

# **EXHIBIT A**

*Galavis et al. v. Bank of America, N.A. et al.*

United States District Court for the Central District of California

Case No. 2:18-CV-09490-SVW-PJWx

**Settlement and Release Agreement**

This Settlement and Release Agreement (“Agreement”) dated as of September 3, 2019 is entered into by Plaintiffs Federico Galavis and Zak Kiriakos (“Plaintiffs”) individually and on behalf of the Settlement Class defined herein, Bank of America, N.A. (“BANA”), and Visa Inc. (“Visa”) (collectively “Defendants”). The Parties hereby agree to the following terms in full settlement of the action titled *Galavis et al. v. Bank of America, N.A. et al.*, No. 2:18-cv-09490-SVW-PJW (C.D. Cal.) (“Action”), subject to Final Approval by the United States District Court for the Central District of California (“Court”).

## **I RECITALS**

WHEREAS, on November 8, 2018, Plaintiffs filed the Action asserting claims for breach of contract, violation of the Truth-in-Lending Act (“TILA”), and declaratory relief against BANA, and for tortious interference of contractual relations against Visa, on behalf of themselves and seeking certification of a class of allegedly similarly situated individuals;

WHEREAS, on February 4, 2019, BANA and Visa filed motions to dismiss the Action on the grounds that Plaintiffs failed to sufficiently plead any of the four causes of action alleged in the Complaint;

WHEREAS, the Court denied Defendants’ motions to dismiss on March 26, 2019;

WHEREAS, on May 6, 2019, the Parties mediated this matter, with the Hon. Jay C. Gandhi of JAMS serving as an independent, third-party mediator;

WHEREAS, BANA and Visa have denied, and continue to deny, each and every claim and allegation of wrongdoing asserted in the Action, and BANA and Visa believe they would ultimately succeed in their respective defenses of all claims asserted in the Action;

WHEREAS, BANA and Visa have nevertheless concluded that settlement of the Action is advisable because further litigation involves risks and could be protracted and expensive;

WHEREAS, Plaintiffs, individually and on behalf of the Settlement Class as defined below, believe that the claims asserted in the Action have merit and that there is evidence to support their claims;

WHEREAS, Plaintiffs nevertheless recognize and acknowledge the expense and length of continued litigation and legal proceedings necessary to prosecute the Action through trial and through any appeals; and

WHEREAS, Plaintiffs have also, in consultation with their counsel, assessed the legal risks faced in the Action, including the risk that some or all of their claims could be adjudicated against them and/or that the Court would decline to certify a class for litigation purposes, and on the basis of that assessment believe that the Settlement set forth in this Agreement and as defined below provides substantial benefits to Plaintiffs and the Settlement Class, and is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class.

NOW THEREFORE, the Parties agree that the Action shall be fully and finally compromised, settled, released, and dismissed with prejudice, subject to the terms and conditions of this Agreement and subject to Final Approval by the Court.

## **II TERMS OF THE SETTLEMENT**

### **Section 1. Definitions**

In addition to the terms defined elsewhere in this Agreement, the following capitalized terms used in this Agreement shall have the meanings specified below:

1.1 “Administrative Costs” means all fees paid to the Administrator for its services administering the Settlement and all out-of-pocket costs and third-party expenses of the Administrator that are associated with providing notice of the Settlement to the Settlement Class, administering and distributing the Settlement Amount to Class Members, or otherwise administering or carrying out the terms of the Settlement, including but not limited to postage and telecommunications costs.

1.2 “Administrator” means Epiq Global.

1.3 “Cash Advance Fee” means any fee assessed in connection with a transaction disclosed as a cash advance or bank cash advance transaction on a credit card monthly statement.

1.4 “Cash Advance Interest” means interest charges assessed on a transaction disclosed as a cash advance or a bank cash advance transaction on a credit card monthly statement.

1.5 “Cash Settlement Amount” has the meaning ascribed to in Section 2.2(a).

1.6 “Class Counsel” means Finkelstein & Krinsk LLP.

1.7 “Class Member” means a person who falls within the definition of the Settlement Class.

1.8 “Class Member Award” means an award to a Class Member of funds from the Net Cash Settlement Amount.

1.9 “Class Notices” means Exhibits A, B, and C attached hereto.

1.10 “Class Period” means the period between and including June 1, 2016, and the date this Agreement is executed.

1.11 “Class Representative Service Award” has the meaning ascribed to it in Section 3.1.

1.12 “Complaint” means the complaint filed in the Action on November 8, 2018.

1.13 “Credit Payment” has the meaning ascribed to it in Section 2.6(b).

