UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

THIS DOCUMENT RELATES TO:

Waters, et al. v. U.S. Bank, N.A.
S.D. Fla. Case No. 1:09-cv-23034-JLK
N.D. Cal. Case No. 09-2071-JSW

Speers, et al. v. U.S. Bank, N.A.
S.D. Fla. Case No. 1:09-cv-23126-JLK
D. Or. Case No. 3:09-cv-00409-HU

Brown v. U.S. Bank, N.A.
S.D. Fla. Case No. 1:10-24147-JLK
E.D. Wash. Case No. 2:10-00356-RMP

PLAINTIFFS' AND CLASS COUNSEL'S RESPONSE TO OBJECTIONS TO MOTION FOR FINAL APPROVAL OF SETTLEMENT AND CLASS APPLICATION FOR SERVICE AWARDS AND ATTORNEYS' FEES

After more than three years of hard-fought litigation, Class Counsel negotiated the Settlement Agreement and Release ("Settlement" or "Agreement") with Defendant U.S. Bank National Association ("U.S. Bank" or the "Bank").[1] The Settlement – which consists of U.S. Bank's cash payment of $55,000,000 to create a Settlement Fund, plus the fees and costs associated with the Notice Program and administration of the Settlement, and the Bank's

[1] All capitalized defined terms have the same meanings ascribed in the Amended and Restated Settlement Agreement and Release attached as Exhibit A to Plaintiffs' and Class Counsel's Motion for Final Approval of Class Settlement, and Application for Service Awards, Attorneys' Fees and Expenses and Incorporated Memorandum of Law (DE # 3681).

agreement to maintain its recently adopted posting order applicable to consumer checking accounts for at least two (2) years following Final Approval, subject to any alteration, modification or rescission that may be required to comply with changes in statutory, regulatory or judicial authority, or examiner guidance – is an outstanding achievement that will provide immediate benefits to approximately two million Settlement Class Members without further risks, delays and costs. Eligible Settlement Class Members do not have to do anything to receive the benefits provided by the Settlement; they will receive their settlement consideration through automatic account credits or by checks. More than two million Settlement Class Members received direct mail Notice of the Settlement. The Notice approved by the Court used plain language to inform Settlement Class Members about, *inter alia*: (1) the terms of the Settlement; (2) the choices available to them – exclude themselves, object, or participate in the Settlement – including applicable deadlines and how to exercise those options; and (3) the Final Approval Hearing.

I. OVERVIEW OF THE OBJECTIONS

Out of more than two million Settlement Class Members, fourteen (14) objections to the Settlement were submitted by or on behalf of individuals purporting to be Settlement Class Members. (DE # 3665/3714, 3693, 3694, 3695, 3698, 3700, 3701, 3706, 3709, 3710, 3711, 3713). Four (4) of the objections were filed by lawyers who have made a career out of objecting to class action settlements. (DE # 3693, 3694, 3698, 3700). Such objectors, known as "serial" or "professional" objectors, have raised the ire of federal courts, including this Court, for playing no positive role in class action litigation and contributing no benefit to the class. The other ten

(10) objections were submitted by *pro se* individuals (DE # 3665/3714, 3695, 3701, 3706, 3709, 3710, 3711, 3713).[2]

Fourteen objections out of over two million Settlement Class Members is particularly telling.[3] It evidences overwhelming support for Plaintiffs' and Class Counsel's Motion for Final Approval of the Settlement, and Application for Service Awards, Attorneys' Fees and Expenses.[4] This extraordinarily "low percentage of objections points to the reasonableness of a proposed settlement and supports its approval." *Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005).

All of the objections lack merit. Most are riddled with misunderstandings of the Settlement and basic class action jurisprudence. Several are substantially identical to objections previously filed by the same professional objectors to other MDL 2036 settlements. *Not a single objector submitted an expert affidavit or provided any evidence undermining the conclusions reached by Class Counsel and their nationally recognized experts that (i) this Settlement achieves an outstanding result for the Settlement Class, and (ii) Class Counsel's application for fees is reasonable. See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1021 (9th Cir. 1998) (affirming final approval of nationwide class action settlement where "[t]he objectors presented no evidence" to support their arguments).

---

[2] The ten (10) *pro se* objections include the two objections attached as Exhibits A and B that were submitted but not filed on the CM/ECF system. The *pro se* objection of Todd J. Luh (Exhibit B) was untimely.

[3] The average number of objections to settlements of consumer class actions is 233. In a settlement of this magnitude, the Court should expect to receive around 259 objections to the Settlement (extrapolating from the average of 4.7 objectors per $1 million in consumer recovery). *See* Theodore Eisenberg & Geoffrey Miller, *The Role of Opt-Outs and Objectors in Class Action Litigation: Theoretical and Empirical Issues*, 57 VAND. L. REV. 1529 (2004).

