

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into this ____ day of September, 2013, by and among (1) Plaintiffs, for themselves and on behalf of the Settlement Class, and (2) Comerica Bank (“Comerica Bank”), subject to preliminary and final approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, Comerica Bank, Class Counsel and Plaintiffs hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class against Comerica Bank in the actions titled *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK; *Simmons v. Comerica Bank, N.A.*, S.D. Fla. Case No. 10-cv-22958 and N.D. Tx. Case No. 3:10-cv-00326-O (collectively, the “Action”), shall be settled and compromised upon the terms and conditions contained herein.

I. Recitals

1. On February 17, 2010, Plaintiff Delphia Simmons initiated this litigation against Comerica Bank,¹ Case No. 3:10-cv-00326-O (“*Simmons*”) in the United States District Court for the Northern District of Texas, alleging improper assessment and collection of overdraft fees and seeking, *inter alia*, monetary damages, interest, attorney’s fees, restitution, and equitable relief.
2. On August 9, 2010, the *Simmons* action was transferred to the United States District Court for the Southern District of Florida, where it joined other actions

¹ The *Simmons* complaint initially named Comerica Bank Incorporated as a defendant. By stipulation of the parties, Comerica Bank subsequently replaced Comerica Bank Incorporated as the defendant in the Action.

- coordinated under the MDL caption *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK (“MDL 2036”), and was assigned to Senior Judge James Lawrence King.
3. On December 6, 2010, Plaintiffs Delphia Simmons and Patricia Matlage filed an Amended Class Action Complaint in MDL 2036, alleging unfair assessment and collection of overdraft fees and seeking monetary damages, restitution, interest, attorney’s fees, and equitable relief from Comerica Bank.
 4. On January 20, 2011, Comerica Bank filed a motion to dismiss the Amended Class Action Complaint (DE # 1084). On February 22, 2011, Plaintiffs filed their opposition to that motion (DE # 1195), and on March 14, 2011, Comerica Bank filed its reply (DE # 1289). On March 21, 2011, the Court denied in part and granted in part Comerica Bank’s motion to dismiss, dismissing Plaintiff’s claims based on the implied covenant of good faith and fair dealing (DE # 1306, reported at *In re Checking Account Overdraft Litig.*, No. 09-2036, 2011 U.S. Dist. LEXIS 30965 (S.D. Fla. Mar. 21, 2011)).
 5. On April 21, 2011, Comerica Bank filed an answer to the operative Amended Class Action Complaint (DE # 1359), denying any and all wrongdoing and liability whatsoever and asserting various affirmative defenses and that Comerica Bank’s actions complied with all applicable laws and regulations.
 6. On June 3, 2011, Comerica Bank filed a Joinder in JPMorgan Chase Bank, N.A.’s Motion, Based on Recently Decided Eleventh Circuit Authority, to Dismiss on Grounds of Preemption Pursuant to FED. R. CIV. P. 12(c) and on Further

- Reconsideration of its Earlier Motion Pursuant to FED. R. CIV. P. 12(b)(6), or, in the Alternative for Certification Pursuant to 28 U.S.C. § 1292(b) (DE # 1568).
7. On July 13, 2011, the Court issued an Omnibus Order Denying Defendants' Motions for Reconsideration and alternative request for certification to the Eleventh Circuit (DE # 1725).
 8. On July 27, 2011, the Parties entered into a Stipulated Protective Order relating to the production of documents and information. (DE # 1774). Comerica Bank subsequently produced to Plaintiffs approximately 340,000 pages of documents (in addition to voluminous data files and spreadsheets).
 9. The most recent scheduling order entered by the Court on July 16, 2013 (DE # 3535) extended the fact discovery period from July 19, 2013 to September 20, 2013. Over the course of this discovery period, the parties conducted extensive discovery. Class Counsel took the depositions of approximately nine Comerica Bank employees, and two of its expert witnesses. Comerica Bank took the depositions of Plaintiffs, as well as of Plaintiffs' data expert.
 10. On January 6, 2012, Plaintiffs Simmons and Mattlage moved for class certification. (DE # 2384). On February 23, 2012, Comerica Bank filed its opposition to class certification (DE # 2490), and on March 22, 2012, Plaintiffs filed their reply (DE # 2583).
 11. On February 21, 2012, Comerica Bank filed a motion for summary judgment (DE # 2488). On February 24, 2012, Comerica Bank moved to defer consideration of class certification pending resolution of the summary judgment motion (DE # 2506). On April 3, 2012, the Court denied Comerica Bank's motion for summary

- judgment, and denied the motion to defer. (DE # 2614).
12. On March 2, 2012, Comerica Bank filed a motion to strike the declaration of Arthur Olsen submitted in support of Plaintiffs' motion for class certification (DE # 2523). Plaintiffs opposed this motion on March 21, 2012 (DE # 2586), and Comerica Bank replied on April 2, 2012 (DE # 2611). On June 29, 2012, the Court denied the motion to strike Mr. Olsen's declaration (DE # 2801).
 13. On March 21, 2012, Plaintiffs moved to strike Comerica Bank's experts (DE # 2587). Defendant responded on June 5, 2012 (DE # 2742) and Plaintiffs replied on June 13, 2012 (DE # 2757). On July 2, 2102 the Court denied Plaintiffs' motion (DE # 2807).
 14. The Court heard oral argument on class certification on July 18, 2012. On August 10, 2012, the Court issued an order granting Plaintiffs' motion for class certification (DE # 2875).
 15. Beginning in early 2012, the Parties initiated preliminary settlement discussions. The preliminary discussions resulted in the scheduling of a mediation.
 16. The Parties participated in mediation on May 23, 2012 with Professor Eric Green of Resolutions LLC as mediator. Although an agreement was not reached at the conclusion of this mediation session, the Parties agreed to continue settlement discussions.
 17. On August 24, 2012, Comerica Bank filed a FED. R. CIV. P. 23(f) petition for leave to appeal the Court's class certification order. Plaintiff's opposed the petition and the Court denied the petition on December 13, 2012.
 18. Comerica Bank adopted a high-to-low posting order as early as 1998. On

- December 26, 2012, the Ninth Circuit Court of Appeals issued its opinion in *Gutierrez v. Wells Fargo Bank*, 704, F.3d 712 (9th Cir. 2012) (“*Gutierrez*”), that reversed in part, and affirmed in part, the district court’s judgment, vacated the district court’s order of restitution, and remanded the case for further proceedings consistent with its opinion.
19. On January 3, 2013, Comerica Bank filed a motion for reconsideration of the denial of its petition for leave to appeal, based on the *Gutierrez* opinion. That motion was denied by the Eleventh Circuit on February 12, 2013.
 20. On March 5, 2013, Comerica Bank filed a motion for judgment on the pleadings and alternative request for certification of an interlocutory appeal (DE # 3302). That motion was fully briefed on April 8, 2013 (DE # 3388, 3419) and is pending.
 21. On May 23, 2013, Plaintiffs served Comerica Bank with its expert report regarding damages.
 22. On July 12, 2013, the Parties participated in a settlement conference. On that date, the Parties reached an agreement in principle concerning the material provisions of a settlement. On August 7, 2013, the Parties executed a Summary Agreement memorializing the material terms of the Settlement. On August 8, 2013, Settlement Class Counsel and Comerica Bank filed a Joint Notice of Settlement (DE # 3592), and requested a suspension of deadlines pending the drafting and execution of a final settlement agreement; the Court granted the requested motion on August 13, 2013 (DE # 3600).
 23. Following further negotiations and discussions, the Parties resolved all remaining issues, culminating in this Agreement.

24. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims of the Settlement Class. The Parties intend this Agreement to bind Plaintiffs, Comerica Bank, and all members of the Settlement Class who do not timely request to be excluded from the Settlement.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

25. “Account” means any consumer checking, demand deposit or savings account maintained by Comerica Bank in the United States accessible by a Debit Card.
26. "Account Holder" means a holder of an Account during the Class Period.
27. “Action” means *In Re: Checking Account Overdraft Litigation*, MDL Case No. 1:09-md-02036-JLK; *Simmons v. Comerica Bank, N.A.*, S.D. Fla. Case No. 10-cv-22958; and any and all other cases pending in MDL 2036 as of the date of Preliminary Approval to the extent they assert claims against Comerica Bank or any of its affiliates.
28. “Comerica Bank” means Comerica Bank, and includes each banking institution that during the Class Period entered into a merger transaction such that Comerica Bank has succeeded to pre-merger liabilities of such other institution by virtue of the merger.

29. “Class Counsel” means:

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and such other counsel as are identified in Class Counsel's request for attorneys' fees and costs.

30. "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.
31. "Class Representatives" means Delphia Simmons and Patricia Matlage.
32. "Court" means the United States District Court for the Southern District of Florida, Miami Division.

33. “Current Account Holder” means the holder of an Account, individually or jointly, at any time during the Class Period, who continues to hold an Account, individually or jointly, as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.
34. “Debit Card” means a card or similar device issued or provided by Comerica Bank, including a debit card, check card, or automated teller machine (“ATM”) card, that can be used to debit funds from an Account by Point of Sale and/or ATM transactions.
35. “Debit Card Transaction” means any debit transaction effectuated with a Debit Card, including Point of Sale transactions (whether by PIN or signature/PIN-less) and ATM transactions. For avoidance of doubt, Debit Card Transaction does not include a debit transaction effectuated by check, by preauthorized transaction, by wire transfer or Automated Clearing House (“ACH”) transaction, or a transfer to another account such as a credit card account or line of credit.
36. “High-to-Low Posting” means Comerica Bank’s practice of posting an Account’s Debit Card Transactions from highest to lowest dollar amount each business day, which is alleged to have resulted in the assessment of Overdraft Fees that would not have been assessed if Comerica Bank had used an alternative posting method, *e.g.*, one that posted transactions from lowest to highest.
37. “Effective Date” means the fifth business day after which all of the following events have occurred:
- a. All Parties, Comerica Bank’s counsel, and Settlement Class Counsel have executed this Agreement;

- b. The Court has entered without material change the Final Approval Order;
and
 - c. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.
38. “Escrow Account” means the account to be established consistent with the terms and conditions described in Section X hereof.
39. “Escrow Agent” means Epiq Class Action & Claims Solution, Inc. (“Epiq”). Settlement Class Counsel and Comerica Bank may, by agreement, substitute a different organization as Escrow Agent, subject to approval by the Court if the Court has previously approved the Settlement, preliminarily or finally. In the absence of agreement, either Settlement Class Counsel, or Comerica Bank, may move the Court to substitute a different organization as Escrow Agent, upon a showing that the responsibilities of Escrow Agent have not been adequately executed by the incumbent. The Escrow Agent shall administer the Escrow Account.
40. “Final Approval” means the date that the Court enters an order and judgment granting final approval to the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Awards to

Class Representatives. The proposed Final Approval Order shall be in a form agreed upon by Settlement Class Counsel and Comerica Bank. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

41. “Final Approval Order” means the order and final judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.
42. “Notice” means the notices of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Mailed Notice, Published Notice and Long-Form Notice. The form of the Mailed Notice, Published Notice and Long-Form Notice shall be agreed upon by Settlement Class Counsel and Comerica Bank. Additional description of the contemplated Notice Program is provided in Section VIII hereof.
43. “Notice Administrator” means Hilsoft Notifications. Settlement Class Counsel and Comerica Bank may, by agreement, substitute a different organization as Notice Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement Class Counsel, or Comerica Bank, may move the Court to substitute a different organization as Notice Administrator, upon a showing that

- the responsibilities of Notice Administrator have not been adequately executed by the incumbent.
44. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed or published, and that ends no later than 35 days prior to the Final Approval Hearing. The deadline for the Opt-Out Period will be specified in the Notice.
 45. “Overdraft Fee” means any fee assessed to an Account for items paid when the Account has insufficient funds to cover the item. Fees charged to transfer funds from other accounts are excluded.
 46. “Parties” means Plaintiffs and Comerica Bank.
 47. “Past Account Holder” means the holder of an Account, individually or jointly, who held that Account at some time during the Class Period but no longer holds that Account as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.
 48. “Plaintiffs” mean Delphia Simmons and Patricia Mattlage.
 49. “Point of Sale” or “POS” transaction means a transaction in which an Account holder uses his or her Debit Card to purchase a product or service.
 50. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties.
 51. “Released Claims” means all claims to be released as specified in Section XIV hereof. The “Releases” means all of the releases contained in Section XIV hereof.

52. “Released Parties” means those persons released as specified in Section XIV hereof.
53. “Releasing Parties” means all Plaintiffs and all Settlement Class Members who do not timely and properly opt out of the Settlement, and each of their respective, executors, representatives, heirs, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, attorneys, and all those who claim through them or on their behalf.
54. “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement.
55. “Settlement Administrator” means Epiq. Settlement Class Counsel and Comerica Bank may, by agreement, substitute a different organization as Settlement Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement Class Counsel or Comerica Bank, may move the Court to substitute a different organization as Settlement Administrator, upon a showing that the responsibilities of Settlement Administrator have not been adequately executed by the incumbent.
56. “Settlement Class” is defined in paragraph 62 hereof.
57. “Settlement Class Counsel” means Aaron S. Podhurst of Podhurst Orseck, P.A.; Bruce S. Rogow of Bruce S. Rogow, P.A.; Robert C. Gilbert of Grossman Roth, P.A.; and Russell W. Budd of Baron & Budd, P.C. Settlement Class Counsel are

a subset of Class Counsel. Settlement Class Counsel are responsible for handling all Settlement-related matters on behalf of Plaintiffs.