1.14 “Cryptocurrency” means digital or virtual currency that has no central issuing or regulating authority but instead uses a decentralized system to record transactions and manage the issuance of new units and also advanced cryptography for security, including, without limitation, Bitcoin, Litecoin, and Ethereum.

1.15 “Effective Date” shall mean when the last of the following has occurred: (1) the day following the expiration of the deadline for appealing Final Approval if no timely appeal is filed; or (2) if an appeal of Final Approval is taken, the date upon which all appeals (including any requests for rehearing or other appellate review), as well as all further appeals therefrom (including all petitions for certiorari) have been finally resolved without material change to the Final Approval Order, as determined by Defendants, and the deadline for taking any further appeals has expired such that no future appeal is possible; or (3) such date as the Parties otherwise agree in writing.

1.16 “Fee & Expense Award” has the meaning ascribed to it in Section 3.2.

1.17 “Final Approval” means entry of the Final Approval Order.

1.18 “Final Approval Hearing” means the hearing on Plaintiffs’ motion seeking Final Approval.

1.19 “Final Approval Order” means the Court’s order regarding Plaintiffs’ motion seeking Final Approval.

1.20 “National Change of Address Database” means the change of address database maintained by the United States Postal Service.

1.21 “Net Cash Settlement Amount” means the Cash Settlement Amount, less the Class Representative Service Awards.

1.22 “Objection Deadline” means seventy-five (75) calendar days after Preliminary Approval (or other date as ordered by the Court).

1.23 “Opt-Out Deadline” means seventy-five (75) calendar days after Preliminary Approval (or other date as ordered by the Court).

1.24 “Parties” means Plaintiffs, BANA, and Visa collectively.

1.25 “Party” means Plaintiffs, BANA, and Visa individually.

1.26 “Preliminary Approval” means entry of the Preliminary Approval Order.

1.27 “Preliminary Approval Hearing” means the hearing on Plaintiffs’ motion seeking Preliminary Approval.

1.28 “Preliminary Approval Order” means the Court’s order regarding Plaintiffs’ motion seeking Preliminary Approval.

1.29 “Released Claims” has the meaning ascribed to it in Section 2.3(a).

1.30 “Releasees” has the meaning ascribed to it in Section 2.3(a).

1.31 “Settlement” means the settlement of the Action by the Parties and the terms thereof contemplated by this Agreement.

1.32 “Settlement Class” has the meaning ascribed to it in Section 2.1(a).

1.33 “Settlement Fund Account” means the account into which BANA and Visa will deposit the Cash Settlement Amount.

1.34 “Taxes” shall have the meaning ascribed to it in Section 3.4.

## **Section 2. The Settlement**

### **2.1 Conditional Certification of the Settlement Class**

(a) Solely for purposes of this Settlement, the Parties agree to certification of the following Settlement Class under Fed. R. Civ. P. 23(b)(3):

All persons and entities in the United States who, upon acquiring a Cryptocurrency during the Class Period, incurred Cash Advance Fees and/or Cash Advance Interest charges on credit cards issued by BANA.

The Settlement Class excludes (i) BANA, its officers, directors, or members of their immediate families and their legal representatives, heirs, successors or assigns, (ii) Visa, its officers, directors, or members of their immediate families and their legal representatives, and (iii) Class Members who submit timely and valid opt-out requests.

(b) In the event that the Settlement does not receive Final Approval, or in the event the Effective Date does not occur, any order certifying the Settlement Class for purposes of effectuating this Settlement Agreement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and the Action shall return to the procedural status quo in accordance with this paragraph. In addition, the Parties shall not be bound by this definition of the Settlement Class, shall not be permitted to use it as evidence or otherwise in support of any argument or position in any motion, brief, hearing, appeal, or otherwise, and BANA and Visa shall retain their right to object to the maintenance of this Action as a class action, the suitability of Plaintiffs to serve as class representatives, and the suitability of Class Counsel to serve as class counsel.

## 2.2 Monetary Relief

(a) Settlement Amount. Defendants will collectively pay \$415,000 to settle the Action (“Cash Settlement Amount”).

(b) Escrow Account. Within thirty (30) calendar days of Preliminary Approval, Defendants shall deposit the Cash Settlement Amount into the Settlement Fund Account, which shall be held with BANA.

