

ONTARIO
SUPERIOR COURT OF JUSTICE

The Honourable
Justice Perell

) The 19th day
) of NOVEMBER, 2015

BETWEEN:

JONATHON BANCROFT-SNELL and 1739793 ONTARIO INC.

Plaintiffs

-and-

VISA CANADA CORPORATION, MASTERCARD INTERNATIONAL INCORPORATED,
BANK OF AMERICA CORPORATION, BANK OF MONTREAL, BANK OF NOVA
SCOTIA, CANADIAN IMPERIAL BANK OF COMMERCE, CAPITAL ONE FINANCIAL
CORPORATION, CITIGROUP INC., FEDERATION DES CASSES DESJARDINS DU
QUEBEC, NATIONAL BANK OF CANADA INC., ROYAL BANK OF CANADA, and
TORONTO DOMINION BANK

Defendants



Proceeding Under the *Class Proceedings Act*, 1992

ORDER

BofA Settlement Approval

THIS MOTION made by the Plaintiffs, coming on for hearing on November 19, 2015, and upon hearing Reidar Mogerman and Jen Winstanley, counsel for the Plaintiffs; Vincent de l'Étoile for Federation des caisses Desjardins du Quebec, Paul Morrison and Christine Lonsdale for Toronto-Dominion Bank, Daniel Cohen for Capital One Bank (Canada Branch), Mike Eizenga for Bank of America Corporation, Mike Adlem and Shayne Strukoff, Robert Kwinter for Visa Canada Corporation, Katherine Kay for Canadian Imperial Bank of Commerce, Paul Martin for Royal Bank of Canada, David

Rankin for BMO Financial Group, James Musgrove for MasterCard International Incorporated, William McNamara for National Bank of Canada Inc. and Markus Kremer for The Bank of Nova Scotia;

ON READING the pleadings and materials filed;

AND ON BEING ADVISED that the Plaintiffs and others have entered into an agreement with the Defendant Bank of America Corporation, formerly MBNA Canada Bank, and its affiliate BofA Canada Bank ("BofA") (collectively, the "Parties"), dated August 16, 2013 and amended July 7, 2014 and July 8, 2014 (the "Settlement Agreement");

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendant consent to this Order;

AND ON BEING ADVISED that the Non-Settling Defendants take no position on this Order;

THIS COURT ORDERS AND DECLARES THAT:

1. The Settlement Agreement, as attached at Schedule "A", is incorporated into this Order in its entirety and forms part of this Order, and the definitions in the Settlement Agreement shall be applied in interpreting this Order;
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail;
3. The Settlement Agreement is fair, reasonable and in the best interests of the Ontario MasterCard Settlement Class and the Ontario Visa Settlement Class (collectively, the "Ontario Settlement Class");
4. The Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992*, RSO 1992, c 6 and shall be implemented in accordance with its terms and the terms of this Order;
5. The Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiffs and all members of the Ontario Settlement Class who have not validly opted-out (collectively, the

"Ontario Settlement Class Members", each an Ontario Settlement Class Member), and the Settling Defendant;

6. This Order, including the Settlement Agreement, is binding upon each Ontario Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rule 7 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 are dispensed with in respect of the Ontario Proceeding;
7. Upon the Effective Date, each Ontario Settlement Class Member shall consent to and shall be deemed to have consented to the dismissal as against the Releasees of any other actions or proceedings in Ontario he, she or it has commenced, without costs and with prejudice;
8. Upon the Effective Date, each other action or proceeding commenced in Ontario by any Ontario Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
9. Upon the Effective Date, each Releasor who has not validly opted-out of the Ontario Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasees from the Released Claims;
10. Upon the Effective Date, each Releasor shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, proceeding, complaint or demand against, or collect or seek to recover from, any Releasee or any other person or persons who will or could bring or commence or continue any claim, cross claim, claim over or any claim for contribution, indemnity or any other relief against any Releasee in respect of any Released Claim, except for the continuation of any proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees, and are permanently barred and enjoined from doing so;

11. The use of the terms "Releasors" and "Released Claims" in this Order is a matter of form only for consistency with the Settlement Agreement and does not constitute a release of claims by those Ontario Settlement Class Members who are resident in any province or territory where the release of one tortfeasors is a release of all tortfeasors;
12. Instead of releasing the claims against the Releasees, upon the Effective Date, each Ontario Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to sue or make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims;
13. Upon the Effective Date, the Releasees have released and shall be conclusively deemed to have forever and absolutely released each of the other from any and all claims for contribution, indemnity or other claims over, with respect to the Released Claims;
14. All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Canadian Proceedings or otherwise by any Non-Settling Defendant, a Settled Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, any named or unnamed co-conspirators or any other Person or party who are not Releasees, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Ontario Proceeding), except as set out in section 7.1(1)(a) of the Settlement Agreement.

15. If, in the absence of paragraph 14 of this Order, the Court or other final adjudication determines that there is a right of contribution, indemnity or other claims over, whether in equity or in law, by contract, statute or otherwise:
- (a) The Ontario Settlement Class Members shall reduce or limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators to not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
 - (b) Further, if the Court or other final adjudication determines that the Toronto-Dominion Bank ("TD") and/or its affiliates or any of its respective officers, directors, employees, agents and representatives is liable to the Plaintiffs in the Ontario Proceeding, in respect of the assets purchased by TD from BofA pursuant to an asset purchase agreement dated as of August 14, 2011 (the "2011 APA") and/or pursuant to an asset purchase agreement dated as of April 29, 2013 (the "2013 APA")(collectively, the "Acquired Assets, and the liability related to such Acquired Assets is referred to as the "Acquired Asset Liability"), and the Court or other final adjudication determines that TD and/or its affiliates and any of its or their respective officers, directors, employees, agents and representatives have rights of indemnity under the 2011 APA and/or the 2013 APA against BofA on account of the Acquired Asset Liability, the members of the Ontario MasterCard Settlement Class who have not validly opted-out shall limit their claims against TD and/or its affiliates and any of its or their respective officers, directors, employees, agents and representatives to not be entitled to recover from TD and/or its affiliates and any of its or their respective officers, directors, employees, agents and representatives, or

from the other Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that relates to the Acquired Asset Liability;

(c) Further, if the Court or other final adjudication determines:

- i. that TD and/or its affiliates and any of its or their respective officers, directors, employees, agents and representatives is liable to the Plaintiffs in the Ontario Proceeding, in respect of the Acquired Assets;
- ii. that TD and/or its affiliates and any of its or their respective officers, directors, employees, agents and representatives have rights of indemnity under the 2011 APA and/or the 2013 APA against BofA on account of the Acquired Asset Liability; and
- iii. that, notwithstanding the claims limitation mechanism in paragraph 15(b) of this Order, TD and/or its affiliates and any of its or their respective officers, directors, employees, agents and representatives is obliged to make payment to the Plaintiffs, the Ontario Settlement Class Members or to the other Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, on account of the Acquired Asset Liability in respect to which TD and/or its affiliates and any of its or their respective officers, directors, employees, agents and representatives have rights of indemnity under the 2011 APA and/or the 2013 APA against BofA;

then BofA and FIA Card Services, National Association shall remain liable under the 2011 APA and/or the 2013 APA to indemnify TD and/or its affiliates and any of its or their respective officers, directors, employees, agents and

representatives in respect of such Acquired Asset Liability and shall be irrevocably bound by the determinations made by the Court or other final adjudication under paragraphs 15(c)(1), (2) and (3) of this Order;

- (d) This Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceeding, whether or not the Releasees remain in the Ontario Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Proceeding and shall not be binding on the Releasees in any other proceedings;
16. If, in the absence of paragraph 14 hereof, the Non-Settling Defendants would not have the right to make claims for contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the Ontario Proceeding;
17. For greater certainty, the bar order in paragraphs 14 through 16 deals only with claims over and is not intended to bar *bona fide* independent and direct claims and causes of action between the Settling Defendant and TD as a Non-Settling Defendant for relief other than that claimed by the Plaintiffs in the Ontario Proceeding, including *bona fide* independent and direct claims and causes of action that TD may have against BofA under the 2011 APA and/or the 2013 APA;
18. Also for greater certainty, the bar order in paragraphs 14 through 16 deals only with claims over and is not intended to bar *bona fide* independent and direct claims and causes of action arising by contract, statute or otherwise between the Settling Defendant and Visa as a Non-Settling Defendant or between the Settling

Defendant and MasterCard as a Non-Settling Defendant for relief other than that claimed by the Plaintiffs in the Ontario Proceeding, including *bona fide* independent and direct claims and causes of action that Visa may have against BofA under the Visa Network Rules or that MasterCard may have against BofA under the MasterCard Network Rules;

19. Subject to paragraph 14 hereof, a Non-Settling Defendant may, on motion to this Court brought on at least ten (10) days' notice to counsel for the Settling Defendant and determined as if the Settling Defendant were a party to the Ontario Proceedings seek orders for the following:
 - (a) Documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure*, RRO 1990, Reg 194 from the Settling Defendant;
 - (b) Oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
 - (c) Leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
 - (d) The production of a representative of the Settling Defendant to testify at trial, with such witnesses to be subject to cross-examination by counsel for the Non-Settling Defendants;
20. The Settling Defendant retains all rights to oppose such motion(s) brought under paragraph 19 of this Order and to seek such ancillary relief as they deem appropriate (including, without limitation, confidentiality protections and/or costs). Nothing in this Order is intended to interfere with the power of this Court to make such orders as to costs and other terms as it considers appropriate on any such motion;

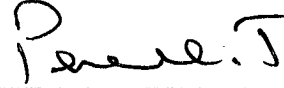
21. A Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 19 above on the Settling Defendant by service on counsel of record for the Settling Defendant in the Ontario Proceeding;
22. For purposes of enforcement of this Order and the Settlement Agreement, this Court will retain an ongoing supervisory role and the Settling Defendant acknowledges the jurisdiction of this Court and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order subject to the terms and conditions set out in the Settlement Agreement and this Order;
23. Except as provided herein, this Order does not affect any claims or causes of action that any Ontario Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the Ontario Proceeding;
24. No Releasee shall have any responsibility or liability relating to the administration of the Settlement Agreement or the Distribution Protocol or the administration, investment, or distribution of the Trust Account;
25. Subject to the provisions of the Settlement Agreement, the Settlement Amount, plus accrued interest less any monies paid out pursuant to the Settlement Agreement, shall be held in trust for the benefit of the Settlement Class, pending further order of the Courts;
26. The approval of the Settlement Agreement is contingent upon approval by the BC Court, the Alberta Court, the Saskatchewan Court, and the Quebec Court and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court, the Alberta Court, the Saskatchewan Court, and the Quebec Court and the BC Proceeding, the Saskatchewan Proceeding, and the Alberta Proceeding have been dismissed with prejudice and without costs and the Quebec Proceeding has been declared settled out of court as against BofA in the relevant proceeding by the Courts. If such orders are not

secured in BC, Alberta, Saskatchewan, and Quebec, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Proceeding and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice;

27. In the event that the Settlement Agreement is terminated in accordance with its terms, on motion made on notice to the Plaintiffs or the Settling Defendant, as appropriate:
 - (a) This Order shall be declared null and void and be without prejudice to any party; and
 - (b) Each party to the Ontario Proceeding shall be restored to his, her or its respective position in the Ontario Proceeding as it existed immediately prior to the execution of the Settlement Agreement.
28. On notice to the Court, but without further order of the Court, the Parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Settlement Agreement;
29. The determination of the form of any additional notice to the Settlement Class Members regarding approval of the Settlement Agreement and/or claims filing process, and the approval of a plan of dissemination of any additional notice be and are hereby adjourned to be dealt with by further orders of the Courts;
30. Except as aforesaid, the Ontario Proceeding be and is hereby dismissed against the Settling Defendant without costs and with prejudice; and
31. The certification for settlement purposes and the approval of the Settlement Agreement is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Proceeding. No person may cite or refer to all or any part of this Order and any reasons given by the Court in

connection with this Order as against any of the Non-Settling Defendants, except as is necessary to enforce this Order.