58. “Settlement Class Member” means any person included in the Settlement Class.
59. “Settlement Fund” means the fund established under Section X hereof.
60. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following Preliminary Approval, but prior to the commencement of the Notice Program, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long-Form Notice, the order preliminarily approving this Settlement, the Claim Form, and such other documents as Settlement Class Counsel and Comerica Bank agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least until Final Approval. The URL of the Settlement Website shall be www.ComericaBankOverdraftSettlement.com or such other URL as Settlement Class Counsel and Comerica Bank agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the Comerica Bank logo or Comerica Bank trademarks. Ownership of the Settlement Website URL shall be transferred to Comerica Bank within 10 days of the date on which operation of the Settlement Website ceases.
61. “Tax Administrator” means Epiq. Settlement Class Counsel and Comerica Bank may, by agreement, substitute a different organization as Tax Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of agreement, either Settlement

Class Counsel, or Comerica Bank, may move the Court to substitute a different organization as Tax Administrator, upon a showing that the responsibilities of Tax Administrator have not been adequately executed by the incumbent. The Tax Administrator will perform all tax-related services for the Escrow Account as provided in this Agreement.

III. Certification of the Settlement Class

62. For settlement purposes only, the Plaintiffs agree to ask the Court to certify the following “Settlement Class” under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

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.

63. This Settlement may be terminated as specified in Section XVI hereof.

IV. Settlement Consideration

64. Subject to approval by the Court, and except as provided in paragraphs --- and --- hereafter, the total cash consideration to be provided by Comerica Bank to the Settlement Class pursuant to the Settlement shall be Fourteen Million Five Hundred Eighty Thousand and 00/100 Dollars (\$14,580,000.00), inclusive of all attorneys’ fees, costs and expenses awarded to Class Counsel, and Service Awards to Class Representatives.

65. In addition to the cash consideration specified in paragraph 64 above, Comerica Bank will pay all administration fees, costs, charges, and expenses of the Settlement Administrator and Notice Administrator incurred in connection with the administration of the Notice Program as set forth in Section VIII hereof, and

the payment of Automatic Distributions from the Settlement Fund to Settlement Class Members as set forth in Section XII hereof. For avoidance of doubt, Comerica Bank shall not bear any other fees, costs, charges, or expenses incurred by Plaintiffs or by Settlement Class Counsel, including, but not limited to, those of any experts retained by Plaintiffs or by Settlement Class Counsel. The monetary payments to be made by Comerica Bank shall be strictly limited to those specified in this paragraph and paragraph 64.

V. Settlement Approval

66. Upon execution of this Agreement by all Parties, Settlement Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement (“Preliminary Approval Order”). The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Settlement Class Counsel and Comerica Bank. The motion for Preliminary Approval shall request that the Court: (1) approve the terms of the Settlement as within the range of fair, adequate and reasonable; (2) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the procedures set forth in Section VIII hereof for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval hearing for a time and date mutually convenient for the Court, Settlement Class Counsel and counsel for Comerica Bank, at which the Court will

conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees, costs and expenses and for Service Awards to Class Representatives ("Final Approval Hearing").

67. Comerica Bank, at its own expense, shall serve or cause to be served a notice of the proposed Settlement in conformance with the Class Action Fairness Act, 28 U.S.C. § 1715(b).

VI. Discovery

68. Class Counsel and Comerica Bank already have engaged in significant formal and informal discovery, including depositions of sixteen party or non-party witnesses and the production of more than 300,000 pages of documents. In addition, and consistent with its contractual, statutory and regulatory obligations to protect its customers' private financial information, Comerica Bank will continue to cooperate informally with Settlement Class Counsel by making pertinent and reasonably accessible data available for review by Settlement Class Counsel and their experts in connection with the allocation analysis as contemplated by Section XI hereof.

VII. Settlement Administrator

69. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph hereafter and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing Mailed Notice to Settlement Class Members; working with the Notice Administrator to effectuate the Published

Notice Program; distributing the Settlement Fund as provided herein; repaying Comerica Bank from the Settlement Fund the amount of account credits Comerica Bank provides to Current Account Holder Settlement Class Members pursuant to paragraph XII hereof; and repaying the Settlement Fund to Comerica Bank in the event of a termination of the Settlement pursuant to Section XVI hereof.

70. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

- a. Obtain from Settlement Class Counsel and Comerica Bank name and address information for Settlement Class Members (to the extent it is available), and verify and update the addresses received through the National Change of Address database, for the purpose of mailing the Mailed Notice, and later mailing distribution checks to Past Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible or reasonable for Comerica Bank to make the payment by a credit to the Settlement Class Members' Accounts;
- b. Establish and maintain a Post Office box for requests for exclusion from the Settlement Class;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain an automated and live operator toll-free telephone line for Settlement Class Members to call with Settlement-related

inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries;

- e. Respond to any mailed Settlement Class Member inquiries;
- f. Process all requests for exclusion from the Settlement Class;
- g. Provide weekly reports and, no later than five days after the end of the Opt-Out Period, a final report to Settlement Class Counsel and Comerica Bank, that summarize the number of requests for exclusion received that week, the total number of exclusion requests received to date, and other pertinent information;
- h. Interface with the Tax Administrator;
- i. At Settlement Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each Settlement Class Member who timely and properly requested exclusion from the Settlement Class;
- j. Process and transmit distributions to Past Account Holder Settlement Class Members from the Settlement Fund; instruct Comerica Bank as to the direct payments to be made to Current Account Holder Settlement Class Members (to the extent feasible); and repay Comerica Bank from the Settlement Fund the aggregate amount of account credits Comerica Bank provides to Current Account Holder Settlement Class Members;
- k. Pay invoices, expenses and costs upon approval by Settlement Class Counsel and Comerica Bank, as provided in this Agreement; and

1. Perform the duties of Escrow Agent as described in this Agreement, and any other Settlement-administration-related function at the instruction of Settlement Class Counsel and Comerica Bank, including, but not limited to, verifying that Settlement Funds have been distributed as required by Section XII hereof.