(c) Calculation of Class Member Awards. Each Class Member who bought at least one Cryptocurrency with a BANA credit card during the Class Period and was assessed a Cash Advance Fee and/or Cash Advance Interest charges for such transaction(s) which was not subsequently reversed in full shall be entitled to receive a cash payment from the Net Cash Settlement Amount. Class Member Awards will be calculated using a proportional payment structure, whereby each Class Member will receive a percentage of the total Cash Advance Fees that the Class Member incurred on Cryptocurrency transactions that were not reversed in full. The percentage used to calculate Class Member Awards will be determined by dividing the Net Cash Settlement Amount by the total amount of Cash Advance Fees, excluding Cryptocurrency transactions reversed in full, that BANA assessed from June 1, 2016 through September 3, 2019, on credit card accounts held by persons in the Settlement Class. That percentage will then be multiplied by the total Cash Advance Fees each Class Member incurred with respect to Cryptocurrency transactions, excluding Cryptocurrency transactions reversed in full, and rounded to the nearest penny, to determine each Class Member’s Class Member Award. In the event the aggregate amount of total cash awards dictated by the proportional payment structure exceeds the Net Cash Settlement Amount, the cash award for each transaction will be reduced pro rata until the aggregate amount of total cash awards no longer exceeds the Net Cash Settlement Amount.

## 2.3 Releases

(a) Class Member Release. Upon the Effective Date, Plaintiffs and Class Members who have not opted out of the Settlement Class pursuant to the procedures set forth in Section 2.5 release, waive, and forever discharge BANA, Visa, and each of their present, former, and future parents, subsidiaries, predecessors, successors, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint ventures, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting or purporting to act for them or on their behalf, including, but not limited to, Bank of America Corporation and Visa U.S.A. Inc. and all of their subsidiaries and affiliates (collectively, “Releasees”) with respect to any claim or issue relating to or arising out of any of the claims that were asserted in the Action, and any allegations, acts, transactions, facts, events, matters, occurrences, representations, statements, or omissions that were or could have been set forth, alleged, referred to, or asserted in the Action, and whether assertable in the form of a cause of action or as a private motion, petition for relief or claim for contempt, or otherwise, and in any court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, and whether based on TILA, Regulation Z,

or any other federal, state (including, without limitation, breach of contract, tortious interference with contractual relations, breach of the implied covenant of good faith and fair dealing, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*), local, statutory or common law or any other law, rule, regulation, ordinance, code, contract, common law, or any other source, including the law of any jurisdiction outside the United States (including both direct and derivative claims), including any and all claims for damages, injunctive relief, interest, attorney fees, and litigation expenses (“Released Claims”).

(b) Unknown Claims. With respect to the Released Claims, Plaintiffs and the Class Members shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:

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

Thus, subject to and in accordance with this Agreement, even if the Plaintiffs and/or Class Members may discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, Plaintiffs and each Class Member, upon entry of Final Approval of the Settlement, shall be deemed to have and by operation of the Final Approval Order, shall have, fully, finally, and forever settled and released all of the Released Claims. This is true whether such claims are known or unknown, suspected, or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now 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, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

(c) Covenant Not to Sue. Plaintiffs and the Settlement Class covenant not to sue or otherwise assert any claims against Defendants challenging practices with respect to assessing Cash Advance Fees and/or Cash Advance Interest charges for Cryptocurrency purchases made during the Class Period.

## 2.4 Notice Procedures

(a) Class Action Administrator. The Administrator shall perform the duties, tasks, and responsibilities associated with providing notice and administering the Settlement. Defendants shall pay all Administrative Costs, estimated at \$70,000.

(b) Provision of Information to Administrator. Within ten (10) calendar days of Preliminary Approval, BANA will provide the Administrator with the following

information, which will be kept strictly confidential between the Administrator and BANA, for each Class Member: (i) name; (ii) last known e-mail address; (iii) last known mailing address; (iv) the amount that each Class Member incurred in Cash Advance Fees for Cryptocurrency transactions (net of fully reversed transactions); and (v) whether the account that incurred any Cash Advance Fees and/or Cash Advance Interest charges with respect to Cryptocurrency transactions remains open. The Administrator shall use the data provided by BANA to make the calculations required by the Settlement, and the Administrator shall share the calculations with Class Counsel. The Administrator shall use this information solely for the purpose of administering the Settlement. Should a Class Member raise a dispute with the Administrator, the Administrator may provide Class Counsel with the information identified in (i), (iv), and (v) above, along with information regarding the nature of the dispute.

