

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 1:09-MD-02036-JLK

IN RE: CHECKING ACCOUNT  
OVERDRAFT LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO:  
FOURTH TRANCHE ACTION

*Simmons, et al. v. Comerica Bank*  
N.D. Tex. Case No. 3:10-cv-326-0  
S.D. Fla. Case No. 1:10-cv-22958

**FINAL JUDGMENT**

The Court, having entered the Order of Final Approval of Settlement, Authorizing Service Awards, and Granting Application For Attorneys' Fees dated June 9th, 2014 (DE # 3894), hereby **ORDERS AND ADJUDGES** as follows:

1. The Court incorporates herein by reference the Order of Final Approval of Settlement, Authorizing Service Awards, and Granting Application For Attorneys' Fees dated June 9th, 2014 ("Final Approval Order"). (DE # 3894).
2. Except as specifically modified by the Final Approval Order, all capitalized terms used herein shall have the meaning set forth in the Settlement Agreement and Release between the Parties ("Settlement"). (DE # 3783-1).
3. This Court has personal jurisdiction over all of the Settlement Class Members because they received the best practicable notice of the Settlement, which notice was reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the

Action and the terms of the Settlement, and to afford them an opportunity to present their objections or to request exclusion from the Settlement. The Court also has jurisdiction over Comerica Bank (“Comerica Bank” or “the Bank”) and over the Plaintiffs, all of whom have personally appeared in the Action pending before this Court. The Court has subject matter jurisdiction over the Action pursuant to 28 U.S.C. §§ 1332(d)(2) and (6).

4. For purposes of effectuating the Settlement, and in accordance with Federal Rules of Civil Procedure 23(a) and 23(b)(3), the Court certifies the Settlement Class defined as:

All holders of a Comerica Bank Account who, during the Class Period applicable to the state in which the Account was opened, incurred one or more Overdraft Fees as a result of Comerica Bank’s High-to-Low Posting. Excluded from the Class are all current Comerica Bank employees, officers and directors, and the judge presiding over this Action.

Agreement, ¶ 62.<sup>1</sup>

5. The Action is hereby dismissed with prejudice, each side to bear its own fees and costs, except as otherwise provided in the Final Approval Order. The Action, as defined in the Settlement, means *Simmons v. Comerica Bank* S.D. Fla. Case No. 1:10-cv-22958-JLK, which is dismissed with prejudice, as are any and all other cases pending in this MDL as of the date of Preliminary Approval to the extent they assert claims against Comerica Bank or any of its affiliates.

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<sup>1</sup> “Class Period” means: (a) for Settlement Class Members who opened accounts in Arizona, the period from February 18, 2004 through August 15, 2010; (b) for Settlement Class Members who opened accounts in California, the period from February 18, 2006 through August 15, 2010; (c) for Settlement Class Members who opened accounts in Florida, the period from February 18, 2005 through August 15, 2010; (d) for Settlement Class Members who opened accounts in Michigan, the period from February 18, 2004 through August 15, 2010; and (e) for Settlement Class Members who opened accounts in Texas, the period from February 18, 2006 through August 15, 2010. Agreement ¶ 30.

6. Without modifying the scope of Section XIV of the Settlement, as of the Effective Date, Plaintiffs and all Settlement Class Members (who do not timely opt-out of the Settlement), each on behalf of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries, and successors, shall automatically be deemed to have fully and irrevocably released and forever discharged Comerica Bank and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them, of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the conduct, omissions, duties or matters up to and including the date of preliminary approval of the Settlement that were or could have been alleged in this action to the extent they relate in any way to overdraft fees, sustained overdraft fees or debit re-sequencing or posting order, including, without limitation, any claims, actions, causes of action, demands, damages, losses, or remedies relating to, based upon, resulting from, or arising out of (a) the assessment of one or multiple overdraft fees and/or sustained overdraft fees on Settlement Class members' accounts, (b) the amount of one or more overdraft fees and/or sustained overdraft fees assessed on Settlement Class members' accounts, or (c) debit re-sequencing or posting order on Settlement Class members' accounts. The foregoing release includes, by way of example but not limitation, any and all of the following to the extent they involve, result in, or seek recovery or relief for overdraft fees, sustained overdraft fees or debit

re-sequencing or posting order: (1) the authorization, approval or handling of any debit card transaction, (2) any failure to notify or to obtain advance approval when a debit card transaction would or might cause a Settlement Class members' accounts to become overdrawn or further overdrawn or an overdraft fee to be assessed, (3) any failure to allow Settlement Class members to opt-out of overdrafts, or to publicize or disclose the ability of the holder of any Comerica Bank account to opt-out of overdrafts, (4) any failure to adequately or clearly disclose, in one or more agreements, posting order, debit re-sequencing, overdrafts, overdraft fees, or the manner in which debit card transactions are or would be approved, processed, or posted to Settlement Class members' accounts; (5) any conduct or statements encouraging the use of Comerica Bank debit cards, (6) the assessment of any sustained overdraft fee, and (7) any advertisements relating to any of the foregoing.


7. Those persons identified on the List of Exclusions attached hereto as Exhibit A are hereby excluded from the Settlement, shall not receive any distribution from the Settlement, and are not bound by this Judgment.

8. The Parties to the Settlement submit to, and this Court expressly reserves and retains, exclusive jurisdiction over the Action and the Parties, including Comerica Bank, Plaintiffs, and all Settlement Class Members, to administer, implement, supervise, construe, enforce and perform the Settlement in accordance with its terms, and to enforce the Final Approval Order. Without limiting the foregoing, and by way of example only, the Court retains jurisdiction to adjudicate any suit, action, proceeding or dispute arising out of the Settlement. The Court shall also retain jurisdiction over all questions and disputes related to the Notice Program, Settlement Administrator, the Notice Administrator and the Tax Administrator.

9. Nothing in the Settlement, the Final Approval Order, or this Judgment shall be deemed to be an admission, or to constitute an adjudication by the Court, of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by Comerica Bank or any party of any fault, liability or wrongdoing of any kind whatsoever or of any violation of statute, regulation or law.

10. Plaintiffs and all Settlement Class Members, including all objectors, are hereby barred and enjoined from asserting any of the Released Claims, including, but without limitation, during any appeals from the Final Approval Order and this Judgment.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse in Miami, Florida, this 9th day of June, 2014.

  
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JAMES LAWRENCE KING  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF FLORIDA

cc: All Counsel of Record

# EXHIBIT A

## COMERICA BANK SETTLEMENT CLASS EXCLUSION LIST

	First Name1	Middle1	Last Name	First Name2	Middle2	Last Name2
1	Jason	S	McMillan			
2	Robert	P	Rowland	Kerri	A	Rowland
3	Diane		Brinsondays			
4	Pamela	K	Chungehrlich			
5	Bernard	A	Young			
6	Latasha		Parker			