VIII. Notice to Settlement Class Members

71. Upon Preliminary Approval of the Settlement, at the direction of Settlement Class Counsel, the Notice Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may exclude themselves from or “opt out” of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information. Settlement Class Counsel and Comerica Bank shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program shall not bear or include the Comerica Bank logo or trademarks or the return address of Comerica Bank, or otherwise be styled to appear to originate from Comerica Bank. Ownership of the Settlement Website URL shall be transferred to Comerica Bank

within ten (10) days of the date on which operation of the Settlement Website ceases, which shall be the date on which distribution of the Net Settlement Fund has been made to Settlement Class Members as provided in paragraph XII, or such other date as Settlement Class Counsel and Comerica Bank may agree upon in writing.

72. The Notice also shall include a procedure for Settlement Class Members to opt out of the Settlement Class. A Settlement Class Member may opt out of the Settlement Class at any time during the Opt-Out Period. Any Settlement Class Member who does not timely and validly request to opt out shall be bound by the terms of this Agreement.
73. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses and/or Service Awards to Class Representatives. Objections to the Settlement, to the application for fees, costs, expenses, and/or to the Service Awards must be mailed to the Clerk of the Court, Settlement Class Counsel, and Comerica Bank's counsel. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

74. For an objection to be considered by the Court, the objection must also set forth:
- a. the name of the Action;
 - b. the objector's full name, address and telephone number;
 - c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
 - d. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
 - e. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;
 - f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
 - g. a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five (5) years;
 - h. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;

- i. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
 - j. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
 - k. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
 - l. the objector's signature (an attorney's signature is not sufficient).
75. Notice shall be provided to Settlement Class Members in three different ways: Mailed Notice; Published Notice; and Long-Form Notice on the Settlement Website. Not all Settlement Class Members will receive all three forms of Notice, as detailed herein. Notice shall be provided in a form to be agreed upon by Settlement Class Counsel and Comerica Bank.
76. Within 28 days from the date that the Settlement Administrator receives from Settlement Class Counsel and Comerica Bank the data files that identify, subject to the availability of information in reasonably accessible electronic form, the names and last known addresses of the Settlement Class Members who held Accounts during the Class Period, the Settlement Administrator shall run the addresses through the National Change of Address Database, and shall mail to all such Settlement Class Members postcards that contain the Mailed Notice (the "Initial Mailed Notice"). To coordinate the Mailed Notice Program with the Published Notice Program, within one business day of the Settlement Administrator's receipt of the data files described herein, the Settlement

Administrator shall inform the Notice Administrator by email that it has received the data files.

77. The Settlement Administrator shall perform reasonable address traces for all Initial Mailed Notice postcards that are returned as undeliverable. By way of example, a "reasonable" tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 70 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Mailed Notice postcards to those Settlement Class Members whose new addresses were identified as of that time through address traces (the "Notice Re-mailing Process"). Because the United States Postal Service sometimes returns undeliverable items beyond the typical time for returning such items, the Settlement Administrator may, at its discretion, perform the Notice Re-mailing Process up to 14 days before the Opt-Out Deadline. The Settlement Administrator's continued efforts in connection with the Notice Re-mailing Process shall not affect or extend any Settlement Class Member's deadlines for objecting or opting out.
78. The Mailed Notice Program (which is composed of both the Initial Mailed Notice and the Notice Re-mailing Process) shall be completed no later than 70 days before the Final Approval Hearing. Within seven days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator shall provide Settlement Class Counsel and Comerica Bank an affidavit that confirms that the Mailed Notice Program was completed in a timely manner. Settlement Class Counsel shall file that affidavit with the Court

as an exhibit to or in conjunction with Plaintiffs' motion for final approval of the Settlement.

79. The Notice Administrator shall administer the Published Notice Program, which shall be composed of the following components: One insertion as an approximate 3 column x 10.5 inch ad unit will be placed in the following daily circulation newspapers: Arizona Republic, Dallas Morning News/Briefing Combo, Detroit Free Press/News Combo, Grand Rapids Press, Houston Chronicle, Lansing State Journal, Los Angeles Times, Palm Beach Post, San Francisco Chronicle and Union Times San Diego. The Published Notice Program shall be completed no later than 70 days before the Final Approval Hearing.
80. Within seven days after the date the Notice Administrator completes the Published Notice Program, the Notice Administrator shall provide Settlement Class Counsel and Comerica Bank with one or more affidavits that confirm that Published Notice was given in accordance with the Published Notice Program. Settlement Class Counsel shall file that affidavit with the Court as an exhibit to or in conjunction with Plaintiffs' motion for final approval of the Settlement.
81. All costs of the Notice Program shall be borne by Comerica Bank.
82. Within the parameters set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Settlement Class Counsel and Comerica Bank.

IX. Final Approval Order and Judgment

83. The Plaintiffs' motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing

will occur. Plaintiffs shall file their motion for Final Approval of the Settlement, and their application for attorneys' fees, costs and expenses and for Service Awards for Class Representatives, no later than 56 days prior to the Final Approval Hearing. At the Final Approval Hearing the Court will hear argument on Plaintiffs' motion for final approval of the Settlement, and on Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards for Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the fee, cost, expense or Service Award application, provided the objectors submitted timely objections that meet all of the requirements listed in paragraphs 73 and 74 hereof.

84. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses and Service Awards. The proposed Final Approval Order shall be in a form agreed upon by Settlement Class Counsel and Comerica Bank. Such proposed Final Approval Order shall, among other things:
 - a. Determine that the Settlement is fair, adequate and reasonable;
 - b. Finally certify the Settlement Class for settlement purposes only;
 - c. Determine that the Notice provided satisfies Due Process requirements;
 - d. Enter judgment dismissing the Action with prejudice and without costs;

- e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims, as set forth in Section XIV hereof, including during any appeal from the Final Approval Order;
- f. Release Comerica Bank and the Released Parties from the Released Claims, as set forth in Section XIV hereof; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Comerica Bank, all Settlement Class Members, and all objectors, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

X. Settlement Fund

- 85. In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section XIV hereof and the dismissal of the Action upon Final Approval, within fourteen (14) calendar days of Preliminary Approval, Comerica Bank shall deposit the sum of \$14,580,000.00 into the Escrow Account to create the Settlement Fund as set forth herein.
- 86. Upon the establishment of the Escrow Account, the Escrow Agent may, but shall not be required to, cause the funds in the Escrow Account to be invested, in whole or in part, in interest-bearing short-term instruments or accounts—to be agreed upon by Settlement Class Counsel and Comerica Bank—that are backed by the full faith and credit of the United States Government or that are fully insured by the United States Government or an agency thereof (the “Instruments”). The Escrow Account shall be established and maintained at Northern Trust Bank or such other FDIC-insured financial institution as Settlement Class Counsel and

Comerica Bank may agree. The Escrow Agent may thereafter re-invest the interest proceeds and the principal as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs and expenses, and other required disbursements, in a timely manner. Notwithstanding the foregoing, that portion of the Settlement Fund that the Settlement Administrator reasonably estimates needs to be available on a liquid basis to pay on-going costs of settlement administration, as provided in this Agreement, may be placed in one or more insured accounts that may be non-interest-bearing. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account and under the control of the Escrow Agent. The Escrow Agent shall communicate with Settlement Class Counsel and counsel for Comerica Bank on at least a monthly basis to discuss potential cash needs for the following month. All costs or fees incurred in connection with investment of the Settlement Fund in the Instruments shall not constitute a cost of settlement administration to be paid by Comerica Bank, but shall instead be payable out of the Settlement Fund.