(c) Class Notices. Within thirty (30) calendar days of Preliminary Approval, or by the time specified by the Court, the Administrator shall send the Class Notices in the forms attached hereto as Exhibits A, B, and C, or in such form as is approved by the Court, to the Class Members. The Administrator shall send the “Email Notice,” attached hereto as Exhibit A, to all Class Members for whom BANA has provided the Notice Administrator with an e-mail address. The Administrator shall send the “Postcard Notice,” attached hereto as Exhibit B, to all Class Members for whom BANA has not provided an email address and to all Class Members to whom the Administrator sent Exhibit A via email but for whom the Administrator receives notice of an undeliverable email. Exhibit B shall be mailed after the Administrator updates mailing addresses provided by BANA with the National Change of Address database and other commercially feasible means. The Administrator shall also maintain a website containing the Complaint, the “Long-Form Notice,” attached hereto as Exhibit C, and any motions or orders relating to Preliminary or Final Approval until at least ninety (90) calendar days after Final Approval. The Administrator shall send the Long-Form Notice by mail or email to any Class Member who requests a copy.

## 2.5 Opt-Outs and Objections

As set forth below, Class Members shall have the right to opt-out of the Settlement Class and this Settlement or to object to this Settlement.

(a) Requirements for Opting-Out. If a Class Member wishes to be excluded from the Settlement Class and this Settlement, that Class Member is required to submit to the Administrator using a form available at the website address listed in the Class Notices, a written, signed, and dated statement that he or she is opting out of the Settlement Class and understands that he or she will not receive a Class Member Award from the Settlement of the Action. To be effective, this opt-out statement (i) must be postmarked no later than the Opt-Out Deadline, (ii) include the Class Member’s name, telephone number, last four digits of his or her BANA credit card account number(s), (iii) state that the Class Member wants to be excluded from the Settlement in *Galavis et al. v. Bank of America, N.A. et al.*, Case No. 2:18-cv-09490-SVW-PJWx, and that the Class Member understands that he or she will receive no money from the Settlement, and (iv) must be personally signed and dated by the Class Member(s). The Administrator will, within five (5) business days of receiving any opt-out statement, provide counsel for the Parties with a copy of the opt-out statement. The Administrator will, at least five (5) court days before the Final Approval Hearing, file copies of all opt-out statements with the

Court. As stated in Section 2.1(a), the Settlement Class will not include any individuals who send timely and valid opt-out statements, and individuals who opt out are not entitled to receive a Class Member Award under this Settlement.

(b) **Objections.** Any Class Member who has not submitted a timely opt-out form and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement must send that written objection to the Clerk of the Court and to the Administrator via first class mail at the addresses listed below.

To be valid and considered by the Court, an objection must (i) be postmarked on or before the Objection Deadline; (ii) state the objector's full name, address, and telephone number; (iii) include the case name and case number of this Action, *Galavis et al. v. Bank of America, N.A. et al.*, Case No. 2:18-cv-09490-SVW-PJWx; (iv) state each objection the Class Member is raising and the specific legal and factual bases for each objection, identify all documents which the Class Member asks the Court to consider, and state whether the objection is intended to apply only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) identify the number of times in which the Class Member has objected to a class action settlement in the past five (5) years, including the caption of each case in which the objector has made such objection; (vi) identify all counsel who represent the objector; (vii) indicate whether the objector (whether *pro se* or through representation) intends to testify at the Final Approval Hearing; and (viii) be personally signed by the Class Member. All evidence and legal support a Class Member wishes to use to support an objection must be filed with the Court on or before by the Objection Deadline and sent to the Parties postmarked on or before the Objection Deadline.

Plaintiffs and Defendants may file responses to any objections that are submitted. Any Class Member who timely files and serves an objection in accordance with this section may appear at the Final Approval Hearing, either in person or through an attorney, if the Class Member files a notice indicating that he/she wishes to appear at the Final Approval Hearing with the Court by the Objection Deadline. A Class Member who wishes to appear at the Final Approval Hearing must also send a copy of the notice indicating that he/she wishes to appear to the Administrator by the Objection Deadline. Failure to adhere to the requirements of this section will bar a Class Member from being heard at the Final Approval Hearing, either individually or through an attorney, unless the Court otherwise orders.

The Parties shall have the right to take discovery, including via subpoenas *duces tecum* and depositions, from any objector.

(c) **Waiver of Objections.** Except for Class Members who opt-out of the Settlement Class in compliance with the foregoing, all Class Members will be deemed to be members of the Settlement Class for all purposes under this Agreement, the Final Approval Order, and the releases set forth in this Agreement and, unless they have timely asserted an objection to the Settlement, shall be deemed to have waived all objections and opposition to its fairness, reasonableness, and adequacy.

(d) **No Encouragement of Objections.** Neither the Parties nor any person acting on their behalf shall seek to solicit or otherwise encourage anyone to object to the

Settlement or appeal from any order of the Court that is consistent with the terms of this Settlement.