Date:

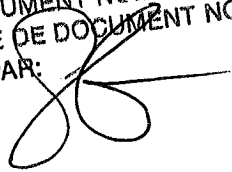


THE HONOURABLE JUSTICE PERELL

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LE / DANS LE REGISTRE NO.:

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AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
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TAB A

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made on August 16, 2013

(the "Execution Date")

Between

**MARY WATSON, HELLO BABY EQUIPMENT INC., JONATHAN
BANCROFT-SNELL, 1739793 ONTARIO INC., 9085-4886 QUEBEC INC.,
PETER BAKOPANOS, MACARONIES HAIR CLUB AND LASER CENTER
INC. OPERATING AS FUZE SALON**

(the "Plaintiffs")

and

BOFA CANADA BANK, BANK OF AMERICA CORPORATION

("BofA")

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**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS the Plaintiffs have commenced the Canadian Proceedings in the Courts and allege that the Defendants, including BofA, participated in the Alleged Conspiracy, and the Plaintiffs claim class-wide damages allegedly caused as a result of the Alleged Conspiracy, as well as equitable relief;
- B. AND WHEREAS BofA, through its participation in the Visa and MasterCard networks, received Interchange Fees in Canada during the Class Period;
- C. AND WHEREAS BofA believes that it is not liable in respect of the Alleged Conspiracy, and believes it has good and reasonable defences in respect of the claims advanced in the Canadian Proceedings;
- D. AND WHEREAS BofA does not admit through the execution of this Settlement Agreement any allegation of unlawful conduct as alleged in the Canadian Proceedings or at all;
- E. AND WHEREAS the Parties agree that neither this Settlement Agreement nor any statement made in the negotiations thereof shall be deemed or construed to be an admission by or evidence against BofA or evidence of the truth of any of the Plaintiffs' allegations against BofA, which BofA expressly denies;

F. AND WHEREAS in December 2011 BofA sold the majority of its MasterCard credit card portfolio in Canada to The Toronto-Dominion Bank ("TD") pursuant to an asset purchase agreement dated as of August 14, 2011 (the "2011 APA");

G. AND WHEREAS in June 2013 BofA sold the balance of its MasterCard credit card portfolio in Canada to TD pursuant to an asset purchase agreement dated as of April 29, 2013 (the "2013 APA");

H. AND WHEREAS, despite its belief that it is not liable in respect of the Alleged Conspiracy and that it has good and reasonable defences in respect of the claims advanced in the Canadian Proceedings, BofA has negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation of the Canadian Proceedings and any other present or future litigation arising out of the facts that gave rise to them, to avoid the risks inherent in uncertain, complex and protracted litigation and to achieve final resolutions of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent in relation to the Alleged Conspiracy;

I. AND WHEREAS BofA expressly reserves its rights to contest certification of other related or unrelated proceedings and assert that the actions herein would not be appropriately certified in the absence of this Settlement Agreement, and that this Settlement Agreement does not constitute in any way a precedent to support the certification of classes of this nature;

J. AND WHEREAS counsel for the Releasees have engaged in extensive arm's-length settlement discussions and negotiations with Class Counsel in respect of this Settlement Agreement;

K. AND WHEREAS as a result of these settlement discussions and negotiations, BofA and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of settlement between BofA and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of all Courts;

L. AND WHEREAS as part of this resolution, BofA has agreed to pay the Settlement Amount for the benefit of the Settlement Class;

M. AND WHEREAS the Plaintiffs have agreed to accept the Settlement Amount, in part, because of the value of the Settlement Amount paid under this Settlement Agreement and the value of the early cooperation BofA agrees to render or make available to the Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by BofA;

N. AND WHEREAS the Plaintiffs and Class Counsel recognize the heightened benefits of BofA's early cooperation in respect of the Canadian Proceedings, which continue to be defended by the Non-Settling Defendants;

O. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law

applicable to the Plaintiffs' claims, and having regard to the proposed dismissal of the Canadian Proceedings against BofA, the value of the Settlement Amount and the early cooperation to be provided by BofA, the burdens and expense associated with prosecuting the Canadian Proceedings, including the risks and uncertainties associated with motions, trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent in each of the Canadian Proceedings;

P. AND WHEREAS the Plaintiffs and the Settlement Class intend to fully and completely settle and resolve the claims advanced in the Canadian Proceedings as against the Releasees on the Effective Date pursuant to this Settlement Agreement;

Q. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a nationwide basis, without admission of liability, all of the Canadian Proceedings as against the Releasees;

R. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Canadian Proceedings as class proceedings and have consented to the Settlement Class and the Common Issue in each of the Canadian Proceedings;

S. AND WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Canadian Proceedings;

T. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Canadian Proceedings as against BofA;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Canadian Proceedings as against BofA be settled and dismissed with prejudice and without costs, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

(1) *Acquirers* mean those persons entering into contracts with Merchants for the provision of Visa Credit Cards or MasterCard Credit Card services and charging Merchant Discount Fees, including Interchange Fees, in Canada.

(2) *Additional Class Proceedings* means the proceeding commenced by 1023926 Alberta Ltd. in the form of an action filed in the Alberta Court, File No. 1203 10620 (Edmonton

Registry), filed on July 13, 2012, as amended on September 18, 2012, the proceeding originally commenced by Canada Rent a Heater (2000) Ltd., and currently prosecuted by The Crown & Hand Pub Ltd. commenced in the form of an action filed in the Saskatchewan Court, Court File No. 1206 of 2012, filed on July 12, 2012, as amended on November 14, 2012 and any future proceeding commenced prior to the Final Order in respect of the Alleged Conspiracy or relating to any conduct alleged, or which could have been alleged, against BofA by the Plaintiffs in the Canadian Proceedings.

(3) *Administration Expenses* mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices and claims administration, but excluding Class Counsel Fees.

(4) *Alberta Court* means the Alberta Court of Queen's Bench.

(5) *Alberta MasterCard Settlement Class* means all Alberta resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(6) *Alberta Proceeding* means the proceeding commenced by Macaronies Hair Club and Laser Center Inc., operating as Fuze Salon, in the form of an action filed in the Alberta Court, File No. 1203 18531 (Edmonton Registry), filed on December 14, 2012.

(7) *Alberta Visa Settlement Class* means all Alberta resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(8) *Alleged Conspiracy* means the alleged unlawful conspiracy by the Defendants to fix, maintain, increase or control Merchant Discount Fees, including Interchange Fees, paid by Merchants who accepted payment by Visa Credit Cards or MasterCard Credit Cards in Canada during the Class Period, contrary to Part VI of the *Competition Act* and the common law.

(9) *Approval Hearings* means the hearing of the motions brought by Class Counsel for the approval of the terms provided for in this Settlement Agreement in each of the Courts.

(10) *BC Court* means the Supreme Court of British Columbia.

(11) *BC MasterCard Settlement Class* means all British Columbia resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(12) *BC Proceeding* means the proceeding commenced by Mary Watson in the form of an action filed in the BC Court (Vancouver registry), Court File No. VLC-S-S-112003, filed on March 28, 2011, as amended.

(13) *BC Visa Settlement Class* means all British Columbia resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(14) *BofA* means BofA Canada Bank, formerly known as MBNA Canada Bank, and its affiliate Bank of America Corporation.

(15) *Canadian Proceedings* mean the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding, the Ontario Proceeding and the Quebec Proceeding.

(16) *Certification Hearings* mean the hearings of the motions brought by Class Counsel for the certification or authorization of the Canadian Proceedings as class proceedings as against BofA in each of the Courts.

(17) *Claims Administrator* means a Person proposed by Class Counsel and appointed by the Courts to administer this Settlement Agreement, including any claims process, in accordance with the provisions of this Settlement Agreement and any Distribution Protocol, and any employees of such Person.

(18) *Class Counsel* means Camp Fiorante Matthews Mogerman, Branch MacMaster LLP and Consumer Law Group.

(19) *Class Counsel Fees* include the fees, disbursements, costs, and other applicable taxes or charges of Class Counsel, including any applicable GST, HST, PST or QST.

(20) *Class Period* means March 23, 2001 to the date of the final judgment or order issued as against the Defendants in the Canadian Proceedings.

(21) *Common Issue* means: Did BofA conspire with others to fix, maintain, increase or control Interchange Fees paid by Merchants who accepted payment by Visa Credit Cards or MasterCard Credit Cards in Canada during the Class Period?

(22) *Confidential Opt-Out Agreement* means the confidential agreement which sets out the Confidential Opt-Out Threshold.

(23) *Confidential Opt-Out Threshold* means the threshold agreed to by the Parties, as set out in Schedule C to this Settlement Agreement, which Schedule shall be kept confidential, and filed and maintained under seal in any filings in the Courts.

(24) *Courts* mean the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court and the Quebec Court (each a "Court").

(25) *Defendant(s)* means, individually or collectively, the individuals or entities now or in the future named as a defendant in the Canadian Proceedings.

(26) *Distribution Protocol* means a plan to be developed by Class Counsel for distributing the Settlement Amount and accrued interest, in whole or part, as approved by the Courts.

(27) *Document(s)* has the meaning given to that term in rule 1-1(1) of the *British Columbia Supreme Court Civil Rules*.

(28) *Effective Date* means the date immediately when the Final Orders have been received from the Courts approving this Settlement Agreement.

(29) *Excluded BofA Documents* means any BofA Documents that are subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or which would require BofA to breach any order, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction.

(30) *Excluded Person(s)* means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

(31) *Execution Date* means the date the Parties execute this Settlement Agreement.