87. The Settlement Fund at all times shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Comerica Bank or its counsel, or Plaintiffs or Class Counsel, with respect to income earned by the

Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Fund. Plaintiffs and Class Counsel, and Comerica Bank and its counsel shall have no liability or responsibility for any of the Taxes. The Settlement Fund shall indemnify and hold Plaintiffs and Class Counsel, and Comerica Bank and its counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

88. The Settlement Fund shall be used for the following purposes:
- a. Automatic distribution of payments to the Settlement Class pursuant to Section XII hereof, including, without limitation, the repayment to Comerica Bank of all amounts automatically distributed by it through credits to Current Account Holder Settlement Class Members;
 - b. Payment of the Court-ordered award of Class Counsel’s attorneys’ fees, costs, and expenses pursuant to paragraphs 107 - 109 --- hereof;
 - c. Payment of the Court-ordered Service Awards to the Class Representatives pursuant to paragraph 110 hereof;
 - d. Payment of any residual distribution as set forth in paragraph 102 hereof, together with any administrative costs associated therewith;
 - e. Payment of all Taxes pursuant to paragraph 87 hereof, including, without limitation, taxes owed as a result of accrued interest on the Escrow Account, in a timely manner consistent with the recommendation of the

Tax Administrator, subject to approval by Settlement Class Counsel and Comerica Bank;

- f. Payment of any costs of settlement administration other than those to be paid by Comerica Bank as set forth in paragraph 65 hereof; and
- g. Payment of additional fees, costs and expenses not specifically enumerated in subparagraphs (a) through (g) of this paragraph, subject to approval of Settlement Class Counsel and Comerica Bank.

XI. Calculation of Automatic Distributions from Settlement Fund

89. Comerica Bank, in consultation with Settlement Class Counsel and their experts, shall identify data—to the extent it exists in reasonably accessible electronic form—sufficient to calculate and implement the allocation of Settlement Fund as provided in this Section XI. The calculation and implementation of allocations contemplated by this Section XI shall be undertaken by Settlement Class Counsel and its experts for the purpose of calculating payments to Settlement Class Members to compensate them for alleged damages. The methodology provided for in paragraph 91 hereof will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computation. Consistent with its contractual, statutory and regulatory obligations to maintain bank security and protect its customers' private financial information, Comerica Bank shall make available to Settlement Class Counsel and its experts data and information sufficient to allow Settlement Class Counsel and its experts to

determine and confirm the calculations and allocations contemplated by this Agreement and Comerica Bank's implementation of such allocations.

90. The parties acknowledge that the information available in reasonably accessible electronic form from Comerica Bank's databases may be incomplete for limited portions of the Class Period and, therefore, it may not be possible to identify all Settlement Class Members and/or to calculate and make Automatic Distribution of all amounts that Settlement Class Members may be due from the Settlement Fund for the entire Class Period. To the extent that the Parties, consistent with the foregoing data constraints and limitations, can reasonably identify Settlement Class Members and calculate the amount such Settlement Class Members are due from the Settlement Fund, an Automatic Distribution will be provided to them based upon the terms of the allocation set forth in this Section XI.
91. The amount of the Automatic Distribution from the Settlement Fund to which each identifiable Settlement Class Member is entitled for the Class Period (subject to the availability of data) shall be determined using the following methodology or such other methodology as would have an equivalent result:
 - a. All Accounts will be identified in which, on one or more calendar days during the Class Period, Comerica Bank assessed two or more Overdraft Fees on such day or days during which the account was subject to High-to-Low Posting. If Settlement Class Counsel and its experts and Comerica Bank cannot conclusively determine from its records whether the account was subject to High-to-Low Posting on a particular calendar day, it may

be assumed for purposes of this paragraph that the account was subject to High-to-Low Posting.

- b. For each such calendar day on which Comerica Bank assessed two or more Overdraft Fees, all transactions posted in such Accounts on that day will be ordered in the following posting order:
 - i. All credits;
 - ii. All bank initiated debits, cash withdrawals, and other high-priority debits, in the order originally posted by the bank;
 - iii. All ATM and POS debit card transactions with date and time of authorization ordered chronologically;
 - iv. All ATM and POS debit card transactions without date and time of authorization ordered by transaction amount, low-to-high;
 - v. All other customer initiated debits, including checks and ACH transactions, in the order originally posted by the bank.
- c. After ordering the transactions as set forth in subparagraph (b) of this paragraph, each Account—on a daily basis for such calendar days—will be identified in which the number of Overdraft Fees Comerica Bank actually assessed exceeds the number of Overdraft Fees that would have been assessed if the Account had been ordered as set forth in subparagraph (b) (“Additional Overdrafts”).
- d. The dollar amount of the Additional Overdrafts will be calculated (“Additional Overdrafts Amount”).

- e. For each Account in which one or more Additional Overdrafts have been identified, it will be determined how many (if any) Overdraft Fees Comerica Bank refunded during the 30-day period following each calendar day on which any Additional Overdraft occurred (“Refunded Additional Overdrafts”).
- f. The dollar amount of the Refunded Additional Overdrafts will be calculated (“Refunded Additional Overdrafts Amount”).
- g. All Accounts will be identified in which on any such calendar day the Additional Overdrafts Amount exceeds the Refunded Additional Overdrafts Amount. The Refunded Additional Overdrafts Amount will be subtracted from the Additional Overdrafts Amount to determine the “Differential Overdraft Fee.”
- h. All Accounts that experienced a Differential Overdraft Fee will be checked against a list of Accounts that Comerica Bank closed with negative balances after writing them off as uncollectible (“Uncollectible Accounts”).
- i. For any Uncollectible Account that experienced a Differential Overdraft Fee, the Differential Overdraft Fee will be reduced dollar-for-dollar by the dollar amount of the negative closing Account balance. When the dollar amount of the negative closing Account balance equals or exceeds the Differential Overdraft Fee for the Account, the Differential Overdraft Fee shall be reduced to zero for purposes of calculating that Account holder’s

distribution, and the Account holder will not receive a distribution from the Settlement Fund for such Account;

- j. The foregoing allocation formula will yield the identification of all Account holders whose Accounts experienced a Differential Overdraft Fee greater than zero dollars (“Positive Differential Overdraft Fee”) as well as the amounts of their respective Positive Differential Overdraft Fees.
92. The Parties agree the foregoing allocation formula is exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, the amount of alleged damages, defined above as Positive Differential Overdraft Fees, that each identifiable Settlement Class Member incurred during the Class Period as a result of High-to-Low Posting and Comerica Bank’s communications to Account holder regarding the practice, and the amount of any Automatic Distribution each Settlement Class Member should receive as alleged damages from the Settlement Fund. The fact that this allocation formula is used herein is not intended and shall not be used for any other purpose or objective whatsoever.