(e) Right to Terminate Based on Opt-outs. Defendants may, in their sole discretion, terminate this Settlement if the number of opt-outs exceeds 5% of the number of all Class members (the “Termination Option”). Defendants shall give written notice to Class Counsel of any decision to exercise the Termination Option within ten (10) calendar days after the Opt-Out Deadline.

In the event Defendants terminate this Agreement, this Settlement shall become null and void, and it shall have no further force or effect. In that event, all funds being held in the Settlement Fund Account will revert back to BANA and Visa, the Action shall continue, and any orders preliminarily approving the Agreement shall be automatically vacated by the Court. In the event Defendants invoke the Termination Option, the Parties shall confer with the Court as to whether and how any notice of the termination should be sent to the Settlement Class, with Defendants bearing the cost of such notice. In the event Defendants terminate this Agreement, the Settlement shall be considered null and void; no term or condition of the Settlement, or any draft thereof, or any element of the discussion, negotiation, documentation, or other part or aspect of the Parties’ settlement discussions, or any judgment or orders entered with respect to the Settlement or any pleading filed in support of motions to approve the Settlement shall have any force or effect, may not be admitted as evidence at trial, and may not be relied upon by any party or by the Court for any purpose whatsoever; and any judgment or orders entered with respect to the Settlement shall be vacated. Thereafter, Plaintiffs and the Class Members shall be free to pursue any claims available to them, and Defendant shall be free to assert any claims or defenses available to it.

## 2.6 Benefit Distribution

(a) Within ten (10) days of Final Approval, the Administrator shall provide to BANA: (1) a list of the individuals and entities who are entitled to receive Class Member Awards; (2) the BANA credit card account numbers for each individual or entity entitled to receive a Class Member Award and the physical address for such individuals and entities; and (3) the amount of each Class Member Award due to each individual or entity entitled to receive Class Member Awards. The information provided by the Administrator shall be considered conclusive as to which individuals and entities are entitled to receive a Class Member Award and as to the amount of the Class Member Award to which each Class Member is entitled.

(b) Within sixty (60) calendar days of the Effective Date, the Administrator shall send Class Member Awards from the Settlement Fund Account via check to all Class Members entitled to Class Member Awards. If the Class Members who are entitled to Class Member Awards are joint accountholders, the Class Member Award check shall be made payable to both accountholders.

(c) Mailing Addresses. Prior to mailing Class Member Award checks, the Administrator shall attempt to update the last known addresses of the Class Members through the National Change of Address Database or similar databases. No skip-tracing shall be done as

to any checks that are returned by the postal service with no forwarding address. Class Member Award checks returned with a forwarding address shall be re-mailed to the new address within seven (7) calendar days. The Administrator shall not mail Class Member Award checks to addresses from which Class Notices were returned as undeliverable.

(d) Interest. All interest on the funds in the Settlement Fund Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Administrator. The Administrator is responsible for the payment of all taxes on interest on the funds in the Settlement Fund Account.

(e) Time for Depositing Class Member Award Checks. If a Class Member's Class Member Award check is not deposited (or cashed) within ninety (90) calendar days after the check is mailed, (i) the check will be null and void, (ii) the Class Member will be barred from receiving a further Class Member Award under this Settlement, and (iii) the amount of such a check will revert to the Settlement Fund Account and be distributed as described in Section 3.5.

(f) Deceased Class Members. Any Class Member Award paid to a deceased Class Member shall be made payable to the estate of the deceased Class Member, provided that the Class Member's estate informs the Administrator of the Class Member's death at least thirty (30) calendar days before the date that Class Member Award checks are mailed and provides a death certificate confirming that the Class Member is deceased. If the Class Member's estate does not inform the Administrator of the Class Member's death at least thirty (30) calendar days before Class Member Award checks are mailed, the deceased Class Member will be barred from receiving a Class Member Award under this Settlement.

(g) Tax Obligations. The Parties shall have no responsibility or liability for any federal, state, or other taxes owed by Class Members as a result of, or that arise from, any Class Member Awards or any other term or condition of this Agreement.

(h) Tax Reporting. The Administrator shall prepare, send, file, and furnish all tax information reporting forms required for payments made from the Settlement Fund Account as required by the Internal Revenue Service pursuant to the Internal Revenue Code and related Treasury Regulations. The Parties hereto agree to cooperate with the Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this section.

(i) Reports. The Administrator shall provide the Parties with a reconciliation and accounting of the Settlement Fund Account at each of the following times: (i) no later than ten (10) calendar days after the Class Member Award checks are mailed, and (ii) no later than ten (10) calendar days after the expiration of the 120-day period for depositing Class Member Award checks.

