transactions to its cardholders as “Purchases.” Such
2 “Purchase” treatment was consistent with (and indeed, required by) the longstanding
3 language of BOA’s Written Contracts.
4

5 58. As creditor, however, upon opening a consumer credit card account, BOA
6 retained the right to change an account holder’s credit terms in the future for any
7 number of reasons. *See, e.g.*, Ex. A (“***We reserve the right to amend this Agreement***
8 ***at any time***”) (emphasis in original). Contractually, BOA retained for itself the
9 right to change pretty much any term of the cardholder’s account, including but not
10 limited to: the interest rates, fees, credit limit(s), or even — as most clearly applicable
11 here — the types of credit card transactions to which “Cash Advance” fees and interest
12 charges would apply under the Written Contract.
13
14

15 59. So when BOA endeavored in January 2018 to change its treatment of
16 crypto purchases from “Purchases,” to “Cash Advances,” there were two primary
17 ways that BOA could have effected this change as a practical matter. One way would
18 have been to *amend* its Written Contracts with cardholders so as to enumerate
19 purchases of cryptocurrencies as “Cash Advances” or “Cash Equivalents” under those
20 agreements. If BOA sent such amended Written Contracts to its cardholders, this
21 would have afforded BOA the *contractual* right to begin charging cardholders Cash
22 Advance fees and interest charges on their virtual currency purchases.
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26 60. But as a matter of *statutory* law, this would not have sufficed. TILA and
27 Regulation Z affirmatively require credit card issuers to provided cardholders with
28

1 advance written notice before implementing any “significant change” to the credit
2 terms on their accounts. 15 U.S.C. § 1637(i)(2). In interpreting TILA and
3 promulgating Regulation Z, the U.S. Consumer Financial Protection Bureau
4 (“Bureau”) specifically identified changing “the types of transaction to which different
5 [interest] rates apply” as a “significant change in account terms” under TILA, which
6 require written notice to the cardholder *45 days* in advance of implementing such a
7 change.
8
9

10 61. So as a practical matter, the first, “Front Door Option” was for BOA was
11 to send out written notice to its cardholders, including Plaintiffs and the Class,
12 informing them that BOA would begin treating all credit card purchases of
13 cryptocurrencies as “Cash Advance” transactions, not “Purchase” transactions under
14 the Written Contracts, and then to amend the Written Contracts accordingly. For
15 whatever reason in January 2018, BOA decided not to do this.
16
17

18 62. Instead, BOA chose to execute a “Back Door Option.” This Back Door
19 Option was to require crypto-selling merchants to change their existing MCCs on
20 VisaNet, into an MCC that BOA’s payment processing system had already been using
21 for years to identify “Cash Advance” transactions under its Written Contracts. Unlike
22 the Front Door Option (the only lawful option), the Back Door Option would allow
23 BOA to *immediately* implement its desired change in credit terms at the flip of a
24 switch, behind close doors. Consumers would remain entirely in the dark about what
25 was happening.
26
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28

1 63. BOA chose this Back Door Option to serve its own interests at Plaintiffs'
2 and the Class's expenses, while ignoring TILA's requirements and the bank's express
3 contractual obligations to cardholders. In or about January 2018, BOA lobbied Visa
4 for, and approved of, Visa's decision to change Coinbase and other crypto-selling
5 merchants' MCCs on VisaNet. BOA lobbied for and approved of this change for the
6 particular purpose of imposing brand new, *undisclosed* Cash Advance fees and interest
7 charges against its cardholders.
8
9

10 64. On January 23, 2018, Visa capitulated to BOA's and other issuers'
11 improper requests. Visa capitulated by forcing Coinbase and other crypto-selling
12 merchants to change their MCCs to MCC 6051. Visa imposed this MCC change upon
13 Coinbase with full awareness that it would cause BOA's and other issuers' processing
14 systems to *automatically* identify every purchase transaction between cardholders and
15 Coinbase as a "Cash Advance" transaction, rather than the "Purchase" transactions
16 that they had always been. Visa imposed this MCC change on Coinbase with full
17 knowledge of the outcome for consumers, and further, *Visa violated its own data*
18 *standards* in the process.
19
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21

22 **Visa Reassigns Coinbase Overnight to *The Wrong MCC***
23 **to Facilitate BOA's Unlawful Conduct Against the Class**