[4] In addition, the extremely low number of requests for exclusion demonstrates overwhelming support for the Settlement.

For the reasons discussed below, Plaintiffs and Class Counsel respectfully request that the Court (1) overrule the objections; (2) grant Final Approval to the Settlement; (3) approve the request for Service Awards to the Plaintiffs; (4) approve Class Counsel's application for attorneys' fees and expenses; and (5) enter Final Judgment dismissing the Action with prejudice.

II. THE PROFESSIONAL OBJECTIONS SHOULD BE STRICKEN OR SUMMARILY DENIED

Attorney Steve Miller and his co-counsel filed an objection on behalf of Laura D. McGrew, Sean O'Leary, Aileen Connors and Kathleen Connors (collectively, the "McGrew Objection"). (DE # 3694). Mr. Miller and his colleagues are serial objectors who make a living filing objections to class action settlements. *See, e.g., In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, MDL No. 1532, DE # 1175 at n.22 (D. Me. Apr. 13, 2011) (rejecting Mr. Miller's "specious" arguments); *In re Am. Int'l Grp., Inc. Sec. Litig.* No. 04-cv-08141-DAB, DE # 663, 664 (S.D.N.Y. Oct. 1, 2012) (Mr. Miller withdrew his appeal of an order rejecting his objections to a settlement, without having provided any benefit to class). Mr. Miller is also known for filing objections in different cases on behalf of the same "clients." *See, e.g., Blessing v. Sirius XM Radio Inc.*, No. 09-cv-10035, DE # 167 (S.D.N.Y. Sept. 14, 2011); *In re Lawnmower Engine Horsepower Marketing & Sales Practices Litig.*, MDL No. 1999, DE # 272 (E.D. Wis. June 22, 2010); *Nakash v. nVidia Corp.*, No. 08-cv-04312-JW, DE # 325 (N.D. Cal. Jan. 14, 2011); *In re Mattel, Inc. Toy Lead Paint Prods. Liab. Litig*, MDL No. 1897, DE # 194 (C.D. Cal. Feb. 19, 2010); *CLRB Hanson Inds., LLC v. Google, Inc.*, No. C 05-03649 JW PVT, DE # 326 (N.D. Cal. July 10, 2009).

Mr. Miller and his co-counsel previously filed virtually identical objections to five other MDL 2036 settlements. (DE # 2133, 3031, 3032, 3227, 3247). In addition to its lack of substantive merit, the McGrew Objection does not even comply with the basic requirements set

forth in the Preliminary Approval Order. (DE # 3559). Not surprisingly, the McGrew Objection fails to provide the information required by paragraphs 89(f)-(k) of the Agreement, including information regarding objections filed by Mr. Miller and his co-counsel in other class action cases. *See* McGrew Objection at p. 1. (DE # 3694). The McGrew Objection is defective and should be stricken based on the failure to comply with the Preliminary Approval Order. The McGrew Objection also lacks substantive merit.

An objection was filed by attorney Brian M. Silverio, on behalf of Howard Shanker and Andrew R. and Danette Coddington (the "Shanker Objection"). (DE # 3693). Mr. Silverio is another serial objector who filed similar objections to the settlements with Bank of America, JPMorgan Chase and Citizens Financial previously approved in MDL 2036. (DE # 1922, 3030, 3196). Like Mr. Miller and his cohorts, Mr. Silverio is attempting to exact a fee in exchange for the withdrawal of his objection. The Shanker objection lacks merit in all respects.

A third objection was submitted by Attorney Patrick Sweeney, on behalf of Pam and Kerry Ann Sweeney ("Sweeney Objection"). (DE # 3698). Mr. Sweeney is a serial objector who previously objected to three other MDL 2036 settlements. (DE # 1936, 3033 and the "Wilkin's objection" in *Lopez v. JPMorgan Chase Bank, N.A.*, S.D. Fla. Case No. 1:09-cv-23137-JLK). The Sweeney Objection argues that a thirty percent fee award is unreasonable, a position rejected by this Court in connection with numerous prior MDL 2036 settlements.

The fourth "professional" objection was submitted by attorney Alex D. Funes on behalf of Erica A'dell Rutherford, Ahmed N. Raed, Jill Marie Radtke and Jason Lynn Waters ("Rutherford Objection"). (DE # 3700). The Rutherford Objections claims – without factual or legal support – that the $55 million Settlement Fund is "illusory," that a thirty percent fee award

is unreasonable, and that the fee allocation provisions of the Settlement violate Rule 23 by allowing for "secret side agreements." The Rutherford Objection is altogether lacking in merit.