### **Section 3. Class Representative Service Award and Class Counsel's Fee & Expense Award**

3.1 Class Representative Service Awards. Plaintiffs, through their undersigned counsel, shall each be entitled to apply to the Court for an award from the Cash Settlement Amount of up to \$5,000 for their participation in the Action and their service to the Settlement Class ("the Class Representative Service Award"). Defendants shall not oppose or appeal such application that does not exceed \$5,000 per Plaintiff. The Class Representative Service Awards shall be paid from the Settlement Fund Account.

3.2 Fee & Expense Award. The Parties consent to the Court appointing Class Counsel in this Action for purposes of the Settlement. Class Counsel shall be entitled to apply to the Court for an award for attorneys' fees incurred in investigating, researching, and litigating this Action, and Class Counsel may also apply for reimbursement for costs and expenses incurred in the Action, in the aggregate amount of \$285,000 ("the Fee & Expense Award"). Defendants agree not to oppose or appeal any such applications that do not collectively exceed \$285,000. The Fee & Expense Award shall constitute full satisfaction of any obligation on the part of Defendants to pay any person, attorney, or law firm for costs, litigation expenses, attorneys' fees, or any other expense incurred on behalf of Plaintiffs or the Settlement Class. Defendants shall pay the Fee & Expense Award to Class Counsel within ten (10) days of the Effective Date. In the event the Court approves a Fee & Expense Award in an amount less than \$285,000, the difference between \$285,000 and the amount the Court awards shall in no circumstance revert to Defendants. Subject to the approval of the Court, Defendants shall deposit the difference into the Settlement Fund Account within ten (10) days of the date the Fee & Expense Award is granted and the difference shall be added to the Net Cash Settlement Amount and distributed to Settlement Class Members under Section 2.2(c). A Fee & Expense Award less than the amount sought by Plaintiffs' counsel is not a basis for setting aside the Agreement, and the decision by the Court concerning the Fee & Expense Award shall not affect the validity of the Agreement or finality of the Settlement.

3.3 Demarcation. It is the intention of the Parties to demarcate clearly between proceeds from the Settlement in which Class Members have an interest, which may subject them to tax liability, and the Fee & Expense Award. Accordingly, the amount paid separately to Class Counsel for the Fee & Expense Award is independent of and apart from the amounts paid to Class Members, and Class Members shall at no time have any interest in the Fee & Expense Award. The Parties make no representation regarding and shall have no responsibility for the tax treatment of the Fee & Expense Award, or any other payments paid to Class Counsel or the tax treatment of any amounts paid under this Agreement.

3.4 The funds in the Settlement Fund Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Settlement Fund Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund Account or otherwise, including any taxes or tax detriments that may be imposed upon Defendants, Defendants' counsel, Plaintiffs and/or Class Counsel with respect to income earned by the Settlement Fund Account for any period during which the Settlement Fund Account does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or

otherwise (collectively “Taxes”), shall be paid out of the Settlement Fund Account. Defendants and Defendants’ counsel and Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes. The Settlement Fund Account shall indemnify and hold Defendants and Defendants’ counsel and Plaintiffs and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

3.5 Residual in Settlement Fund. In the event that there is any residual in the Settlement Fund Account after the distributions required by this Agreement are completed, said funds shall in no circumstance revert to Defendants. Subject to the approval of the Court, the funds may be distributed to Settlement Class Members through a secondary, pro-rata distribution; however, if the residual amount is less than \$5,000, the funds may be distributed to a residual *cy pres* program chosen by and mutually agreed to by Plaintiffs and Defendants. Any *cy pres* distribution shall be paid as soon as reasonably possible following the completion of distribution of funds to the Settlement Class Members.

#### **Section 4. Settlement Approval**

4.1 Preliminary Approval. On or before October 22, 2019, Plaintiffs will submit for the Court’s consideration a motion seeking Preliminary Approval of the Settlement and apply to the Court for entry of a Preliminary Approval Order, the form of both will be subject to review and consent by Defendants. In the event the Court does not enter the Preliminary Approval Order in the same form as consented to by Defendants, the Parties have the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless the Parties waive in writing their right to terminate the Agreement due to any changes or deviations from the form of the Preliminary Approval Order. If any Party exercises its right to terminate and this Agreement becomes null and void, all funds being held in the Settlement Fund Account will revert to BANA and Visa. In Plaintiffs’ motion seeking Preliminary Approval, Plaintiffs shall request that the Court approve the Class Notices attached as Exhibits A, B, and C. The Court will ultimately determine and approve the content and form of the Class Notices to be distributed to Class Members.