(32) *Final Order* means a final order made by a Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

(33) *Interchange Fees* mean interchange fees collected by Issuers arising from transactions made under the terms of the Visa Network Rules and MasterCard Network Rules in Canada.

(34) *Interchange Threshold* means 2% of the Interchange Fees collected by all Issuers in any calendar year.

(35) *Issuers* means the banks or other financial institutions which issued Visa and/or MasterCard Credit Cards in Canada;

(36) *MasterCard* means MasterCard International Incorporated.

(37) *MasterCard Credit Cards* mean credit cards issued by Issuers of MasterCard credit cards in Canada.

(38) *MasterCard Network Rules* means the MasterCard Worldwide MasterCard Rules, as amended.

(39) *Merchant Agreements* mean standard agreements entered into between Acquirers and Merchants which impose Merchant Discount Fees, including Interchange Fees, on Merchants whenever they accept payment from customers by way of Visa Credit Cards or MasterCard Credit Cards.

(40) *Merchant Discount Fees* mean fees paid by Merchants arising from the use of Visa Credit Cards or MasterCard Credit Cards in Canada.

(41) *Merchants* mean all persons or entities resident in Canada who accept payments from customers by way of Visa Credit Cards or MasterCard Credit Cards in exchange for the supply of goods or services.

(42) *Non-Settling Defendant(s)* means any Defendant that is not a Releasee, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the date of execution of this Settlement Agreement.

(43) *Notice of Certification/Authorization and Settlement Hearing* means the form or forms of notice, agreed to by the Plaintiffs and BofA, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the principal elements of this Settlement Agreement; (ii) the certification or authorization of the Canadian Proceedings; (iii) the dates and locations of the Approval Hearings; and (iv) the process by which the Settlement Class may opt-out of the Canadian Proceedings.

(44) *Notice of Claims Procedure* means any form or forms of notice, agreed to by the Plaintiffs and BofA, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the approval of this Settlement Agreement; and (ii) the process by which the Settlement Class Members may apply to obtain compensation from the Settlement Amount.

(45) *Notices* mean: (i) Notice of Certification/Authorization and Settlement Hearing; (ii) Notice of Claims Procedure; (iii) notice of termination of this Settlement Agreement if it is terminated after notice provided for in accordance with (i) above or otherwise ordered by the Courts; and (iv) any other notice that may be required by the Courts.

(46) *Ontario Court* means the Ontario Superior Court of Justice.

(47) *Ontario MasterCard Settlement Class* means all Canadian resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the BC MasterCard Settlement Class, the Alberta MasterCard Settlement Class, the Saskatchewan MasterCard Settlement Class, the Quebec MasterCard Settlement Class, and Excluded Persons.

(48) *Ontario Proceeding* means the proceeding commenced by Jonathan Bancroft-Snell and 1739793 Ontario Inc. in the form of a Statement of Claim filed in the Ontario Court (Toronto registry), Court File No. CV-11-426591CP (Toronto), filed on May 16, 2011.

(49) *Ontario Visa Settlement Class* means all Canadian resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the BC Visa Settlement Class, the Alberta Visa Settlement Class, the Saskatchewan Visa Settlement Class, the Quebec Visa Settlement Class, and the Excluded Persons.

(50) *Opt-Out Form* means the form in substantially the same form as that attached as Schedule D to this Settlement Agreement.

(51) *Opt-Out Period* means a period of sixty (60) days after the date on which the Notice of Certification/Authorization and Settlement Hearing is first published, or such other date that has been agreed upon by the Parties and ordered by the Courts.

(52) *Parties* mean the Plaintiffs and BofA (each a "Party").

(53) *Person(s)* means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(54) *Plaintiffs* mean the plaintiffs in the Canadian Proceedings, and any other Person who may in the future be added or substituted as a plaintiff to any of the Canadian Proceedings.

(55) *Proportionate Liability* means the proportion of any judgment that, had they not settled, the Courts would have apportioned to the Releasees and shall also be deemed to include any amount that a Releasee would have been liable to pay to a Non-Settling Defendant as indemnification in the absence of the bar orders contained herein.

(56) *Quebec Court* means the Superior Court of Quebec.

(57) *Quebec MasterCard Settlement Class* means all Quebec resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest, partnership or association which at any time between October 5, 2003 and October 5, 2004 had under its direction or control more than 50 persons bound to it by contract of employment.

(58) *Quebec Proceeding* means the proceeding commenced by 9085-4886 Quebec Inc. and Peter Bakopanos, in the form of an application for authorization (la Requete pour obtenir l'autorisation d'exercer un recours collectif) in the Quebec Superior Court, Court File No. 500-06-000549-101 (Montreal), filed on December 17, 2010, as amended.

(59) *Quebec Visa Settlement Class* means all Quebec resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal person established for a private interest, partnership or association which at any time between October 5, 2003 and October 5, 2004 had under its direction or control more than 50 persons bound to it by contract of employment.

(60) *Released Claims* mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof, in respect of the Alleged Conspiracy or

relating to any conduct alleged (or which could have been alleged) in the Canadian Proceedings including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the Alleged Conspiracy, or as a result of or in connection with any other alleged unlawful horizontal or vertical anticompetitive conduct in connection with the payment of Merchant Discount Fees, including Interchange Fees, but does not include any benefits that may accrue as a result of the proceeding by the Commissioner of Competition in the Competition Tribunal of Canada, also known as *The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated et al*, Case No. CT-2010-010 (the "Bureau Proceeding"), nor any benefits that may accrue as a result of injunctive or declaratory relief that may be issued as a result of the Canadian Proceedings.

(61) *Releasee(s)* mean, jointly and severally, individually and collectively, BofA and all of its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of its respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives (subject to such particular inclusions or exclusions of individuals as may be specified in writing by BofA in its sole discretion prior to the Effective Date); and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, including without limiting

the generality of the foregoing, Bank of America National Association ("BANA"), excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants.

(62) *Releasors* mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective present, former, and future parents, affiliates, subsidiaries, predecessors, successors, trustees, representatives, heirs, executors, administrators, insurers, and assigns.

(63) *Saskatchewan Court* means the Saskatchewan Court of Queen's Bench.

(64) *Saskatchewan MasterCard Settlement Class* means all Saskatchewan resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(65) *Saskatchewan Proceeding* means the proceeding commenced by Hello Baby Equipment Inc. in the form of a Statement of Claim filed in the Saskatchewan Court of Queen's Bench, Court File No. 133 of 2013, filed on January 24, 2013.

(66) *Saskatchewan Visa Settlement Class* means all Saskatchewan resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(67) *Settlement Agreement* means this agreement, including the Recitals and Schedules.

- (68) *Settlement Amount* means the all-inclusive sum of **CAD \$7.75 million**.
- (69) *Settlement Class* means all Persons included in the BC MasterCard Settlement Class, the BC Visa Settlement Class, the Alberta MasterCard Settlement Class, the Alberta Visa Settlement Class, the Saskatchewan MasterCard Settlement Class, the Saskatchewan Visa Settlement Class, the Ontario MasterCard Settlement Class, the Ontario Visa Settlement Class, the Quebec MasterCard Settlement Class and the Quebec Visa Settlement Class.
- (70) *Settlement Class Member(s)* means a member of the Settlement Class who has not validly opted-out of the Settlement Class in accordance with the order of the Courts, as applicable.
- (71) *Trust Account* means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of the Settlement Class Members.
- (72) *US Proceeding* means *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, MDL Docket No. 1720.
- (73) *Visa* means Visa Canada Corporation.
- (74) *Visa Credit Cards* mean credit cards issued by Issuers of Visa credit cards in Canada.
- (75) *Visa Network Rules* means the Visa International Operating Regulations, as amended.

SECTION 2- SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to: (i) effectuate this Settlement Agreement, including obtaining the approval of the Courts, and to secure the prompt, complete and final dismissal with prejudice, or where applicable a declaration of settlement, of the Canadian Proceedings; and (ii) stay the Additional Class Proceedings as against the Releasees named as Defendants in the Canadian Proceedings.

2.2 Motions Certifying or Authorizing the Canadian Proceedings and Approving Notice

(1) At a time mutually agreed to by the Plaintiffs and BofA after this Settlement Agreement is executed, the Plaintiffs shall bring motions before the Courts for orders certifying or authorizing each of the Canadian Proceedings as a class proceeding as against BofA for settlement purposes and approving the Notice of Certification/Authorization and Settlement Hearing.

(2) The BC order certifying the BC Proceeding as a class proceeding referred to in section 2.2(1) shall be substantially in the form set out in Schedule A.

(3) The Alberta, Saskatchewan, Ontario and Quebec orders certifying or authorizing the Alberta Proceeding, the Saskatchewan Proceeding, the Ontario Proceeding and the Quebec Proceeding shall be agreed upon by the Parties and shall mirror the substance and, where

possible, the form of the BC order referred to in section 2.2(2), taking into account the rules and practices of each province.

(4) Following receipt of any orders referred to in sections 2.2(2) or 2.2(3) and the expiration of the Opt-Out Period, and at a time mutually agreed to by the Parties, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

(5) The BC order approving this Settlement Agreement referred to in section 2.2(4) shall be substantially in the form set out in Schedule B.

(6) The Alberta, Saskatchewan, Ontario and Quebec orders approving this Settlement Agreement referred to in section 2.2(4) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order referred to in section 2.2(5), taking into account the rules and practices of each province.

2.3 Agreement on Form of Orders

(1) It is a fundamental term of this Settlement Agreement that the Plaintiffs and BofA must agree on the form and content of the orders to be sought pursuant to section 2.2 ("collectively, the "Certification and Approval Orders"), including the form of Notice of Certification/Authorization and Settlement Hearing, and the issued Certification and Approval Orders and the Notice of Certification/Authorization and Settlement Hearing must be consistent with the terms of this Settlement Agreement. The form and content of the Certification and Approval Orders shall be considered a material term of this Settlement Agreement and the failure

of any Court to approve the form and content of the Certification and Approval Orders substantially in the form agreed upon shall give rise to a right of termination pursuant to section 13 of this Settlement Agreement.

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by section 2.2(1) is brought, the Parties shall keep all of the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for BofA and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

(2) Notwithstanding section 2.4(1), at any time after the execution of this Settlement Agreement, BofA may elect to disclose this Settlement Agreement to the Non-Settling Defendants or for insurance purposes provided the recipient has agreed to act in accordance with section 2.4(1). If BofA elects to disclose this Settlement Agreement to any of the Non-Settling Defendants, it will provide immediate notice of this fact to the Class Counsel.

2.5 Sequence of Motions

(1) At any time as mutually agreed to by the Plaintiffs and BofA after this Settlement Agreement is executed, the Plaintiffs may bring motions before the Courts to request that the Courts hold joint hearings to consider any of the motions required by this Settlement Agreement

pursuant to the *Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions*.