XII. Distribution of Net Settlement Fund

93. As soon as practicable but no sooner than 90 days from the Effective Date, Comerica Bank and the Settlement Administrator shall distribute the Net Settlement Fund as set forth in this Section XII. Each Settlement Class Member who had a Positive Differential Overdraft Fee and has not opted out as provided herein.
94. The Net Settlement Fund is equal to the Settlement Fund plus any interest earned from the Instruments, and less the following:

- a. the amount of the Court-awarded attorneys' fees, costs and expenses to Class Counsel;
 - b. the amount of the Court-awarded Service Awards to the Class Representatives;
 - c. a reservation of a reasonable amount of funds for prospective costs of Settlement administration (if any) that are not Comerica Bank's responsibility pursuant to paragraph 65 hereof, including tax administration as agreed upon by Settlement Class Counsel and Comerica Bank; and
 - d. all other costs and/or expenses incurred in connection with the Settlement not specifically enumerated in subsections (a) through (c) of this paragraph that are expressly provided for in this Agreement or have been approved by Settlement Class Counsel and Comerica Bank.
95. The Settlement Administrator shall divide the total amount of the Net Settlement Fund by the total amount of all Settlement Class Members' Positive Differential Overdraft Fees calculated pursuant to Section XI hereof. This calculation shall yield the "Pro Rata Percentage."
96. The Settlement Administrator shall multiply each Settlement Class Member's total Positive Differential Overdraft Fees by the Pro Rata Percentage. This calculation shall yield each Settlement Class Member's "Differential Overdraft Payment Amount." The Settlement Administrator shall communicate to Settlement Class Counsel, Comerica Bank and Comerica Bank's Counsel the Differential Overdraft Payment Amount to be paid to Settlement Class Members.

97. Every Settlement Class Member shall be paid from the Net Settlement Fund the total Differential Overdraft Payment Amount to which he or she is entitled, calculated as set forth herein (“Settlement Fund Payments”). In no event, however, shall Comerica Bank ever be required to pay more than a total of \$14,580,000.00 to the Settlement Class, inclusive of all attorneys’ fees, costs, and expenses, and Service Awards (exclusive of costs of Notice and Administration as provided in this Agreement).
98. Settlement Fund Payments to Current Account Holders shall be made either by a credit to those Account Holders’ Accounts, or by mailed check in those circumstances where it is not feasible or reasonable to make the payment by a credit. Comerica Bank shall notify Current Account Holders of any such credit, and provide a brief explanation that the credit has been made as a payment in connection with the Settlement. Comerica Bank shall provide the notice of account credit described in this paragraph in or with the account statement on which the credit is reflected. Comerica Bank will bear any costs associated with implementing the account credits and notification discussed in this paragraph. Settlement Fund Payments made to Current Account Holders by check will be cut and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Settlement Class Counsel and Comerica Bank, to indicate that it is from the Settlement, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Account Holders, and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator

- will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), and will re-mail it once to the updated address. All costs associated with the process of printing and mailing the checks and any accompanying communication to Current Account Holders shall be borne by Comerica Bank as provided in paragraph 65 hereof.
99. Comerica Bank shall be entitled to a payment from the Net Settlement Fund equal to the amount of account credits paid pursuant to paragraph 98 hereof. Such payment shall be made within two (2) business days after Comerica Bank provides written verification to Settlement Class Counsel and the Escrow Agent of the aggregate amount of account credits that were given and that such Settlement Fund Payments were given to the Settlement Class Members who are Current Account Holders.
100. Settlement Fund Payments to Past Account Holders will be made by check with an appropriate legend, in a form approved by Settlement Class Counsel and Comerica Bank, to indicate that it is from the Settlement Fund. Checks will be cut and mailed by the Settlement Administrator, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for 180 days. For jointly held Accounts, checks will be payable to all Account Holders, and will be mailed to the first Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any intended recipient of Settlement Funds whose check is returned by

the Postal Service as undeliverable (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), and will re-mail it once to the updated address, or, in the case of a jointly held Account, and in the Settlement Administrator's discretion, to an Account Holder other than the one listed first. All costs associated with the process of printing and mailing the checks and any accompanying communication to Past Account Holders shall be borne by Comerica Bank as provided in paragraph 65 hereof.

101. The amount of the Net Settlement Fund attributable to uncashed or returned checks sent by the Settlement Administrator shall remain in the Settlement Fund for one year from the date that the first distribution check is mailed by the Settlement Administrator. During this time the Settlement Administrator shall make a reasonable effort to locate intended recipients of Settlement Funds whose checks were returned (such as by running addresses of returned checks through the Lexis/Nexis database that can be utilized for such purpose), to effectuate delivery of such checks. The Settlement Administrator shall make only one such additional attempt to identify updated addresses and re-mail or re-issue a distribution check to those for whom an updated address was obtained.

XIII. Disposition of Residual Funds

102. Within one year plus 30 days after the date the Settlement Administrator mails the first Settlement Fund Payments, any funds remaining in the Settlement Fund shall be distributed as follows:
 - a. First, the funds shall be distributed on a *pro rata* basis to participating Settlement Class Members who received Settlement Fund Payments pursuant to Section XII

- of the Agreement, to the extent feasible and practical in light of the costs of administering such subsequent payments unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair;
- b. Second, in the event the costs of preparing, transmitting and administering such subsequent payments pursuant to subparagraph a above are not feasible and practical to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair, Settlement Class Counsel and counsel for Comerica Bank shall jointly file a proposed plan for distribution of the residual funds consistent with the American Law Institute, *Principles of Aggregate Litigation* § 3.07(c), together with supporting materials, for consideration by the Court. After consultation with the Parties, the Court shall have the discretion to approve, deny, amend or modify, in whole or in part, the proposed plan for distribution of the residual funds in a manner consistent with the American Law Institute, *Principles of Aggregate Litigation* § 3.07(c). The residual funds shall not be used for any litigation purpose or to disparage any Party. The Parties agree that the Court's approval, denial, amendment or modification, in whole or in part, of the proposed plan for distribution of the residual funds pursuant to this paragraph shall not constitute grounds for termination of the Settlement pursuant to paragraph 112 of the Agreement; and
- c. All costs associated with the disposition of residual funds – whether through additional distributions to Settlement Class Members and/or through an

alternative plan approved by the Court – shall be borne solely by the Settlement Fund. Under no circumstances shall Comerica Bank have responsibility for any costs associated with the disposition of residual funds whether through additional distributions to Settlement Class Members and/or through an alternative plan approved by the Court.