24 65. The technical mechanism by which Defendants — not Coinbase —
25 effected this change on January 23, 2018 was by requiring Coinbase and other
26 commercial crypto sellers to change their MCCs on the Visa credit card network.
27
28

1 However, based on Visa’s then-existing data standards for assigning MCCs to credit
2 card merchants, *the MCC to which Coinbase was forcibly reassigned was clearly not*
3 *the “correct” MCC for Coinbase.*

4
5 66. Specifically, the Visa Data Standards Manual (“DSM”) in effect as of
6 January 2018 listed several hundred MCCs, each with different descriptions for the
7 different types of businesses that should be assigned to each MCC. The DSM in effect
8 at the relevant time also provided helpful interpretive guidance for assigning MCCs to
9 merchants, based on the various MCC descriptions contained in the DSM.

10
11 67. Under a section titled “General Rules,” the DSM explained:

12
13 The MCC is a four-digit number assigned to describe a merchant’s
14 primary business based on annual sales volume measured in local
15 currency. In addition, some MCCs identify a specific merchant or type of
16 transaction. Because Visa and its members [*i.e.*, issuers] use MCC data
17 for a range of purposes, including activity tracking, reporting, and risk
18 management purposes, *it is crucial that acquirers assign the proper MCC*
19 *to each merchant.*

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23 The DSM further instructed as follows under a subsection titled “Basic Rules to
24 Remember”:

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26 The following rules should be considered when assigning MCCs:

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1. *Select the MCC that most accurately describes the merchant’s business.* The MCC, in most cases, should reflect the primary type of business in which the merchant is engaged. If the merchant has more than one line of business and may qualify for more than one MCC, the merchant must either:
 - Use the MCC that describes the business with the highest sales volume (measured in local currency) to process all Visa sales [or]
 - Use different MCCs for each line of business.

2. Use MCCs termed “miscellaneous” only if there is no MCC specific to the merchant’s business. *MCC descriptions are very accurate*, and merchants must only be assigned a “miscellaneous” MCC when no other MCC applies to its business. Miscellaneous MCCs generally end in the number 99. Examples are MCC 5499 — Miscellaneous Food Stores and MCC 5999 —Miscellaneous and Specialty Retail Shops. MCCs are used for a variety of purposes by acquirers [*i.e.*, merchants’ banks], issuers, and Visa. *It is important that a merchant be assigned the MCC that most accurately describes its business.* When there is such an MCC, the merchant must not be assigned a “miscellaneous MCC.”

1 68. The DSM further provided that acquirers (*i.e.*, merchants’ banks) must
2 “have a clear understanding of different merchants’ business types and their proper
3 MCC designation,” and that “[a]ll acquirers are responsible for making sure that each
4 merchant business is identified using *the most appropriate MCC.*” The DSM also said
5 that, “Visa retains the right to require *corrections* [not ‘arbitrary changes’] to non-
6 compliant or confusing merchant descriptors.”
7

8
9 69. As of January 23, 2018, Coinbase and its financial institution were
10 arbitrarily and capriciously required by Visa, at BOA’s and other issuers’ requests, to
11 change Coinbase’s longstanding, pre-approved MCC to a different MCC: numbered
12 6051.
13

14 70. As of January 23, 2018, MCC 6051 was titled in the Visa DSM as “*Non-*
15 *Financial Institutions—Foreign Currency, Money Orders (Not Wire Transfer), and*
16 *Travelers Cheques.*” The DSM’s complete description for MCC 6051 stated as
17 follows:
18

19 This MCC must be used for *the funding of an account, the purchase of foreign*
20 *currency, money orders, or travelers cheques* occurring at non-financial
21 institutions such as currency exchanges, money order merchants, and hotels.
22
23 The face-to-face purchase of *foreign currency, money orders, and travelers*
24 *cheques* at financial institutions such as banks, savings and loans, thrifts and
25 credit unions must be classified under MCC 6012 – *Financial Institutions —*
26 *Merchandise and Services.* (emphasis in the last two lines from the original).
27
28

1 The code description for MCC 6051 had always been expressly limited to “the funding
2 of an account, the purchase of foreign currency, money orders or travelers cheques.”