(2) If no such request is made, or if the Courts do not agree to hold joint hearings, the Parties agree that, unless they agree otherwise, or unless any Court orders otherwise, any motions required by this Settlement Agreement shall be heard first by the BC Court. The Parties may take steps to schedule parallel motions in Alberta, Saskatchewan, Ontario and Quebec before any BC hearing, but, if necessary, Class Counsel may seek an adjournment of these hearings to permit the BC Court to render its decision on the motions.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within forty-five (45) days of the Execution Date, BofA agrees to pay the Settlement Amount in full satisfaction of: (i) all payment obligations under this Settlement Agreement; and (ii) the Released Claims against the Releasees.

(2) None of the Releasees shall have any obligation to pay any amount other than the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(3) Once the Settlement Amount is paid by BofA to Class Counsel in accordance with Section 3.1(1), that sum will be received by Class Counsel in trust in full satisfaction of all

payment obligations under this Settlement Agreement and in full satisfaction the Released Claims against the Releasees.

(4) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement. Class Counsel shall not pay out all or part of the monies in the Trust Account, except in accordance with this Settlement Agreement or in accordance with an order of the Courts obtained after notice to BofA, and in any event, after all appeal rights have either lapsed or been exhausted.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3) and (4), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.

(3) BofA shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay

any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to BofA who, in such case, shall be responsible for the payment of all taxes on such interest.

(4) Class Counsel hereby indemnifies, defends, and holds harmless BofA from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel with the Settlement Amount or funds in the Trust Account not strictly in accordance with the provisions of this Settlement Agreement or any order of the Courts.

3.3 Cooperation

(1) To the extent not previously provided to the Plaintiffs, and subject to the limitations set forth in this Settlement Agreement, BofA agrees to provide cooperation to Class Counsel, as specifically set forth below, which cooperation the Parties acknowledge and agree is a material term of this Settlement Agreement.

(2) Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by Class Counsel and BofA, BofA shall provide to Class Counsel:

- (a) any BofA Documents that have been produced by BofA or its related corporate entities in the US Proceeding to the extent that they are not subject to confidentiality obligations, court orders, or third party consent rights. Further,

BofA shall make reasonable efforts to produce Documents that BofA has produced in the US Proceeding that are subject to confidentiality obligations, court orders or third party consent rights. Reasonable efforts will include requesting consents from third parties, but in no case shall BofA be required to advance or respond to contested proceedings to provide to Class Counsel Documents that BofA produced in the US Proceeding that are subject to confidentiality obligations, court orders or third party consent rights. Upon a request by the Plaintiffs or Class Counsel, BofA will provide for the authentication of any business records in this production, so identified by Class Counsel, pursuant to a single request made to BofA;

- (b) any BofA Documents in BofA's possession relevant to the issues raised in the Canadian Proceedings, including any Visa or MasterCard Canadian transaction data since March 23, 2001, but excluding any Excluded BofA Documents, to the extent that such BofA Documents are not protected against disclosure pursuant to any confidentiality obligations, court orders, or third party consent rights; and
- (c) any third party Documents in BofA's possession or control relevant to the issues raised in the Canadian Proceedings but excluding any Excluded BofA Documents, to the extent that such third party Documents are not protected against disclosure pursuant to any confidentiality obligations, court orders, or third party consent rights.

(3) In connection with the implementation of Section 3.3(2), the Parties agree that: (i) BofA will provide to Class Counsel those Documents already produced by BofA in the US Proceeding; and (ii) BofA Canada Bank and any subsidiary of Bank of America Corporation that issued Visa Credit Cards or MasterCard Credit Cards in Canada during the Class Period will produce any other Documents relevant to issues in the Canadian Proceedings.

(4) If BofA has in its possession any Documents produced by third parties relevant to the issues raised in the Canadian Proceedings that cannot be disclosed pursuant to confidentiality obligations, court orders, or third party consent rights, BofA will reasonably consider making any requests necessary to obtain consent or authorization for the release of such Documents. If such consent or authorization is withheld, BofA will reasonably consider allowing the Plaintiffs to, at their own expense, assert any rights BofA has to permit production of such Documents to the Plaintiffs, provided that in no case shall BofA be required to advance or respond to contested proceedings to provide to Class Counsel Documents that are relevant to issues raised in the Canadian Proceedings.

(5) In the event that the Plaintiffs make an application to intervene or request Documents relevant to the Canadian Proceedings produced in the US Proceeding, BofA will consent to any such application.

(6) In connection with any Documents produced by BofA pursuant to this Settlement Agreement (including pursuant to a bar order which grants a Non-Settling Defendant an ability

to apply for: (i) documentary or oral discovery from BofA; (ii) service of a request to admit or production on BofA; or (iii) production of a witness at a hearing or trial), BofA shall be at liberty to designate such Documents as "Confidential" or "Highly Confidential" pursuant to the Consent Order made in the BC Proceeding dated September 17, 2012 (the "BC Protective Order"). To the extent that Documents produced by BofA are required for use in the Canadian Proceedings other than the BC Proceeding, Class Counsel shall seek, on a contested basis if necessary, protective orders similar in substance to the BC Protective Order, so that any Documents produced by BofA to Class Counsel under this Settlement Agreement, for use in the Canadian Proceedings, which qualify as Confidential or Highly Confidential, may be produced subject to a protective order.

(7) BofA will make reasonable efforts to facilitate access to Rubina Haylin for a meeting to speak to Class Counsel for a period of 6 hours or less. If Ms. Haylin does not make herself available, the Class Counsel and BofA will confer to determine whether there is any other individual of whom the same request can be made who has information relevant to the Canadian Proceedings.

(8) In the event that the Courts approve a bar order which grants a Non-Settling Defendant an ability to apply for: (i) documentary or oral discovery from BofA; (ii) service of a request to admit or production on BofA; or (iii) production of a witness at a hearing or trial, then such ability to apply shall extend to the Plaintiffs.

(9) It is understood and agreed that the Plaintiffs, Settlement Class Members, and Class Counsel shall not, without the express written consent of BofA, directly or indirectly, use or disclose any information or Documents provided by BofA for any purpose other than the investigation or prosecution of the claims in the Canadian Proceedings, nor, except as expressly permitted herein, share with any other Persons, including, but not limited to, any Settlement Class Members, Plaintiffs, or any other counsel in any action on behalf of Merchants, any information or BofA Documents obtained in connection with this Settlement Agreement, except in the event that a court in Canada expressly orders such information or Documents to be disclosed. In no circumstances, however, may the Plaintiffs, Settlement Class Members and/or Class Counsel apply for or consent to such an order, and promptly upon becoming aware of an application for such an order, Class Counsel shall immediately notify BofA of the application so that BofA may intervene in such proceedings. The disclosure restrictions set forth in this subsection do not apply to otherwise publicly available Documents and information.

(10) It is understood and agreed that any BofA Documents may be confidential and may be designated as confidential in accordance with and subject to the terms of any protective order(s) issued in the US Proceeding or confidentiality order(s) issued in the Canadian Proceedings, and the Plaintiffs, Settlement Class Members and Class Counsel agree to comply with the terms of such order(s), even if they or any of them are not parties to the US Proceeding.

(11) Upon the final judgment or order being entered by a Court against the Defendants in the Canadian Proceedings, including an order denying the certification or authorization of the

Canadian Proceedings as class proceedings, if requested by BofA, the Plaintiffs, Class Members and/or Class Counsel shall return to BofA or destroy, and provide BofA with a written confirmation by Class Counsel of such destruction, all Documents or other materials provided to the Plaintiffs or Class Counsel by BofA pursuant to this Settlement Agreement. Nothing contained in this subparagraph shall be construed to require the Plaintiffs or Class Counsel to return any of their work product.

(12) The provisions set forth in this Settlement Agreement are the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery, information or Documents from BofA or their current or former officers, directors or employees. The Plaintiffs, Settlement Class Members and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel, other than at trial, the evidence of BofA or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(13) A material factor influencing the decision by BofA to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from BofA and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on BofA.

SECTION 4 - OPTING-OUT

4.1 Procedure

- (1) A Person may opt-out of this Settlement Agreement by sending a fully completed Opt-Out Form, signed by the person and providing all of the required information, by pre-paid mail or courier to Class Counsel at an address to be identified in the Final Orders and the Notices.
- (2) A fully completed Opt-Out Form will only be effective if it is received by Class Counsel and is post-marked on or before the Opt-Out Period.
- (3) A Person who opts-out will cease to be a proposed member of the applicable class in the ongoing litigation against the Non-Settling Defendants.
- (4) A Person who does not opt-out of this Settlement Agreement will have the opportunity to opt-out of the continuing litigation against the Non-Settling Defendants if and when the continuing litigation is certified against some or all of those Non-Settling Defendants.

4.2 Opt-Out Report

- (1) Within thirty (30) days of the Opt-Out Period, Class Counsel shall provide BofA, to the extent such information is known by Class Counsel, with a report that sets out the names of any Persons who have opted-out of this Settlement Agreement, along with any other information received from such Persons pursuant to section 4.1(1).

4.3 The Confidential Opt-Out Agreement

(1) The Confidential Opt-Out Threshold shall be stated in the Confidential Opt-Out Agreement signed prior to or contemporaneously with the execution of this Settlement Agreement. The Confidential Opt-Out Agreement shall be kept confidential by the Parties and their counsel and may be shown to the Courts but shall not otherwise be disclosed.

(2) The Confidential Opt-Out Threshold contemplated in this section shall be considered a material term of this Settlement Agreement and, once met, shall give rise to a right of termination pursuant to Section 13 of this Settlement Agreement.

SECTION 5 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST

5.1 Distribution Protocol

(1) At a time within the discretion of Class Counsel, Class Counsel will seek orders from the Courts approving a Distribution Protocol.

5.2 No Responsibility for Administration or Fees

(1) BofA shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees and any responsibility or liability as a result of any decrease or depreciation of the value of the Trust Account, howsoever caused, including but not limited to, a decrease or depreciation in the value

of any investments purchased and/or held in the Trust Account.

SECTION 6 - RELEASES, DISMISSALS AND STAYS

6.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors release the Releasees from the Released Claims.

(2) Notwithstanding subsection 6.1(1), if, at any time between the date of the Final Order and the date of the final judgment or order being entered by the Courts as against the Defendants in the Canadian Proceedings, the Releasees collect Interchange Fees in excess of the Interchange Threshold, the release shall not apply to any such Interchange Fees. For greater certainty, in such circumstances, the release shall continue to apply for Interchange Fees collected up to, but not in excess of, the Interchange Threshold.

6.2 Covenant Not To Sue

(1) Notwithstanding section 6.1(1), for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to sue or make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The Parties

agree that the Final Order entered by the Court shall also enjoin the Releasors from making or pursuing such additional claims.