XIV. Releases

103. Upon the Settlement becoming effective, 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.

104. AS OF THE EFFECTIVE DATE, PLAINTIFFS AND EACH SETTLEMENT CLASS MEMBER SHALL FURTHER AUTOMATICALLY BE DEEMED TO HAVE WAIVED AND RELEASED ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY § 1542 OF THE CALIFORNIA CIVIL CODE OR SIMILAR LAWS OF ANY OTHER STATE OR JURISDICTION. SECTION 1542 OF THE CALIFORNIA CIVIL CODE READS: “§1542. CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”
105. Plaintiffs or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraphs 103 and 104 hereof, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this paragraph and paragraphs 103 and 104 hereof. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the

releases contained in this paragraph and in paragraphs 103 and 104 hereof, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

106. Nothing in this Agreement shall operate or be construed to release any claims or rights Comerica Bank has to recover any past, present or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on his/her accounts, loans or any other debts with Comerica Bank, pursuant to the terms and conditions of such accounts, loans, or any other debts. Nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that any Plaintiffs or Settlement Class Members may have in the event Comerica Bank (or its assigns) seeks to recover any Overdraft Fees incurred during the Class Period.

XV. Payment of Attorneys' Fees, Costs, and Service Awards

107. Comerica Bank agrees not to oppose Class Counsel's request for attorneys' fees of up to thirty percent (30%) of the Settlement Fund specified in paragraph 85, and not to oppose Class Counsel's request for reimbursement of costs and expenses. Any award of attorneys' fees, costs, and expenses to Class Counsel shall be payable solely out of the Settlement Fund. The determination of Class Counsel's request for attorneys' fees shall be based on controlling Eleventh Circuit precedent involving the award of fees in common fund class actions and not based on state law. The Parties agree that the Court's failure to approve, in

whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming Effective, nor shall it be grounds for termination.

108. Within three business days of the Effective Date, the Escrow Agent shall pay from the Settlement Fund to Settlement Class Counsel all Court-approved attorneys' fees, costs, and expenses of Class Counsel, including interest accrued thereon. Provided, however, that the Escrow Agent shall not pay any such fees, costs or expenses from the Settlement Fund to Settlement Class Counsel until such time as Settlement Class Counsel have jointly agreed upon a plan of allocation of fees, costs and expenses among all Class Counsel, and have jointly provided payment instructions to the Escrow Agent. In the event that the award of attorneys' fees, costs, and expenses of Class Counsel is reduced on appeal, the Escrow Agent shall only pay to Settlement Class Counsel from the Settlement Fund the reduced amount of such award, including interest accrued thereon. Settlement Class Counsel shall timely furnish to the Escrow Agent any required tax information or forms before the payment is made.
109. The payment of attorneys' fees, costs and expenses of Class Counsel pursuant to paragraphs 107 and 108 hereof shall be made through a deposit by the Escrow Agent into an Attorney Client Trust Account jointly controlled by Settlement Class Counsel. After the fees, costs and expenses have been deposited into this account, Settlement Class Counsel shall be solely responsible for distributing each Class Counsel firm's allocated share of such fees, costs and expenses to that firm. Comerica Bank shall have no responsibility for any allocation, and no liability

whatsoever to any person or entity claiming any share of the funds to be distributed.

110. Settlement Class Counsel will ask the Court to approve service awards of \$10,000 per Class Representative, or \$10,000 per Class Representative for married couples in which both spouses are Class Representatives (“Service Awards”). All Service Awards are to be paid from the Settlement Fund. The Service Awards shall be paid to Class Representatives in addition to Class Representatives' Settlement Class Member Payments. Comerica Bank agrees not to oppose Settlement Class Counsel's request for the Service Awards.
111. The Parties negotiated and reached agreement regarding Attorneys' Fees and Costs and Service Awards only after reaching agreement on all other material terms of this Settlement.

XVI. Termination of Settlement

112. This Settlement may be terminated by either Settlement Class Counsel or Comerica Bank by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 45 days (or such longer time as may be agreed between Settlement Class Counsel and Comerica Bank) after any of the following occurrences:
 - a. Settlement Class Counsel and Comerica Bank agree to termination;
 - b. the Court fails to preliminarily approve the Settlement within 180 days after filing of the motion for preliminary approval, or fails to finally approve the Settlement within 360 days of Preliminary Approval by the Court;

- c. the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
 - d. an appellate court vacates or reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand within 270 days of such reversal;
 - e. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Settlement Class Counsel or Comerica Bank seeking to terminate the Settlement reasonably considers material;
 - f. the Effective Date does not occur; or
 - g. any other ground for termination provided for elsewhere in this Agreement.
113. Comerica Bank also shall have the right to terminate the Settlement by serving on Settlement Class Counsel and filing with the Court a notice of termination within fourteen (14) days of its receipt from the Settlement Administrator of the final report specified in paragraph 70(g) hereof, if the number of Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with this Settlement by Settlement Class Counsel and Comerica Bank. The number or percentage shall be confidential except to the Court, who shall upon request be provided with a copy of the letter for *in camera* review.

114. In the event of a termination of the Settlement, and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Escrow Account, to the extent any such fees or expenses have been incurred given Comerica Bank's obligation in paragraph 65 hereof to pay settlement expenses directly, the balance of the Settlement Fund shall be refunded and remitted to Comerica Bank as provided in paragraph --- hereof. For any funds paid directly by Comerica Bank in connection with the Notice in Section VIII hereof, or paid directly from the Escrow Account pursuant to this Agreement, Comerica Bank shall have no right to seek reimbursement from Plaintiffs or Class Counsel in the event of termination of this Agreement.
115. In the event of a termination of the Settlement pursuant to this Section XVI the parties retain all of their pre-Settlement litigation rights and defenses.

XVII. Effect of a Termination

116. The grounds upon which this Agreement may be terminated are set forth in paragraphs 112 and 113 hereof. In the event of a termination as provided therein, this Agreement shall be considered null and void; all of Comerica Bank's obligations under the Settlement shall cease to be of any force and effect; the amounts in the Settlement Fund shall be returned to Comerica Bank in accordance with paragraph 114 hereof; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims and defenses will be retained and preserved.