The Parties further agree that in Plaintiffs’ motion seeking Preliminary Approval, Plaintiffs will request that the Court enter the following schedule governing the Settlement: (i) deadline for sending the Class Notices: thirty (30) calendar days from Preliminary Approval; (ii) deadline for filing motions for Class Representative Service Award and Fee & Expense Award: forty-five (45) calendar days from Preliminary Approval; (iii) deadline for opting out or serving objections: seventy-five (75) calendar days from Preliminary Approval; and (iv) Final Approval Hearing: one-hundred (100) calendar days from Preliminary Approval.

4.2 Final Approval. Plaintiffs will submit for the Court’s consideration, by the deadline set by the Court, a Final Approval Order, the form of which will be subject to review and consent by Defendants. The motion for Final Approval of this Settlement, the form of which will also be subject to review and consent by Defendants, shall include a request that the Court enter the Final Approval Order and, if the Court grants Final Approval of the Settlement and incorporates the Agreement into the final judgment, that the Court dismiss this Action with prejudice, subject to the Court’s continuing jurisdiction to enforce the Agreement. In the event that the Court does not enter the Final Approval Order in materially the same form

as consented to by Defendants, as determined by the Parties, the Parties have the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless the Parties waive in writing their right to terminate the Agreement due to any material changes or deviations from the form of the Final Approval Order. If this Agreement becomes null and void, all funds being held in the Settlement Fund Account will revert to BANA and Visa. While materiality remains subject to the Parties' determination in their reasonable discretion, material changes shall not include any changes to the legal reasoning or format used by the Court to justify the substantive relief sought by the Final Approval Order. In the event that the Effective Date does not come to pass, the Final Approval Order is vacated or reversed, or the Settlement does not become final and binding, the Parties agree to request that the Court shall vacate any dismissal with prejudice.

4.3 Effect of Disapproval. If the Settlement does not receive Final Approval or the Effective Date does not come to pass, the Parties shall have the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless the Parties waive in writing their right to terminate the Agreement under this section. In addition, the Parties agree that if this Agreement becomes null and void, all funds being held in the Settlement Fund Account will revert to BANA and Visa; Defendants shall not be prejudiced in any way from opposing class certification in the Action; and Plaintiffs and the Class Members shall not use anything in this Agreement, in any terms sheet, or in the Preliminary Approval Order or Final Approval Order to support a motion for class certification or as evidence of any wrongdoing by Defendants. No Party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including but not limited to, claims or objections to class certification, or claims or defenses on the merits. Each Party reserves the right to prosecute or defend this Action in the event that this Agreement does not become final and binding.

## **Section 5. General Provisions**

5.1 Cooperation. The Parties agree that they will cooperate in good faith to effectuate and implement the terms and conditions of this Settlement.

5.2 Effect of Prior Agreements. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the Settlement of this Action, contains the final and complete terms of the Settlement of the Action and supersedes all prior agreements between the Parties regarding Settlement of the Action. The Parties agree that there are no representations, understandings, or agreements relating to the Settlement of this Action other than as set forth in this Agreement. Each Party acknowledges that it has not executed this Agreement in reliance upon any promise, statement, representation, or warranty, written or verbal, not expressly contained herein.

5.3 No Drafting Presumption. All Parties hereto have participated, through their counsel, in the drafting of this Agreement, and this Agreement shall not be construed more strictly against any one Party than the other Parties. Whenever possible, each term of this Agreement shall be interpreted in such a manner as to be valid and enforceable. Headings are for the convenience of the Parties only and are not intended to create substantive rights or obligations.

5.4 No Admission of Liability. Defendants expressly disclaim and deny any wrongdoing or liability whatsoever. This Agreement and the Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with the Agreement and Settlement, shall not be construed or deemed to be evidence of an admission or concession by Defendants of any liability or wrongdoing by Defendants or any of the Releasees with respect to the matters that are the subject of the Action, or that the case was properly brought as a class action, or that any person suffered compensable harm or is entitled to any relief with respect to Defendants' conduct as alleged in the Complaint.

5.5 Court Address for Objections. All objections must be sent to the Administrator at the address listed below. In addition, objections must be sent to the Clerk of Court at the following address:

Clerk of the Court  
U.S. District Court for the Central District of California  
Judge Stephen V. Wilson  
First Street Courthouse  
350 W. 1st Street, Courtroom 10A, 10th Floor  
Los Angeles, CA 90012

5.6 Administrator Address. All notices to the Administrator required or desired to be given under this Agreement shall be in writing and sent by first class mail as follows:

Epiq Global  
P.O. Box 5110  
Portland, OR 97208

5.7 Notices. All notices to the Parties or counsel for the Parties required or desired to be given under this Agreement shall be in writing and sent by first class mail as follows:

To Plaintiffs and the Settlement Class:

Jeffrey R. Krinsk  
Finkelstein & Krinsk LLP  
550 West C Street  
Suite 1760  
San Diego, California 92101

To BANA:

William K. Pao  
O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899

To Visa:

Timothy W. Loose  
Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071

5.8 Modifications. No modifications to this Agreement may be made without written agreement of all Parties and Court approval.