6.3 No Further Claims

(1) The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Persons, any action, suit, cause of action, claim or demand against any Releasee or against any other Persons who may claim contribution or indemnity, or other claims over relief, from any Releasees in respect of any Released Claim or any matter related thereto, except for the continuation of the Canadian Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees. Plaintiffs and Class Counsel acknowledge that BofA considers it to be a material term of this Settlement Agreement that the Settlement Class Members will be bound by the releases provided for herein.

6.4 Dismissal of the Canadian Proceedings

(1) The Canadian Proceedings shall be dismissed with prejudice and without costs as against any and all Releasees that are Defendants in the Canadian Proceedings.

6.5 Stay of the Additional Class Proceedings

(1) The Additional Class Proceedings shall be stayed as against any and all Releasees that are Defendants in the Canadian Proceedings. Class Counsel shall bring such motions as are

necessary to stay the Additional Class Proceedings and the Releasees shall not be responsible for any costs incurred or otherwise ordered in bringing or adjudicating such motions.

6.6 Settlement of Quebec Proceeding

(1) The Quebec Proceeding shall be settled, without costs and without reservation as against BofA and any and all Releasees that are Defendants in the Quebec Proceeding, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court.

6.7 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Settlement Class Members against any Person other than the Releasees.

6.8 No Assistance to Other Plaintiffs

(1) As of the Execution Date, the Plaintiffs, the Settlement Class Members and Class Counsel shall not, without the express written consent of BofA, provide any direct or indirect assistance to any plaintiff or any plaintiff's counsel related to any proceeding alleging price fixing of Merchant Discount Fees, including Interchange Fees, against the Releasees, except in the event that a court in Canada expressly directs the Plaintiffs, the Settlement Class Members or Class Counsel to provide such assistance. In no circumstances, however, may the Plaintiffs, the Settlement Class Members and/or Class Counsel apply for or consent to such an order, and

promptly upon becoming aware of an application for such an order, Class Counsel shall immediately notify BofA of the application in order that BofA or any Releasee may intervene in such proceedings.

6.9 Releases and Covenants

(1) The releases or covenants contemplated in this section shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the releases, or of the Releasers to abide by the covenants, contemplated herein shall give rise to a right of termination pursuant to Section 13 of this Settlement Agreement.

SECTION 7 - BAR ORDER AND OTHER CLAIMS

7.1 British Columbia, Alberta, Saskatchewan and Ontario Bar Order

(1) Subject to section 6.2, the Plaintiffs in the British Columbia Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding and the Ontario Proceeding shall seek a bar order from the BC Court, the Alberta Court, the Saskatchewan Court and the Ontario Court respectively, providing for the following:

- (a) All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims which were or could have been brought in the Canadian Proceedings, by any Non-Settling Defendant or any other Person

(and/or named or unnamed alleged conspirators) or party, against a Releasee, or by a Releasee against any Non-Settling Defendant or any other Person or party (excepting (i) a claim by a Releasee against any Person excluded in writing from the definition of Releasees; (ii) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against any Non-Settling Defendant; (iii) a claim by a Person who has validly and timely opted-out of the Canadian Proceedings; and (iv) a claim by a Non-Settling Defendant or any Person or party for contribution, indemnity or other claims over relating to Interchange Fees that have not been released pursuant to section 6.1(2)), are barred, prohibited and enjoined in accordance with the terms of the order.

(b) If any one of the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court or other final adjudication determines that there is a right of contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise:

(i) The members of the BC MasterCard Settlement Class, BC Visa Settlement Class, Alberta MasterCard Settlement Class, Alberta Visa Settlement Class, Saskatchewan MasterCard Settlement Class, Saskatchewan Visa Settlement Class, Ontario MasterCard Settlement Class or Ontario Visa Settlement Class shall limit their claims against the Non-Settling

Defendants (and/or named or unnamed co-conspirators) to not be entitled to claim or recover from the Non-Settling Defendants that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) Further, if any one of the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court or other final adjudication determine that TD is liable to the Plaintiffs in the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding or the Ontario Proceeding, in respect of the assets purchased by TD from BofA pursuant to the 2011 APA and/or the 2013 APA (collectively, the "Acquired Assets", and the liability related to such Acquired Assets is referred to as the "Acquired Asset Liability"), and any one of the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court or other final adjudication determine that TD has rights of indemnity under the 2011 APA and/or the 2013 APA against BofA on account of the Acquired Asset Liability, the members of the BC MasterCard Settlement Class, Alberta MasterCard Settlement Class, Saskatchewan MasterCard Settlement Class or Ontario MasterCard Settlement Class shall limit their claims against TD to not be entitled to

claim or recover from TD or from the other Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that relates to the Acquired Asset Liability; and

- (iii) the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding or the Ontario Proceeding, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding and shall not be binding on the Releasees in any other proceedings.

- (c) A Non-Settling Defendant may, on motion to the BC Court, Alberta Court, Saskatchewan Court or Ontario Court brought on at least ten (10) days notice and to be determined as if BofA is a party to the BC Proceeding, Alberta Proceeding,

Saskatchewan Proceeding or Ontario Proceeding, not to be brought until the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding against the Non-Settling Defendants have been certified and all appeals or times to appeal from such certification have been exhausted, seek orders for the following:

- (i) documentary discovery and an affidavit of documents in accordance with the relevant rules of civil procedure from BofA;
 - (ii) oral discovery of a representative of BofA, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit on BofA in respect of factual matters; and/or
 - (iv) the production of a representative of BofA to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (2) BofA retains all rights to oppose such motion(s) brought under section 7.1(1)(e).
- (3) A Non-Settling Defendant may serve the motion(s) referred to in section 7.1(1)(c) on BofA by service on counsel of record for BofA in any of the Canadian Proceedings.

(4) To the extent that an order is granted pursuant to section 7.1(1)(c) and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall promptly be provided by BofA to the Plaintiffs and Class Counsel.

7.2 Quebec Waiver or Renunciation of Solidarity Order

(1) The Plaintiffs and BofA agree that the Quebec order approving this Settlement Agreement must include an order providing for the following:

- (a) the Plaintiffs in Quebec and the members of the Quebec MasterCard Settlement Class and Quebec Visa Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Releasees;
- (b) the Plaintiffs in Quebec and the members of the Quebec MasterCard Settlement Class and Quebec Visa Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendants;
- (c) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and

- (d) any future right by the Non-Settling Defendants to examine on discovery a representative of BofA will be determined according to the provisions of the *Code of Civil Procedure*, and BofA shall reserve its right to oppose such an examination under the *Code of Civil Procedure*.

7.3 Material Term

- (1) The form and content of the bar orders contemplated in section 7 of this Settlement Agreement shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the bar orders contemplated herein shall give rise to a right of termination pursuant to section 13 of this Settlement Agreement.

SECTION 8 - EFFECT OF SETTLEMENT

8.1 No Admission of Liability

- (1) The Plaintiffs and BofA expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any fault, omission, wrongdoing or liability by BofA or by any Releasee, or of the truth of any of the

claims or allegations contained in the Canadian Proceedings or any other pleading filed by the Plaintiffs or any other Settlement Class Member, including but not limited to those pleadings filed in the Additional Class Proceedings.

8.2 Agreement Not Evidence

(1) Whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (a) by the Parties in a proceeding to approve or enforce this Settlement Agreement; (b) by a Releasee to defend against the assertion of a Released Claim; (c) by a Releasee in any insurance-related proceeding; or (d) as otherwise required by law or as provided in this Settlement Agreement.

8.3 No Further Litigation

(1) Except as provided in sections 8.3(2) and 8.3(4) of this Settlement Agreement, no Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims.

(2) Sections 6.8 and 8.3(1) of this Settlement Agreement, shall be inoperative to the extent that they require any lawyer who is a member of the Law Society of British Columbia (the "LSBC") to breach his or her obligations under Rule 4.7 of the LSBC's Professional Conduct Handbook by refraining from participation or involvement in any claim or action in a BC Court. This section shall not affect or render inoperative any other section or provision of this Settlement Agreement.

(3) No Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel may divulge to any Person for any purpose any information, including, without limitation, any cooperation materials and Documents provided pursuant to section 3.3, obtained in the course of the Canadian Proceedings or in connection with this Settlement Agreement or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court in Canada.

(4) Section 8.3(1) does not apply to the involvement of any Person in the continued prosecution of the Canadian Proceedings against any Non-Settling Defendant or unnamed co-conspirators who are not Releasees.

SECTION 9 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

9.1 Settlement Class and Common Issue

(1) The Parties agree that the Canadian Proceedings shall be certified or authorized as class proceedings against BofA solely for purposes of settlement of the Canadian Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Canadian Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class. The Plaintiffs acknowledge that BofA agrees to the definition of the Common Issue for purposes of settlement only.

9.2 Certification or Authorization Without Prejudice

(1) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect, the Parties agree that any prior certification or authorization of a Proceeding as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties or any Releasee may later take on any issue in the Canadian Proceedings or any other litigation.

SECTION 10 - NOTICE TO SETTLEMENT CLASS

10.1 Notices Required

- (1) The Settlement Class shall be given the Notices.

10.2 Form and Distribution of Notices

- (1) The form and content of the Notices and the manner and extent of publication and distribution of the Notices shall be as agreed to by the Plaintiffs and BofA, such agreement not to be unreasonably withheld, and approved by the Courts.

10.3 Notice of Distribution

- (1) Except to the extent provided for in this Settlement Agreement, the Courts shall determine the form of notice in respect to the administration of this Settlement Agreement and any Distribution Protocol, on motions brought by Class Counsel.

SECTION 11 - ADMINISTRATION AND IMPLEMENTATION

11.1 Mechanics of Administration

- (1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

11.2 Settlement Class Member Information and Assistance

(1) BofA will make reasonable efforts to compile and provide to Class Counsel a list of the names, addresses of Settlement Class Members who paid Interchange Fees in respect of transactions incurred by persons using BofA Visa Credit Cards or MasterCard Credit Cards in Canada during the year 2011, together with information regarding the total sum of any known Interchange Fees, paid on these transactions. To the extent that this information is not in the possession of BofA and cannot readily be assembled, reasonable efforts will include requesting this information from Visa and MasterCard.

(2) The information required by section 11.2(1) shall be delivered to Class Counsel within one hundred and twenty (120) business days of the Execution Date, or such other date that has been agreed upon by the Parties and ordered by the Courts.

(3) Class Counsel may only use the information provided under section 11.2(2):

- (a) to facilitate the dissemination of the Notices;
- (b) to advise the Settlement Class Members of any subsequent settlement agreement reached in the Canadian Proceedings, any related approval hearings, and any other major steps in the Canadian Proceedings;

(c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement achieved in the Canadian Proceedings; and

(d) as otherwise authorized in (but subject to the terms of) section 3.3.