3 71. As the DSM itself explained, “MCC descriptions are very accurate,” not
4 generalized, except for those “miscellaneous” codes which are to be used sparingly.
5 See ¶67, *supra*. For the reasons explained in ¶¶17-31 and ¶¶41-46, *supra*, the sale of
6 virtual currencies did not, in fact, come close to matching Visa’s “very accurate”
7 description for MCC 6051 as of January 23, 2018.
8
9

10 72. In addition, as of January 23, 2018, there were several other more
11 accurate MCCs in the DSM that could have been chosen for Coinbase. Yet Visa acted
12 against its own DSM and required Coinbase to switch to an MCC *that clearly never*
13 *applied to Coinbase*, because:
14

- 15 (a) the particular purpose of this sham MCC change was to aid and abet BOA in
16 charging wrongful Cash Advance fees and interest charges against
17 cardholders; and
18
19 (b) BOA’s computer systems were long programmed to designate, disclose and
20 charge transactions coded with MCC 6051 as “Cash Advance” transactions
21 under the Written Contracts.⁴
22
23
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25 ⁴ This particular programming for MCC 6051 in BOA’s computer systems was *not* a
26 problem before January 23. But *after* this MCC change on January 23, BOA’s
27 computers were programmed to charge as “Cash Advances” a *brand new category of*
28 *transactions that was never disclosed in, or permitted by, the terms of BOA’s Written*
Contracts. This is the technical mechanism by which BOA silently effected these
brand new Cash Advance charges against cardholders.

1 73. Visa previously approved a different MCC for Coinbase, other than 6051,
2 as Visa merchants cannot be assigned an MCC in the first place without Visa's
3 approval.

4 74. Moreover, in March 2018, just after Visa began requiring Coinbase and
5 other crypto sellers to switch to the inapposite MCC 6051, Visa's Chief Financial
6 Officer publicly declared, "My personal view is that cryptocurrencies are more
7 speculative investment commodities than payment options, operating in a very
8 unsettled regulatory environment." He further commented on one of the many
9 fundamental differences between cryptocurrencies and money: "With a currency
10 issued by the Federal Reserve, I know who stands behind it." With cryptocurrency, he
11 said: "Who's good for the money? Who the hell knows?" In addition, he opined,
12 "This is the ultimate thing that you hear about when you have a bubble, when the guy
13 shining your shoes tells you what stock to buy." See
14 <https://www.ft.com/content/ba6c2c40-285f-11e8-b27e-cc62a39d57a0> (last visited
15 August 15, 2018).

16 75. Visa's CFO was likely correct to call cryptocurrencies "investment
17 commodities" in March 2018. And conveniently, *Visa's DSM had a specific MCC for*
18 *investment commodities at the time: MCC 6211.* The DSM stated that, "Merchants
19 classified under this MCC [6211] buy, sell and broker securities, stocks, bonds,
20 *commodities*, and mutual funds." This MCC 6211 could well have been used to
21 "accurately" and "appropriately" describe Coinbase, because Coinbase sells

1 cryptocurrencies to consumers for investment and other purposes. Coinbase never
2 sold “foreign currency, money orders, or travelers cheques,” as required by MCC
3 6051. But neither Visa nor BOA demanded the admittedly more “accurate” and
4 “appropriate” MCC 6211 from Coinbase or from Coinbase’s financial institution:
5 because the goal of this MCC change was never “accuracy,” as required by the DSM,
6 but rather, to help BOA levy Cash Advance charges against its cardholders.
7

8
9 76. As of January 2018, Visa’s DSM also had existing MCCs for “*Digital*
10 *Goods — Applications (Excludes Games)*” and “*Digital Goods — Large Digital*
11 *Goods Merchant.*” These were listed as MCC 5817 and MCC 5818, respectively.
12 The DSM described the former as selling “*applications (excludes games: see 5914)*
13 *that are delivered in electronic format. Software, if delivered in electronic format,*
14 *may also be classified under this category.*” The DSM described the latter as “*large*
15 *merchants that sell digital goods (i.e., goods delivered via electronic format) with a*
16 *minimum threshold of 25 million transactions annually.*” Coinbase, the preeminent
17 seller of virtual currencies, more accurately and appropriately fell into either of these
18 MCCs than into MCC 6051 because MCC 6051 was — by its express terms — limited
19 to sellers of “foreign currency, money orders, or travelers cheques.”
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24 77. But again, “accuracy” was neither BOA’s goal nor Visa’s goal in
25 reassigning Coinbase and other crypto merchants to MCC 6051. The sole purpose was
26 to impose brand new Cash Advance charges against credit cardholders like Plaintiffs
27 and the Class without notice. To serve that unlawful purpose, far more “accurate” and
28