117. In the event of a termination as provided in paragraph 112 and/or 113 and after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Escrow Account, to the extent any such fees or expenses have been incurred given Comerica Bank's obligation in paragraph 65 hereof to pay settlement expenses directly, the Escrow Agent shall return the balance of the Settlement Fund to Comerica Bank within seven calendar days of termination. For any funds paid directly by Comerica Bank in connection with the Notice in Section VIII hereof, or paid directly from the Escrow Account pursuant to this Agreement, Comerica Bank shall have no right to seek reimbursement from Plaintiffs or Class Counsel in the event of termination of this Agreement.
118. The Settlement shall become effective on the Effective Date unless earlier terminated in accordance with the provisions of paragraphs 112 and/or 113 hereof.
119. In the event the Settlement is terminated in accordance with the provisions of paragraphs 112 and/or 113 hereof, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court.

XVIII. No Admission of Liability; Non-Disparagement

120. Comerica Bank disputes the claims alleged in the Action and maintains that its debit posting practices complied, at all times, with applicable laws and

regulations. Comerica Bank does not by this Agreement or otherwise admit any liability or wrongdoing of any kind. Comerica Bank has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

121. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have fully investigated the facts and law relevant to the merits of the claims, have conducted extensive formal and informal discovery, and have conducted independent investigation of the challenged practices. Class Counsel have concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.
122. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability or wrongdoing of any kind whatsoever.

123. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency or other tribunal.
124. In addition to any other defenses Comerica Bank may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.
125. Plaintiffs and Class Counsel agree that they will refrain from all future conduct, verbal or otherwise, that disparages or damages, or reasonably could disparage or damage, the reputation, goodwill, or standing in the community of Comerica Bank, with respect to, or in connection with, the allegations asserted in this action, including without limitation allegations concerning Comerica Bank's debit posting practices. Comerica Bank and its counsel agree that all officers, directors and employees of Comerica Bank, present and future, and its counsel of record in this case, will refrain from all future conduct, verbal or otherwise, that disparages or damages, or reasonably could disparage or damage, the reputation, goodwill, or standing in the community of Plaintiffs and Class Counsel, with respect to, or in

connection with, the prosecution of this action or the allegations asserted therein.

XIX. Miscellaneous Provisions

126. References to Comerica Bank in Third-Party Materials. In the course of pursuing claims against defendant banks other than Comerica Bank in MDL 2036, Class Counsel are serving subpoenas and seeking discovery from third-party consultants to the banking industry. Comerica Bank has requested and Plaintiffs agree to provide Comerica Bank promptly with copies of all materials received by Class Counsel through such subpoenas and discovery that Class Counsel reasonably determine, refer or pertain to Comerica Bank.
127. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
128. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.
129. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect regardless of

events that may occur, or court decisions that may be issued in MDL 2036 or in any other case in any court.

130. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.
131. Integration. This Agreement (along with the letter referenced in paragraph 113 hereof) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.
132. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.
133. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Florida, without regard to the principles thereof regarding choice of law.
134. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.
135. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive

jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice program, the Settlement Administrator, the Notice Administrator, and the Tax Administrator. As part of their respective agreements to render services in connection with this Settlement, the Settlement Administrator, the Notice Administrator, and the Tax Administrator shall consent to the jurisdiction of the Court for this purpose.

136. Notices. All notices to Settlement Class Counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Aaron S. Podhurst, Esq.
PODHURST ORSECK, P.A.
25 West Flagler Street, Suite 800
Miami, FL 33130
Telephone: (305) 358-2800
Facsimile: (305) 358-2382
Email: apodhurst@podhurst.com

Bruce S. Rogow, Esq.
BRUCE S. ROGOW, P.A.
Broward Financial Center
500 East Broward Boulevard, Suite 1930
Fort Lauderdale, FL 33394
Telephone: (954) 767-8909
Email: brogow@rogowlaw.com

Robert C. Gilbert, Esq.
GROSSMAN ROTH, P.A.
2525 Ponce de Leon Boulevard, 11th Floor
Coral Gables, FL 33134
Telephone: (305) 442-8666
Facsimile: (305) 779-9596
Email: rcg@grossmanroth.com

Russell Budd, Esq.
BARON & BUDD, P.C.
3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219
Tel: (214) 521-3605
Facsimile: (214) 520-1181
Email: rbudd@baronbudd.com

All notices to Comerica Bank, provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

Kenneth C. Johnston, Esq.
KANE RUSSELL COLEMAN & LOGAN P.C.
2700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Tel: (214) 777-4200
Fax: (214) 777-4299
Email: kjohnston@krcl.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice program.

137. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Settlement Class Counsel and counsel for Comerica Bank and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

138. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.
139. Authority. Settlement Class Counsel (for the Plaintiffs and the Settlement Class Members), and counsel for Comerica Bank (for Comerica Bank), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiffs and Comerica Bank to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.
140. Agreement Mutually Prepared. Neither Comerica Bank nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of 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 Agreement.
141. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit

the binding nature of this Agreement. Comerica Bank has provided and is providing information that Plaintiffs reasonably request to identify Settlement Class Members and the alleged damages they incurred. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

142. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Releases contained in Section --- hereof, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Dated: _____

Delphia Simmons
Plaintiff

Dated: _____

Patricia Mattlage
Plaintiff

Dated: _____

Aaron S. Podhurst, Esq.
PODHURST ORSECK, P.A.
City National Bank Building
25 W. Flagler Street, Suite 800
Miami, FL 33130-1780
Telephone: (305) 358-2800

Settlement Class Counsel

Dated: _____

Bruce S. Rogow, Esq.
BRUCE S. ROGOW, P.A.
Broward Financial Center
500 East Broward Boulevard, Suite 1930
Fort Lauderdale, FL 33394
Telephone: (954) 767-8909

Settlement Class Counsel

Dated: _____

Robert C. Gilbert, Esq.
GROSSMAN ROTH, P.A.
2525 Ponce de Leon, Suite 1150
Miami, Florida 33134
Telephone: (305) 442-8666

Settlement Class Counsel

Dated: _____

Russell Budd, Esq.
BARON & BUDD, P.C.
3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219
Tel: (214) 521-3605

Settlement Class Counsel

Dated: _____

REPRESENTATIVE OF COMERICA BANK
Defendant

Dated: _____

Kenneth C. Johnston, Esq.
KANE RUSSELL COLEMAN & LOGAN PC
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Tel: 214-777-4200
Fax: 214-777-4299

Counsel for Defendant Comerica Bank