(4) If this Settlement Agreement is terminated, all information provided by BofA pursuant to section 11.2(2) shall be returned or destroyed forthwith, no record of the information so provided shall be retained by Class Counsel or by any Person to whom Class Counsel has provided such information, in any form whatsoever, and the information so provided may not be used or disclosed, directly or indirectly, in any form or manner by Class Counsel or by any Person to whom Class Counsel has disclosed such information.

SECTION 12 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) Class Counsel shall pay the costs of the Notices of this Settlement Agreement from the Trust Account.

(2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement, or at such other time as they shall determine in their sole discretion. BofA will not oppose such motions.

(3) Except as provided in sections 12(1) and 12(2), Class Counsel Fees and any Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Releasees shall not be liable for any fees, disbursements or taxes, including but not limited to any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or any Settlement Class Member's respective lawyers, experts, advisors, agents, or representatives.

SECTION 13 - TERMINATION OF SETTLEMENT AGREEMENT

13.1 Right of Termination

- (1) BofA or the Plaintiffs may terminate this Settlement Agreement in the event that:
- (a) the Confidential Opt Out Threshold is met;
 - (b) the releases and covenants contemplated in section 6 are not provided or abided by;
 - (c) the form and content of any of the orders or Notices departs materially from the form and content of the orders and Notices as agreed upon by the Plaintiffs and BofA;
 - (d) the form and content of any of the Final Orders approved by the Courts departs materially from the form and content of the orders agreed upon by the Plaintiffs and BofA under section 2.3(1) of this Settlement Agreement;

- (e) any Court declines to approve this Settlement Agreement or any material term or part hereof;
- (f) any Court declines to dismiss the Canadian Proceedings or stay the Additional Class Proceedings against BofA;
- (g) any Court approves this Settlement Agreement in a materially modified form; or
- (h) any orders approving this Settlement Agreement made by the Courts do not become Final Orders.

(2) To exercise a right of termination under section 13.1(1), a terminating party shall deliver a written notice of termination pursuant to this Settlement Agreement with fifteen (15) business days of the fact of the condition being met becoming known to the terminating party. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 13.4, shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by any Court that is not substantially in the form and content of the respective Final Orders, as agreed upon by the Plaintiffs and BofA in accordance with section 2.3(1), shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the termination of this Settlement Agreement, provided however that BofA may agree to waive this provision.

(4) Any order, ruling or determination made by any Court with respect to Class Counsel Fees or any Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(5) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and BofA agree that any prior certification or authorization of a Canadian Proceeding as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or any Releasee may later take on any issue in the Canadian Proceedings or any other litigation.

(6) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and BofA agree that any appearance, attendance, filing or other action or step taken by BofA pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that any Releasee may later take in respect of the jurisdiction of the Courts or any other court, including, without limitation, a motion to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over any Releasee in the Canadian Proceedings or any other litigation.

13.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify or authorize any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying or authorizing any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of any of the Canadian Proceedings as class proceedings, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in any of the Canadian Proceedings or any other litigation; and
- (d) the Parties shall negotiate in good faith to determine a new timetable, if the Canadian Proceedings are to continue against any Releasees.

13.3 Allocation of Monies in the Trust Account Following Termination

(1) Class Counsel shall pay to BofA the Settlement Amount plus all accrued interest thereon, less the costs of the Notices, within thirty (30) business days of termination in accordance with this Settlement Agreement.

(2) The Plaintiffs and BofA expressly reserve all of their respective rights if this Settlement Agreement is terminated.

13.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2, 8.1, 8.2, 9.2, 10, 11.2(4), 12(1), 12(4) and 13 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 14 - MISCELLANEOUS

14.1 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of this Settlement Agreement or the Distribution Protocol.

14.2 Motions for Directions

- (1) BofA or the Plaintiffs may apply to the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) Class Counsel may apply to the Courts for directions in respect of any Distribution Protocol.
- (3) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and BofA, except for those motions concerned solely with the implementation and administration of any Distribution Protocol.

14.3 Further Acts

- (1) Without limiting the generality of any other provisions of this Settlement Agreement, until such time as the Courts have approved or refused to approve this Settlement Agreement: (i) none of the Plaintiffs, the Releasers and Class Counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement; and (ii) none of the Releasees and their respective counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement.

14.4 Publicity

- (1) Except as otherwise required for the purposes of approving the settlement, the Plaintiffs and BofA agree that:

- (a) the Parties shall not issue any press releases or other communication of any kind (with the media or otherwise) regarding this settlement, except those that may be agreed to by the Parties;
- (b) the Parties shall act in good faith to ensure that any public statements, comments or any communications of any kind about any descriptions of the settlement and the terms of this Settlement Agreement are balanced, fair and accurate;
- (c) the Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the Parties to comply with any order of the Courts or as may be required under any applicable law or regulation.

14.5 Headings, etc.

- (1) In this Settlement Agreement:
 - (a) the division of this Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and

- (b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein" and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

14.6 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days;
and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

14.7 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the proceeding commenced in its jurisdiction, the parties thereto, and Class Counsel Fees in that proceeding.
- (2) The Plaintiffs and BofA agree that no Court shall make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a

complementary order or direction being made or given by the other Courts with which it shares jurisdiction over that matter.

14.8 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia, save for matters relating exclusively to the Quebec MasterCard Class Members and Quebec Visa Class Members, which matters shall be governed by and construed and interpreted in accordance with the Laws of the Province of Quebec.

14.9 Entire Agreement

(1) This Settlement Agreement, including the Recitals herein and the Schedules attached hereto, constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

14.10 Amendments and Waivers

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and the Courts with jurisdiction over the matter to which the

amendment relates must approve any such modification or amendment.

(2) The waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party and, any such waiver shall not be deemed or construed as a waiver of any other right, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

14.11 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by BofA shall be binding upon all of the Releasees.

14.12 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

14.13 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that

any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Settlement Agreement.

14.14 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents supportif ou connectif soient rédigés en Anglais. Nevertheless, BofA shall prepare a French translation of this Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

(2) The cost of translating the Notices, claims forms, or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required, be paid by BofA.

14.15 Transaction

(1) This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of

fact, of law and/or of calculation.

14.16 Recitals

(1) The recitals to this Settlement Agreement are true and form part of this Settlement Agreement.

14.17 Schedules

(1) The Schedules annexed hereto form part of this Settlement Agreement.

14.18 Notice

(1) Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

For the Plaintiffs and for Class Counsel in the Canadian Proceedings:

J.J. Camp, Q.C.

Ward Branch

CAMP FIORANTE MATTHEWS

BRANCH MACMASTER LLP

4th Floor, Randall Building
555 West Georgia Street
Vancouver, BC V6B 1Z6
Tel: 604-689-7555
Fax: 604-689-7554

1410 - 777 Hornby Street
Vancouver, BC V7G 3E2
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Fax: 604-684-3429

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For BofA:

Michael Eizenga

Robert Staley

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Tel: 416-777-4857
Fax: 416-863-1716
Email: staleyr@bennettjones.com

14.19 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

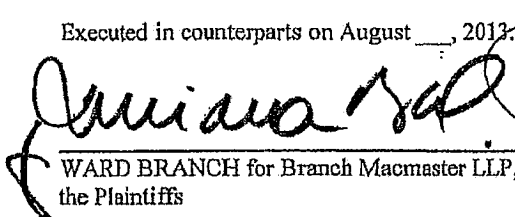
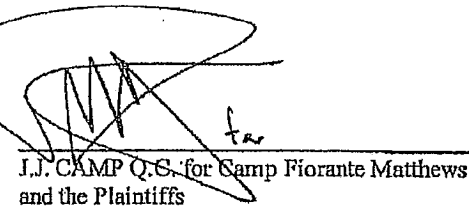
- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;

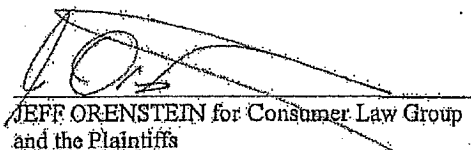
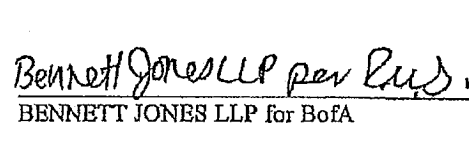
- (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

14.20 Authorized Signatures

(1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified below their respective signatures.

Executed in counterparts on August __, 2013.

 WARD BRANCH for Branch Macmaster LLP, the Plaintiffs	 J.J. CAMP Q.C. for Camp Fiorante Matthews and the Plaintiffs
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 JEFF ORENSTEIN for Consumer Law Group and the Plaintiffs	 BENNETT JONES LLP for BofA
--	--

SCHEDULE A

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Mary Watson

Plaintiff

and:

Bank of America Corporation, BMO Financial Group, Bank of
Nova Scotia, Canadian Imperial Bank of Commerce, Capital
One Bank (Canada Branch), Citigroup Inc., Fédération des
caisses Desjardins du Québec, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa Canada
Corporation

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c 50

**ORDER MADE AFTER APPLICATION
(CERTIFICATION AND NOTICE APPROVAL)**

☐ BEFORE Choose an item. LAST NAME

)
)
)

dd/mm/yyyy

☒ ON THE APPLICATION of the Plaintiff, Mary Watson, coming on for hearing at 800 Smithe Street, Vancouver, B.C. on ♦, and on hearing Ward K. Branch, Luciana Brasil and Reidar Mogerman, counsel for the Plaintiff, and Michael Eizenga and Robert Staley, counsel for Bank of America Corporation and BofA Canada Bank, formerly MBNA Canada Bank, affiliate of Bank of America Corporation (collectively, "BofA") and [counsel for Non-Settling Defendants] and on reading the pleadings and materials filed,

and on being advised that the Plaintiff and others have entered into an agreement with BofA (collectively, the "Parties"), dated ♦ (the "Settlement Agreement"); and on being advised that the Parties consent to this Order; and on being advised that the Non-Settling Defendants take no position on this Order;

THIS COURT ORDERS that:

1. Except to the extent that they are modified by this Order, the definitions set out in the Settlement Agreement, which is attached as Schedule "A" to this Order, apply to and are incorporated into this Order;
2. The within proceeding (the "BC Proceeding") is certified as a class proceeding only as against the defendant Bank of America Corporation (the "Settling Defendant"), for settlement purposes only;
3. The "BC MasterCard Settlement Class" is defined as:

All British Columbia resident persons who, during the Settlement Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons;
4. The "BC Visa Settlement Class" is defined as:

All British Columbia resident persons who, during the Settlement Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons;
5. Mary Watson is appointed as the representative plaintiff for the BC MasterCard Settlement Class and the BC Visa Settlement Class (collectively the "BC Settlement Class");
6. The proceeding is certified on the basis that the following issue is common to the BC Settlement Class:

Did BofA conspire with others to fix, maintain, increase or control Interchange Fees paid by Merchants who accepted payment by Visa Credit Cards or MasterCard Credit Cards in Canada during the Class Period?
7. ♦ is appointed as the Opt-Out Administrator;
8. Any member of the BC Settlement Class who wishes to opt-out of the within action must do so by sending a written election to opt-out to Class Counsel at the

address, by the means and within the time period specified in the Notice of Certification and Settlement Approval Hearing (the "Pre-Approval Notice");

9. Any member of the BC Settlement Class who has validly opted-out of the BC Proceeding is not bound by the Settlement Agreement and will not be entitled to receive any share of benefits payable in connection with same, and will cease to be a putative class member in the continuing action against the Non-Settling Defendants;
10. Any member of the BC Settlement Class who has not validly opted-out of the within action is bound by this Order and the Settlement Agreement, but may, subject to further court order, be entitled to opt-out of the continuing action as against the Non-Settling Defendants if future opt-out opportunities are provided;
11. Requests to opt-out of these proceedings must be sent to Class Counsel postmarked on or before the date that is sixty (60) days after the first newspaper publication of the Pre-Approval Notice;
12. This Order, including the Settlement Agreement, is binding upon each member of the BC Settlement Class, including those persons who are minors or mentally incapable.
13. The short form of the Pre-Approval Notice is hereby approved substantially in the form attached hereto as Schedule "B";
14. The long form of the Pre-Approval Notice is hereby approved substantially in the form attached hereto as Schedule "C";
15. The plan of dissemination for the Pre-Approval Notice (the "Plan of Dissemination") is hereby approved in the form attached hereto as Schedule "D";
16. The Pre-Approval Notices shall be disseminated in accordance with the Plan of Dissemination approved as part of this Order;
17. This Order, including without limiting the generality of the foregoing, the certification of the BC Proceeding against the Settling Defendant and the definitions of BC MasterCard Settlement Class, BC Visa Settlement Class, Class Period and Common Issue, is without prejudice to any position a Non-Settling Defendant may take in this or any other proceeding on any issue, including the issue of whether the BC Proceeding should be certified as a class proceeding as against the Non-Settling Defendants. For greater certainty, this Order, the Court's reasons in support of this Order and the certification of the BC Proceeding against the Settling Defendant for settlement purposes only are not binding on and shall have no effect on this Court's ruling in the continuing prosecution of the BC Proceeding or any other proceeding as against the Non-Settling Defendants. Notwithstanding the foregoing, the Non-Settling Defendants may not assert a deficiency in the notice plan and/or opt-out process set out in this Order as a

basis for opposition to approval of the Settlement Agreement, including without limitation as a basis for opposition to approval of the proposed bar order contained in the Settlement Agreement; and

18. Endorsement of this Order by counsel for the Non-Settling Defendants shall be dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Plaintiff

WARD BRANCH for Branch Macmaster
LLP

Signature of lawyer for Bank of America
Corporation

ROBERT STALEY/MICHAEL EIZENGA
for Bennett Jones LLP.

By the Court

Registrar

Schedule "B"
Legal Notice

If you entered into a merchant agreement between March 23, 2001 and continuing through to the present, your rights could be affected by the proposed national class actions settlement.

The Class Actions

Class action lawsuits were commenced in British Columbia, Alberta, Saskatchewan, Quebec and Ontario (the "Class Proceedings") against Visa Canada Corporation ("Visa"), MasterCard International Incorporated ("MasterCard") and banks which issue their credit cards ("Issuing Banks") alleging they conspired in setting the amount of and rules relating to merchant discount fees, including interchange fees.

The Settlement

Although Bank of America Corporation and BofA Canada Bank, formerly MBNA Canada Bank, affiliate of Bank of America Corporation (collectively, "BofA"), deny liability, they have reached a national settlement with the plaintiffs, subject to approval of the courts in British Columbia, Alberta, Saskatchewan, Quebec and Ontario (the "Courts"). BofA will pay CAD \$7,750,000 for the benefit of the Visa and MasterCard Class members (as defined in the Class Proceedings) and provide cooperation that will assist with prosecuting the ongoing actions against the non-settling defendants in exchange for a full release of claims against it and its related entities.

Certification/Authorization as Class Proceedings for Settlement Purposes

The Courts have certified/authorized the actions as class proceedings against BofA for settlement purposes only.

Settlement Class Members

You are a settlement class member if you entered into a merchant agreement with an acquirer for the provision of Visa or MasterCard credit card services and incurred merchant discount fees, including interchange fees, in Canada between March 23, 2001 and continuing through to the present.

Opting Out of the Class Proceedings

If you fall within within the Settlement Class (as defined in the Class Proceedings) and wish to participate in the Class Proceedings, you do not need to do anything at this time.

If you fall within the Settlement Class and do not want to participate in the Class Proceedings, you must opt-out (exclude yourself) in writing at this time. The deadline to opt out of the class actions is ♦. No further right to opt-out will be provided in the Canadian Proceedings as it relates to the action against BofA.

Hearings to consider approval of the settlement with BofA, counsel fee and disbursements payable from the settlement amount will be heard on <date> at <BC time> (British Columbia), <date> at <AB time> (Alberta), <date> at <SK time> (Saskatchewan), <date> at <QC time> (Quebec) and <date> at <ON time> (Ontario).

If you do not wish to participate in the Class Proceedings but wish to comment on or object to the settlement with BofA, you must do so by ♦.

FOR INFORMATION on the approval hearings or the settlement or on how to opt out of the Class Proceedings or object to the settlement with BofA, visit www.creditcardclassaction.com or call toll-free 1-800-689-2322 or email ♦.

Settlement class members should periodically monitor www.creditcardclassaction.com for updated information on the Class Proceedings. This notice is approved by the Courts.

Schedule "C"
VISA/MASTERCARD CLASS ACTION
Notice of Certification/Authorization and
Proposed Canadian Settlement with Bank of America Corporation

THE LAWSUITS

Class action lawsuits were commenced in British Columbia, Alberta, Saskatchewan, Quebec and Ontario (the "Class Proceedings") against Visa Canada Corporation ("Visa"), MasterCard International Incorporated ("MasterCard") and banks which issue their credit cards ("Issuing Banks") alleging they conspired in setting the amount of and rules relating to merchant discount fees, including interchange fees.

THE PROPOSED SETTLEMENT

A settlement was reached with the defendant Bank of America Corporation and BofA Canada Bank, formerly MBNA Canada Bank, affiliate of Bank of America Corporation (collectively, "BofA"). Settlement benefits include the payment of CAD\$7,750,000 assignment of rights in other lawsuits and cooperation in prosecuting the Canadian Proceedings against others. The settlement must be approved by the British Columbia, Alberta, Saskatchewan, Quebec and Ontario Courts (the "Courts") to be effective.

CERTIFICATION / AUTHORIZATION

The Class Proceedings were certified/authorized as class actions for settlement purposes by the Courts only in relation to BofA as a party to the Class Proceedings. It will be set aside if the settlement is not approved by all the Courts.

THE SETTLEMENT AFFECTS YOUR RIGHTS

If the settlement is approved, it will affect residents in British Columbia who, during some or all of the period commencing March 23, 2001 and continuing through to the present (the "Settlement Class Period"), except those who opt out of the Class Proceedings, the Defendants and certain related parties ("Settlement Class Members").

Under the settlement, the Settlement Class Members RELEASE BofA from claims alleging they conspired in setting the amount of and rules relating to merchant discount fees, including interchange fees.

As the Class Proceedings will continue against other Defendants, the money will be held in trust. If the settlement is approved, the Settlement Class Members may be entitled to receive money later and should keep purchase documents.

SETTLEMENT APPROVAL HEARINGS

The requests to approve the settlement will take place in hearings on <date> at <BC time> (British Columbia), <date> at <AB time> (Alberta) , <date> at <SK time> (Saskatchewan), <date> at <QC time> (Quebec) and <date> at <ON time> (Ontario).

YOUR OPTIONS

If you do not want to participate in the Class Proceedings, you must complete and send an Opt-Out Form to <> by <date>. Opt-Out Forms are available at <website> or from Class Counsel. You will keep any right to sue individually (except against BofA) but will not receive the benefit of this or future settlements or judgments in the Class Proceedings.

If you have no objection to the settlement and want to continue to participate in the Class Proceedings, you do not need to do anything at this time.

To comment on or object to the settlement, you must write to Class Counsel by <7 days before the settlement approval hearings>. Comments and objections will be provided to the Courts.

CLASS COUNSEL

- For British Columbia, Alberta, Saskatchewan and Ontario residents: Branch MacMaster LLP at ♦@branmac.com, and Camp Fiorante Mathews Mogerman at ♦@cfmlawyers.ca; and
- For Quebec residents: Jeff Orenstein at jorenstein@clg.org

The Plaintiffs entered into contingency agreements with the Plaintiff Lawyers providing for payment of up to 1/3 of amounts recovered in the Class Proceedings. The Courts will determine the amount to be paid to Class Counsel.

This Notice is a summary. Access www.creditcardclassaction.com for more information or to read the settlement agreement, or contact Class Counsel.

Schedule "D"

PLAN OF DISSEMINATION

**Notice of Certification/Authorization and Settlement Approval Hearing
in the Matter of Visa/MasterCard Class Action Litigation**

The Plaintiffs propose that the Notice of Certification/Authorization and Settlement Approval Hearing (the "Pre-Approval Notice") shall be distributed in the following manner:

Short-Form Notice:

1. Published once in the following newspapers, in either English or French, as is appropriate for each newspaper, subject to each having reasonable publication deadlines and costs:

(a) *The Globe and Mail, national edition*

(b) *National Post, national edition*

(c) *Montreal La Presse*

(d) *Montreal The Gazette*

2. Published once in the following industry magazines, in either English or French, as is appropriate for each magazine, subject to each having reasonable publication deadlines and costs:

(a) ♦

3. Sent to the following industry associations, in either English or French, as is appropriate for each association, requesting voluntary distribution to their membership:

(a) *Retail Council of Canada*

(b) ♦

Long-Form Notice:

4. A copy will be posted in electronic format in English and in French on the websites of Class Counsel.

5. A copy will be provided to the CBA National Class Action Registry with a request that it be posted online.
6. A copy will be sent to all persons who have contacted Class Counsel and identified themselves as being potential class members.