1 “appropriate” MCCs were ignored by BOA and Visa in favor of the clearly erroneous
2 MCC 6051, which would accomplish BOA’s and other issuers’ unlawful purposes.

3 78. In April 2018, months after MCC 6051 was wrongly foisted upon
4 Coinbase and other merchants, Visa substantially amended its DSM to reflect the new
5 action it had taken against cardholders. As of April 26, 2018, Visa amended the DSM
6 to describe a brand new version of MCC 6051, which is now titled: “*Non-Financial*
7 *Institutions — Foreign Currency, Non-Fiat Currency (for example: Cryptocurrency),*
8 *Money Orders (Not Money Transfer) Travelers Cheques, and Debt Repayment.*” This
9 substantially amended description for MCC 6051 now provides:
10
11

12
13 This MCC must be used for the funding of an account, the
14 purchase of foreign currency, *non-fiat currency (for example:*
15 *cryptocurrency)*, money orders, or travelers cheques that occurs at
16 non-financial institutions such as currency exchanges, money order
17 (a negotiable paper-based remittance — not a Money Transfer)
18 merchants, and hotels.
19

20
21 This MCC must also be used for the repayment of a loan or debt if
22 the entity that holds the debt is not a financial institution.
23

24 *A merchant that sells non-fiat currency such as cryptocurrency*
25 *must use MCC 6051 for those transactions. All other transactions*
26
27

1 at the same merchant locations must use the appropriate MCC for
2 those transactions.

3
4 79. The main point of the above MCC allegations (¶¶50-78, *supra*) is this:
5 BOA's overnight switch from crypto "Purchases" to crypto "Cash Advances" was not
6 merely the result of a technical error on the part of Visa, Coinbase or Coinbase's
7 acquirer. Instead, BOA and its business partners at Visa literally rewrote the book on
8 credit card transaction processing in order to implement this undisclosed — and
9 therefore unlawful — change in credit terms against Plaintiffs and the Class.
10
11

12 **CLASS ACTION ALLEGATIONS**

13 80. Plaintiffs bring this action as a class action pursuant to Federal Rule of
14 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons and
15 entities in the United States who, upon purchasing a cryptocurrency from
16 Coinbase.com or another Visa credit card merchant, incurred cash advance fees and/or
17 cash advance interest charges on credit cards issued by Bank of America, N.A.
18 Excluded from the Class are BOA, the officers and directors of BOA, at all relevant
19 times, members of their immediate families and their legal representatives, heirs,
20 successors or assigns and any entity in which BOA has or had a controlling interest.
21
22

23
24 81. The members of the Class are so numerous that joinder of all members is
25 impracticable. Leading up to and during January and February 2018, hundreds if not
26 thousands of BOA credit card members used their BOA cards to purchase cryptos for
27

1 millions of dollars, collectively. While the exact number of Class members is
2 unknown to Plaintiffs at this time, and can be ascertained only through appropriate
3 discovery, Plaintiffs believe that there are hundreds or thousands of members in the
4 proposed Class. Members of the Class may be identified and located from database
5 records maintained by BOA and may be notified of the pendency of this action by
6 electronic mail and/or regular mail, using the form of notice similar to that
7
8 customarily used in class actions.
9

10 82. Plaintiffs' claims are typical of Class members' claims, as all members of
11 the Class are similarly affected by Defendants' wrongful conduct in violation of law,
12
13 as complained of herein.

14 83. Plaintiffs will fairly and adequately protect the interests of Class
15 members and has retained counsel competent and experienced in class action
16 litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the
17
18 Class.