As this Court and several others have determined, serial objectors such as Messrs. Miller, Silverio, Sweeney and Funes, who hold up large class action settlements for a payout, perform no constructive role in class action litigation. "[M]ost if not all . . . are motivated by things other than a concern for the welfare of the Settlement Class." *Tornes v. Bank of America, N.A.*, 830 F. Supp. 2d 1330, 1361 n.30 (S.D. Fla. 2011) (King, J.). Such lawyers make their living "simply by filing frivolous appeals and thereby slowing down the execution of settlements." *Barnes v. FleetBoston Fin. Corp.*, 2006 U.S. Dist. LEXIS 71072, at *3-4 (D. Mass. Aug. 22, 2006). Their "sole purpose is to obtain a fee by objecting to whatever aspects of the Settlement they can latch on to" and levying "what is effectively a tax on class action settlements, a tax that has no benefit to anyone other than to the objectors." *Tornes*, 830 F. Supp. 2d at 1361 n.30 (quoting *Barnes*, 2006 U.S. Dist. LEXIS 71072, at *3-4). For this reason, "federal courts are increasingly weary of professional objectors." *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 295 n.26 (E.D. Pa. 2003).

Given who is behind these four objections, they should be accorded little, if any, weight by the Court.

III. ALL THE OBJECTIONS SHOULD BE OVERRULED ON THE MERITS

Most of the objections raise similar concerns, including that: (i) the amount of the Settlement is insufficient and/or that additional penalties and/or interest should be imposed on U.S. Bank (DE # 3665, 3701, 3706, 3709); (ii) the Service Awards to the 12 named Plaintiffs are excessive and/or that the objectors should also receive Service Awards (DE # 3665, 3700, 3706, 3710); and (iii) the request for attorneys' fees is excessive (DE # 3665, 3694, 3695, 3698, 3700,

3706, 3709, 3710, 3711). Most of the issues raised reflect a lack of understanding of the Settlement and/or of class action procedure in general. Moreover, most of the arguments raised in the four objections filed by serial objectors are rehashed from prior objections previously rejected by this Court, while many of their other arguments are inapposite or inapplicable to this Settlement. On the merits, these objections are not persuasive and should be overruled.

The Settlement Recovery is Fair, Adequate and Reasonable In Light of the Significant Legal Obstacles in the Action.

Several objections, principally from *pro se* individuals, claim that the recovery achieved through the Settlement is insufficient. *See* Null Objection (Exhibit A attached); Myers Objection at p. 2 (DE # 3665); Rutherford Objection at p. 12 (DE # 3700); Carpenter Objection at p. 3 (DE # 3706); and Lichvarick Objection at p. 1 (DE # 3709). These objections do not consider or realistically evaluate the most significant legal obstacle confronted in this case – U.S. Bank's effort to force Plaintiffs and all Settlement Class Members to *individually* arbitrate their claims.

As discussed in Plaintiffs' and Class Counsel's Motion for Final Approval of Class Settlement, and Application for Service Awards, Attorneys' Fees and Expenses, and Incorporated Memorandum of Law ("Motion) (DE # 3681) and supporting declarations, the amount recovered through this Settlement must be measured against the fact that *any* recovery by Plaintiffs and Settlement Class Members in this litigation could only have been achieved if, *inter alia*, U.S. Bank's effort to enforce mandatory *individual* arbitration was defeated in its entirety in this Court and on appeal. Motion at 23-25. If the Bank were successful in enforcing its arbitration agreement, the result would have effectively wiped out 100% of the value of Plaintiffs' and every Settlement Class Members' claims in the Action, and would have effectively spelled the "death-knell" of Plaintiffs' and all Settlement Class Members' ability to successfully recover damages arising from U.S. Bank's High-to-Low Posting practices. *See*

Joint Declaration of Aaron S. Podhurst, Bruce S. Rogow and Robert C. Gilbert, ¶¶ 58-61, 69-70 (DE # 3681-2); Declaration of Professor Brian Fitzpatrick ¶ 12 (DE # 3681-3); Declaration of Thomas E. Scott, ¶ 15 (DE # 3681-7). Moreover, the likelihood that more than a handful of Settlement Class Members could or would have successfully pursued *individual* arbitrations was virtually non-existent. Joint Decl. ¶ 59.

Given the risks associated with U.S. Bank's arbitration arguments (in addition to the many other risks associated with this complex case, even in the absence of arbitration), the percentage recovery in this action is "commensurate with the other settlements in this MDL that have already been approved" where defendant banks timely invoked the arbitration issues. Fitzpatrick Decl. ¶ 13. Under these circumstances, it is beyond reasonable dispute that the recovery achieved by the Settlement is a fair and reasonable recovery for the Settlement Class.