SCHEDULE B

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Mary Watson

Plaintiff

and:

Bank of America Corporation, BMO Financial Group, Bank of
Nova Scotia, Canadian Imperial Bank of Commerce, Capital
One Bank (Canada Branch), Citigroup Inc., Fédération des
caisses Desjardins du Québec, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa Canada
Corporation

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c 50

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN

Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca
via Mike Bike

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Mary Watson

Plaintiff

and:

Bank of America Corporation, BMO Financial Group, Bank of
Nova Scotia, Canadian Imperial Bank of Commerce, Capital
One Bank (Canada Branch), Citigroup Inc., Fédération des
caisses Desjardins du Québec, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa Canada
Corporation

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c 50

**ORDER MADE AFTER APPLICATION
(SETTLEMENT APPROVAL)**

☐ **BEFORE** Choose an item, LAST NAME

)
)
)
dd/mm/yyyy

☒ **ON THE APPLICATION** of the Plaintiff, Mary Watson, coming on for hearing at 800 Smithe Street, Vancouver, B.C. on ♦, for an order approving the agreement made between the Plaintiff and others and Bank of America Corporation and BofA Canada Bank, formerly MBNA Canada Bank, an affiliate of Bank of America Corporation (collectively, "BofA" or the "Settling Defendant"), dated ♦ (the "Settlement Agreement");

ON HEARING the submissions of Ward K. Branch, Luciana Brasil and Reidar Mogerman, counsel for the Plaintiff, and Michael Eizenga and Robert Staley, counsel for BofA, [counsel for Non-Settling Defendants];

AND ON READING the pleadings and materials filed, including ♦;

AND ON BEING ADVISED that the Parties consent to this Order;

AND ON BEING ADVISED that the Non-Settling Defendants take no position on this Order;

THIS COURT ORDERS that:

1. The Settlement Agreement is incorporated into this Order in its entirety and forms part of this Order, and the definitions in the Settlement Agreement shall be applied in interpreting this Order;
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail;
3. The Settlement Agreement is fair, reasonable and in the best interests of the BC MasterCard Settlement Class and the BC Visa Settlement Class (the "BC Settlement Class");
4. The Settlement Agreement is hereby approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c 50 and shall be implemented in accordance with its terms and the terms of this Order;
5. The Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff and all members of the BC Settlement Class, who have not validly opted-out, and the Settling Defendants;
6. This Order, including the Settlement Agreement, is binding upon each member of the BC Settlement Class including those persons who are minors or mentally incapable and the requirements of Rule 20-2 of the Supreme Court Civil Rules are dispensed with in respect of the BC Proceeding;
7. Upon the Effective Date, each member of the BC Settlement Class that has not validly opted-out shall consent to and shall be deemed to have consented to the dismissal as against the Releasees of any other actions or proceedings in BC he, she or it has commenced, without costs and with prejudice;
8. Upon the Effective Date, each other action or proceeding commenced in BC by any member of the BC Settlement Class that has not validly opted-out shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
9. Upon the Effective Date, each Releasor who has not validly opted out of the BC Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasees from the Released Claims;
10. Upon the Effective Date, each Releasor shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or

any other person, any action, suit, cause of action, claim, proceeding, complaint or demand against, or collect or seek to recover from, any Releasee or any other person or persons who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of any proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees, and are permanently barred and enjoined from doing so;

11. The use of the terms "Releasers" and "Released Claims" in this Order does not constitute a release of claims by those members of the BC Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors;
12. Upon the Effective Date, each member of the BC Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims;
13. Upon the Effective Date, the Releasees have released and shall be conclusively deemed to have forever and absolutely released each of the other from any and all claims for contribution, indemnity or other claims over, with respect to the Released Claims;
14. All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Class Proceedings by any Non-Settling Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, any named or unnamed co-conspirators, or any other Person or party who are not Releasees, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of the BC Proceeding);
15. If, in the absence of paragraph 14 above, the Court determines that there is a right of contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise:
 - (a) The BC Plaintiff and the BC Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs

claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (b) The BC Plaintiff and the BC Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees to, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees, only those claims for damages, costs and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees to the BC Plaintiff and the BC Settlement Class Members, if any, and, for greater certainty, the BC Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees, to the extent provided by law; and
 - (c) This Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Proceeding, whether or not the Releasees remain in the BC Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Proceeding and shall not be binding on the Releasees in any other proceedings;
16. If, in the absence of paragraph 14 above, the Court or other final adjudication determines that The Toronto-Dominion Bank ("TD") is liable to the BC Plaintiff in the BC Proceeding, in respect of the assets purchased by TD from the Releasees pursuant to an asset purchase agreement dated as of August 14, 2011 (the "2011 APA") and/or pursuant to an asset purchase agreement dated as of April 29, 2013 (the "2013 APA") (collectively, the "Acquired Assets", and the liability related to such Acquired Assets is referred to as the "Acquired Asset Liability"), and the BC Court or other final adjudication determines that TD has rights of indemnity under the 2011 APA and/or the 2013 APA against any of the Releasees on account of the Acquired Asset Liability, the BC Plaintiff and the BC Settlement Class Members shall not be entitled to claim or recover from TD, or from the other Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that relates to the Acquired Asset Liability.
17. That if, in the absence of paragraph 14 hereof, the Non-Settling Defendants would not have the right to make claims for contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against

the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the B.C. Proceeding.

18. Subject to paragraph 14 hereof, a Non-Settling Defendant may, on motion to this Court brought on at least ten (10) days' notice to counsel for the Settling Defendant and determined as if the Settling Defendant were a party to the BC Proceeding, and not to be brought unless and until the BC Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following
 - (a) Documentary discovery and an affidavit of documents in accordance with the *Supreme Court Civil Rules*, BC Reg 168/2009 from the Settling Defendant;
 - (b) Oral discovery of representatives of the Settling Defendant, the transcript of which may be read in at trial;
 - (c) Leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
 - (d) The production of representatives of the Settling Defendant to testify at trial, with such witnesses to be subject to cross-examination by counsel for the Non-Settling Defendants;
19. The Settling Defendant retains all rights to oppose such motion(s) brought under paragraph 18 of this Order, and nothing in this Order is intended to interfere with the power of this Court to make such orders as to costs and other terms as it considers appropriate on any such motion;
20. A Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 18 above on the Settling Defendant by service on counsel of record for the Settling Defendant in the BC Proceeding;
21. For purposes of enforcement of this Order and the Settlement Agreement, this Court will retain an ongoing supervisory role and the Settling Defendant acknowledges the jurisdiction of this Court and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order and subject to the terms and conditions set out in the Settlement Agreement and this Order;
22. Except as provided herein, this Order does not affect any claims or causes of action that any member of the BC Settlement Class has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the BC Proceeding;

23. No Releasee shall have any responsibility or liability relating to the administration of the Settlement Agreement or the Distribution Protocol or the administration, investment, or distribution of the Trust Account;
24. Subject to the provisions of the Settlement Agreement, the Settlement Amount, plus accrued interest less any monies paid out pursuant to the Settlement Agreement, shall be held in trust for the benefit of the Settlement Class, pending further order of the Courts;
25. The terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Alberta Court, the Saskatchewan Court, the Quebec Court and the Ontario Court and shall have no force and effect if such approval is not secured;
26. In the event that the Settlement Agreement is terminated in accordance with its terms, on motion made on notice to the Plaintiff or the Settling Defendant, as appropriate:
 - (a) This Order shall be declared null and void and be without prejudice to any party; and
 - (b) Each party to the BC Proceeding shall be restored to his, her or its respective position in the BC Proceeding as it existed immediately prior to the execution of the Settlement Agreement.
27. On notice to the Court, but without further order of the Court, the Parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Settlement Agreement;
28. The determination of the form of any additional notice to the Settlement Class Members regarding approval of the Settlement Agreement and/or claims filing process, and the approval of a plan of dissemination of any additional notice be and are hereby adjourned to be dealt with by further orders of the Courts;
29. Except as aforesaid, the BC Proceeding be and is hereby dismissed against the Settling Defendant without costs and with prejudice; and
30. Endorsement of this Order by the Non-Settling Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Plaintiff

WARD BRANCH for Branch Macmaster
LLP

Signature of lawyer for Bank of America
Corporation

ROBERT STALEY/MICHAEL EIZENGA
for Bennett Jones LLP.

By the Court

Registrar

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Mary Watson

Plaintiff

and:

Bank of America Corporation, BMO Financial Group, Bank of
Nova Scotia, Canadian Imperial Bank of Commerce, Capital
One Bank (Canada Branch), Citigroup Inc., Fédération des
caisses Desjardins du Québec, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa Canada
Corporation

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996, c.50

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca
via Mike Bike

SCHEDULE C
CONFIDENTIAL OPT-OUT THRESHOLD

REDACTED

SCHEDULE D

OPT-OUT FORM

By completing this Opt-Out Form, you are choosing to irrevocably opt out of the Credit Card Actions. By opting-out you are choosing not to take part in the Settlement Agreement between Bank of America Corporation and BofA Canada Bank, formerly MBNA Canada Bank, an affiliate of Bank of America Corporation (collectively, "BofA") and the Plaintiffs in the Credit Card Actions.

If you complete this Opt-Out Form you will NOT be bound by the Settlement Agreement or the release in the Settlement Agreement and you will NOT be a part of the Credit Card Actions going forward against the Non-Settling Defendants.

The form must be fully completed and must be postmarked no later than •. Opt-Out Forms received after • will not be accepted.

For more information on the Settlement Agreement and the ongoing Credit Card Actions, please see the Notice enclosed with this Opt-Out Form, or visit <http://creditcardclassaction.com>

Your name: _____ (required)
Your address: _____ (required)

Your telephone number: () _____ (required)
Your email address: _____ (optional)
Name of business*: _____ (required)

* Provide the name of the legal entity accepting Visa or MasterCard credit cards in Canada. This is probably the name of the company listed on the statements you receive from your credit card acquirer.

Declaration:

I declare that I have legal authority to bind the business named above, and I wish to opt out of the Credit Card Actions including the Settlement Agreement with BofA in the Credit Card Actions. I understand that by submitting this Opt-Out Form I will not receive any benefits under the Settlement Agreement but will not be bound by the Settlement Agreement.

Signature

Date

Return completed Opt-Out Forms to:

CAMP FIORANTE MATTHEWS

or

BRANCH MACMASTER LLP

4th Floor, Randall Building
555 West Georgia Street
Vancouver, BC V6B 1Z6

1410 - 777 Hornby Street
Vancouver, BC V7G 3E2

BANCROFT-SNELL and v. VISA CANADA CORPORATION, et al
1739793 ONTARIO INC.

Plaintiffs

Defendants

Court File No. CV-11-426591

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT TORONTO

Proceedings under the *Class Proceedings Act*, 1992

- Order

BRANCH MACMASTER LLP

Attn: Ward K. Branch

LSUC#: 42471K

1410 – 777 Hornby Street

Vancouver, BC V6Z 1S4

Telephone: (604) 654-2999

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LLP

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400 – 856 Homer Street

Vancouver, BC V6B 2W5

Telephone: (604) 689-7555

Fax: (604) 689-7554

LAWYERS FOR THE PLAINTIFFS

FILE: X01-029