19 84. Common questions of law and fact exist as to all members of the Class
20 and predominate over any questions solely affecting individual members of the Class.
21
22 Among the questions of law and fact common to the Class are:

- 23 a. whether BOA violated TILA by declining to notify Plaintiffs and all other
24
25 Class members in advance of its sudden, unilateral change to their credit card terms;
26
27 b. whether BOA, in fact, failed or declined to provide Class members with
28 advance written notice of its sudden, unilateral change to their credit card accounts;

1 c. whether BOA breached its Written Contracts with Plaintiffs and the Class
2 by assessing Cash Advance fees and interest charges against them for buying cryptos
3 directly from a third-party Visa merchant;

4
5 d. whether Visa tortuously interfered with Plaintiff's and the Class's
6 contractual relationships with BOA;

7
8 e. whether Plaintiffs and the Class suffered damages as a result of
9 Defendants' conduct, and the proper measure of such damages; and

10 f. whether Plaintiffs and the Class are entitled to statutory damages, as well
11 as reasonable attorneys' fees and expenses as a result of BOA's wrongful conduct.
12

13 85. A class action is superior to all other available methods for the fair and
14 efficient adjudication of this controversy since joinder of all members is impracticable.
15 Furthermore, as the damages suffered by individual Class members may be relatively
16 small, the expense and burden of individual litigation would make it difficult if not
17 impossible for members of the Class to redress the wrongs done to them on an
18 individual basis. There will be no difficulty in the management of this case as a class
19 individual basis. There will be no difficulty in the management of this case as a class
20 action.
21

22 **COUNT I**
23 **Breach of Contract**
24 **(Against Defendant BOA)**

25 86. Plaintiffs hereby repeat and re-allege each and every allegation set forth
26 above as if fully set forth herein.
27

1 87. Plaintiffs and each member of the Class entered into adhesive Written
2 Contracts with Defendant Bank of America, N.A.

3 88. The Written Contracts provide that, “This Agreement is governed by the
4 laws of the State of North Carolina (without regard to its conflict of laws principles)
5 and by any applicable federal laws.”
6

7 89. Under North Carolina law, Defendant BOA and its agents acting on its
8 behalf breached the Written Contracts between BOA and members of the Class by
9 charging Cash Advance fees and interest charges on credit card transactions, which
10 did not and do not constitute “Cash Advances” or “Cash Equivalents” under BOA’s
11 Written Contracts.
12

13
14 90. As a direct and proximate result of Defendant’s breaches of its Written
15 Contracts with Class members, and the implied covenant of good faith and fair
16 dealing, Plaintiffs and each member of the Class have sustained financial losses, costs,
17 damages and expenses in amounts to be proven at the trial of this matter.
18

19
20 **COUNT II**
21 **Violation of Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.*,**
22 **Regulation Z, 12 C.F.R. §§ 1026.1, *et seq.* – “Significant Change in**
23 **Account Terms”**
(Against Defendant BOA)

24 91. Plaintiffs hereby repeat and re-allege each and every allegation set forth
25 above as if fully set forth herein.
26
27

1 92. The Truth in Lending Act, at 15 U.S.C. § 1637(i)(2), requires credit card
 2 issuers to “provide a written notice of any significant change, as determined by rule of
 3 the [U.S. Consumer Financial Protection] Bureau, in the terms . . . of the cardholder
 4 agreement between the creditor and obligor, not later than 45 days prior to effective
 5 date of the change.”
 6

7 93. Pursuant to its express authority under 15 U.S.C. § 1637(i)(2), the
 8 Consumer Financial Protection Bureau (“Bureau”) promulgated 12 C.F.R. §
 9 1026.9(c)(2) which provides the following “Rules affecting open-end (not home-
 10 secured) plans,” *i.e.*, credit card plans:
 11

12 (i) Changes where written advance notice is required.
 13

14 (A) General. For plans other than home equity plans . . . , when
 15 a significant change in account terms as described in
 16 paragraph (c)(2)(ii) of this section is made, a creditor must
 17 provide a written notice of the change at least 45 days prior
 18 to the effective date of the change to each consumer who
 19 may be affected.
 20

21 12 C.F.R. § 1026.9(c)(2)(i) (emphasis added). Section 1026.9(c)(2)(ii) then defines
 22 “Significant changes in account terms” as follows:
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24 For purposes of this section, a “significant change in account
 25 terms” means a change to a term required to be disclosed
 26 under § 1026.6(b)(1) and (b)(2), an increase in the required
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minimum periodic payment, a change to a term required to be disclosed under § 1026.6(b)(4), or the acquisition of a security interest.