5.9 Agreement Binding on Successors in Interest; No Third-Party Beneficiaries. This Agreement shall not inure to the benefit of any third party, except that this Agreement is binding on and shall inure to the benefit of the respective heirs, successors, and assigns of the Parties.

5.10 Retention of Jurisdiction. The Court shall retain jurisdiction over the interpretation, effectuation, enforcement, administration, and implementation of this Agreement. The Court has jurisdiction over the Parties to this Agreement, and the Settlement Class. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the Court in which this Action is pending.

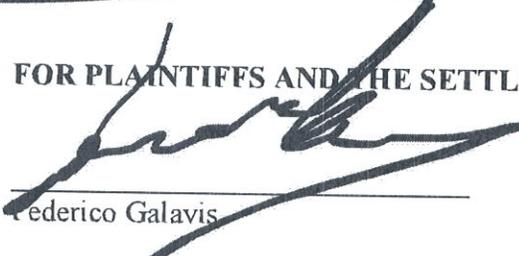
5.11 No Waiver. The provisions of this Agreement may be waived only in a writing executed by the waiving Party. The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver, by that Party or by any other Party, of any other prior or subsequent breach of this Agreement.

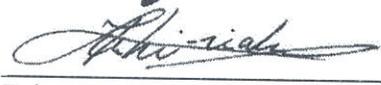
5.12 Execution in Counterparts. This Agreement may be executed in counterparts. Each signed counterpart together with the others shall constitute the full Agreement. Each signatory warrants that the signer has authority to bind his/her party.

5.13 CAFA. The Administrator shall timely send the notices required by 28 U.S.C. § 1715 within ten (10) calendar days after Plaintiffs file the motion seeking Preliminary Approval of the Settlement.

5.14 Deadlines. ~~If any~~ of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day.

**FOR PLAINTIFFS AND THE SETTLEMENT CLASS:**

  
\_\_\_\_\_  
Federico Galavis

  
\_\_\_\_\_  
Zak Kiriakos

**09/17/19**

\_\_\_\_\_  
Date

\_\_\_\_\_  
September 17, 2019

\_\_\_\_\_  
Date



Jeffrey R. Krinsk  
David J. Harris, Jr.  
FINKELSTEIN AND KRINSK LLP  
550 West C Street, Suite 1760  
San Diego, CA 92101

9/17/19  
Date

**FOR BANK OF AMERICA, N.A.:**

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
William K. Pao  
O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071  
(213) 430-6000

\_\_\_\_\_  
Date

Elizabeth L. McKeen  
Edgar H. Martinez  
O'MELVENY & MYERS LLP  
610 Newport Center Drive 17th Floor  
Newport Beach, CA 92660-6429  
(949) 760-9600

**FOR VISA INC.:**

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Timothy W. Loose  
Jason S. Kim  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
(213) 229-7000

\_\_\_\_\_  
Date

Andrew S. Tulumello  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue NW  
Washington, D.C. 20036  
(202) 955-8500

\_\_\_\_\_  
Jeffrey R. Krinsk  
David J. Harris, Jr.  
FINKELSTEIN AND KRINSK LLP  
550 West C Street, Suite 1760  
San Diego, CA 92101

\_\_\_\_\_  
Date

**FOR BANK OF AMERICA, N.A.:**

\_\_\_\_\_  
*Thomas P. Well*

September 23, 2019  
Date

Title: Senior Vice President  
\_\_\_\_\_  
*[Signature]*

9/23/2019  
Date

\_\_\_\_\_  
William K. Pao  
O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071  
(213) 430-6000

Elizabeth L. McKeen  
Edgar H. Martinez  
O'MELVENY & MYERS LLP  
610 Newport Center Drive 17th Floor  
Newport Beach, CA 92660-6429  
(949) 760-9600

**FOR VISA INC.:**

\_\_\_\_\_  
*[Signature]*

Sept 24, 2019  
Date

Title: Vice President  
\_\_\_\_\_  
*[Signature]*

9/25/19  
Date

\_\_\_\_\_  
Timothy W. Loose  
Jason S. Kim  
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