12 C.F.R. § 1026.9(c)(2)(ii). The credit card account terms specifically enumerated in 12 C.F.R. § 1026.6(b)(1), (b)(2) and (b)(4) include, but are not limited to, the following:

Transaction charges. Any transaction charge imposed by the creditor for use of the open-end plan for purchases.

12 C.F.R. § 1026.6(b)(2)(iv).

Cash advance fee. Any fee imposed for an extension of credit in the form of cash or its equivalent.

12 C.F.R. § 1026.6(b)(2)(vii).

Type of transaction. The type of transaction to which the [interest] rate applies, if different rates apply to different types of transaction.

12 C.F.R. § 1026.6(b)(4)(i)(C).

94. By disclosing and treating Plaintiffs’ and the Class’s crypto purchases as “Purchases” under its card member agreements, and not imposing cash advance fees or interest charges — then changing Plaintiffs’ and the Class’s crypto “Purchases” to be treated as “Cash Advances” on January 23, 2018 — BOA made “significant

1 changes” to Plaintiffs’ and the Class’s credit card terms within the meaning of 15
2 U.S.C. § 1637(i)(2) and Regulation Z promulgated thereunder.

3 95. Upon making this significant, overnight change to Plaintiffs’ and the
4 Class’s credit card terms in January 2018, BOA did not provide advance written notice
5 of the change as required by 15 U.S.C. § 1637(i)(2) and Regulation Z.
6

7 96. In the alternative, Regulation Z provides as follows:
8

9 [I]f a creditor increases any component of a charge, or introduces a
10 new charge, required to be disclosed under § 1026.6(b)(3) that is
11 *not* a significant change in account terms as described in paragraph
12 (c)(2)(ii) of this section, a creditor must either, at its option:

13
14 i. Comply with the [45-day notice] requirements of paragraph
15 (c)(2)(i) of this section; or

16
17 ii. Provide notice of the amount of the charge *before the consumer*
18 *agrees to or becomes obligated to pay the charge*, at a time and in
19 a manner that a consumer would be likely to notice the disclosure
20 of the charge. The notice may be provided orally or in writing.
21

22 12 C.F.R. § 1026.9(c)(2)(iii).
23

24 97. The credit card terms specifically enumerated in 12 C.F.R. § 1026.6(b)(3)
25 include, but are not limited to, the following:

26 For charges imposed as part of an open-end (not home-secured)
27 [credit card] plan, *the circumstances under which the charge may*
28

1 *be imposed*, [and] the amount of the charge or an explanation of
2 how the charge is determined.

3 12 C.F.R. § 1026.6(b)(3)(i).
4

5 98. Had BOA provided Plaintiffs and the Class with advance notice of these
6 changes as required by TILA and Regulation Z, then Plaintiffs and Class members
7 would not have used their BOA credit cards to buy cryptos from Coinbase and other
8 merchants on or after the effective date of such changes. Consequently, Plaintiffs and
9 the Class would not have incurred BOA’s surprise “Cash Advance” fees or interest
10 charges, effectively taking out personal cash loans from BOA without their knowledge
11 or consent.
12

13
14 99. Pursuant to 15 U.S.C. § 1640(a), Plaintiffs bring this claim on their own
15 behalf, and on behalf of the Class defined above, to recover their and the Class’s
16 actual financial damages, plus statutory damages in the aggregate amount of \$1
17 million, plus their costs of this action and reasonable attorneys’ fees and expenses
18 incurred therein.
19
20

21 **COUNT III**
22 **Tortious Interference With Contractual Relations**
23 **(Against Defendant Visa)**

24 100. Plaintiffs hereby repeat and re-allege each and every allegation set forth
25 above as if fully set forth herein.
26
27

1 101. Plaintiffs and each Class member entered into Written Contracts with
2 BOA, to which Defendant Visa is not a party.

3 102. At all relevant times, Defendant Visa had knowledge of BOA’s Written
4 Contracts with Plaintiffs and the Class.
5

6 103. In or about January 2018, Defendant Visa intentionally acted to induce a
7 breach and/or disruption of Plaintiffs’ and the Class’s contractual relationship with
8 BOA, by requiring various Visa credit card merchants to inaccurately identify
9 themselves under MCC 6051 on VisaNet, for the particular purpose of facilitating
10 BOA’s treatment of the Class’s relevant transactions as “Cash Advances,” rather than
11 the “Purchase” transactions they had always been under BOA’s Written Contracts
12 with Plaintiffs and the Class. Visa’s intentional, MCC-altering conduct, in fact,
13 induced an actual breach and/or disruption of Plaintiffs’ and the Class’s contractual
14 relationships with BOA, as BOA’s transaction processing systems immediately and
15 *inaccurately* began identifying Plaintiff’s and the Class’s crypto transactions as
16 “purchase[s] of foreign currency, money orders, or travelers cheques” (*i.e.*, money or
17 monetary instruments) under MCC 6051, when in fact, Plaintiffs’ and the Class’s
18 relevant credit card purchases were of no such thing, and Visa well knew this.
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23 104. As a direct and proximate result of Visa’s MCC-altering conduct,
24 Plaintiffs and the Class suffered actual financial damages in the form of unlawful Cash
25 Advance fees and interest charges on their personal credit card accounts.
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COUNT IV
Declaratory Judgment, 28 U.S.C. § 2201
(Against Defendant BOA)

105. Plaintiffs hereby repeat and re-allege each and every paragraph set forth above as though fully set forth herein.

106. Pursuant to 28 U.S.C. § 2201, Plaintiffs and the Class are entitled to have this Court establish by declaration their rights and legal relations under their Written Contracts with Chase.

107. Accordingly, Plaintiffs on behalf of the Class pray for a declaration that the terms of their Written Contracts with BOA do not permit BOA to impose “Cash Advance” fees and interest charges against Plaintiffs and the Class for buying virtual currencies from third-party credit card merchants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiffs as Class representatives, and the law firm of Finkelstein & Krinsk LLP as Class Counsel;

B. Requiring Defendants to pay the actual damages sustained by Plaintiffs and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiffs and the Class additional statutory damages in the aggregate amount of \$1 million pursuant to 15 U.S.C. § 1640(a);

1 D. Awarding Plaintiffs and other members of the Class prejudgment and
2 post-judgment interest, as well as reasonable attorneys' fees, expert fees and other
3 costs and expenses of this litigation; and

4
5 E. Awarding such other relief as the Court may deem just and proper.

6 **JURY DEMAND**

7 Plaintiffs hereby demand a trial by jury.
8
9

10 Dated: November 8, 2018

Respectfully submitted,

11 FINKELSTEIN & KRINSK LLP
12

13 By: s/ David J. Harris, Jr.
14 David J. Harris, Jr., Esq.

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20 *Counsel for Plaintiffs and the Putative*
21 *Class*
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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) FEDERICO GALAVIS and ZAK KIRIAKOS, Individually and On Behalf of All Others Similarly Situated,	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) BANK OF AMERICA, N.A. and VISA, INC.,
(b) County of Residence of First Listed Plaintiff <u>Los Angeles</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Finkelstein & Krinsk LLP, David J. Harris, Jr. (286204), 550 West C St., #1760, San Diego, CA 92101; (619) 238-1333	

II. BASIS OF JURISDICTION (Place an X in one box only.)

<input type="checkbox"/> 1. U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2. U.S. Government Defendant	<input type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multidistrict Litigation - Transfer	<input type="checkbox"/> 8. Multidistrict Litigation - Direct File
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V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ \$5,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 VIOLATIONS OF THE FEDERAL TRUTH IN LENDING ACT, 15 U.S.C. section 1601, et seq.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL INJURY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input checked="" type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF: <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	INITIAL DIVISION IN CACD IS: Western Southern Eastern
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QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question C. If "yes," answer Question B.1, at right.	B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question B.2.
B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question D. If "yes," answer Question C.1, at right.	C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question C.2.
C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

QUESTION D: Location of plaintiffs and defendants?	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	D.2. Is there at least one answer in Column B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓
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QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	WESTERN

QUESTION F: Northern Counties? Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court**? NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**? NO YES

If yes, list case number(s): _____

Civil cases are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): s/ David J. Harris, Jr. DATE: 11/8/2018

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))