A. The Service Awards Are Reasonable and Should Be Approved.

Four objectors contend that the named Plaintiffs should not receive Service Awards. *See* Myers Objection at p. 2 (DE # 3665); Rutherford Objection at p. 12 (DE # 3700); Carpenter Objection at p. 4-5 (DE # 3706); Emerson Objection at pp. 3-4 (DE # 3710). Some argue that if Service Awards are approved, they should also receive them. These objections have no merit.

As discussed in the Motion and Joint Declaration, the Service Awards will compensate the 12 named Plaintiffs for their time and effort in the Action and the risks they undertook in prosecuting the Action. Motion at 27-28; Joint Decl. ¶¶ 73-74. Many courts, including this Court, have found service awards to be an efficient and productive way to encourage members of a class to become class representatives. *Id.* The named Plaintiffs provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement. In so doing, the named Plaintiffs were integral to forming the theory of the case; they not only devoted

time and effort to the litigation, but the end result of their efforts, and those of Class Counsel, conferred a substantial benefit on the Settlement Class. Joint Decl. ¶ 76. Moreover, the amount of the Service Awards in this Settlement are consistent with service awards previously approved by this Court in connection with other MDL 2036 settlements, and the total amount of the Service Awards here ($90,000) represent less than 0.20% of the total recovery. Motion at 28; Joint Decl. ¶77; *see, e.g.*, DE # 3134, 3585.

Finally, while certain *pro se* objectors argue they should receive Service Awards as well, they did not provide the assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, and did not assume any risks in prosecuting the Action. Simply put, there is no basis to provide Service Awards to unnamed Settlement Class Members who appear for the first time on the eve of final approval.

B. A Fee of Thirty Percent of the $55 Million Common Fund Is Reasonable.

Without support, some objectors argue that the requested thirty percent (30%) fee award of the $55 million common fund created through this Settlement is unreasonable. *See* Myers Objection (DE # 3665/3714); Shanker Objection (DE # 3693); McGrew Objection at pp. 9-12 (DE # 3694); Sweeney Objection at pp. 1-2 (DE # 3698); Rutherford Objection at pp. 8-10 (DE # 3700); Carpenter Objection at pp. 5-6 (DE # 3706); Lichvarcik Objection at p. 1 (DE # 3709); Emerson Objection at pp. 3-4 (DE # 3710); Dahl Objection at p. 1 (DE # 3711). The objectors are incorrect.

Professor Fitzpatrick and Judge Thomas E. Scott (Ret.) provided detailed factual and legal bases supporting their opinions that a fee award of thirty percent (30%) of the $55 million common fund is "well within the range of reason" and is "reasonable and well justified." *See*

Fitzpatrick Decl. ¶ 25 (DE # 3681-3); Declaration of Thomas E. Scott ¶ 10 (DE # 3681-7). The opinions of Professor Fitzpatrick and Judge Scott are *unrebutted*.

According to Professor Fitzpatrick, when fee awards are examined scientifically it becomes apparent that a thirty percent (30%) fee award on the $55 million common fund in this case is clearly reasonable. *See* Fitzpatrick Decl. ¶ 22 (DE # 3681-3). Professor Fitzpatrick concluded that a thirty percent (30%) fee award in this case is consistent with the results in: (i) other checking account overdraft fee cases (within MDL 2036 and elsewhere); (ii) fee awards in other Federal District Courts in Florida; and (iii) the results of several studies conducted by scholars and the Federal Judicial Center. *Id*.

Judge Scott reached the same conclusion – a thirty percent (30%) fee award on the $55 million common fund in this case is well justified. *See* Scott Declaration ¶¶ 10, 13. (DE # 3681-7). Judge Scott also offered great detail, applying the relevant *Camden I* factors, why a thirty percent (30%) fee is warranted in this case. *See* Scott Decl. ¶¶ 11-12 (DE # 3681-7).

In *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (awarding fees of 31 1/3 % of $1.06 billion), U.S. District Judge Alan Gold held that decreasing a fee percentage solely in light of a large settlement:

> is *antithetical* to the percentage of the recovery method adopted by the Eleventh Circuit in *Camden*, the whole purpose of which is to align the interests of Class Counsel and the Class by rewarding counsel in proportion to the result obtained. By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for Class Counsel to settle too early for too little.

Id. at 1213 (emphasis added) (citation omitted); *see also Williams v. General Elec. Capital Auto Lease*, 1995 WL 765266, at *10 (N.D. Ill. Dec. 16, 1995) ("Without significant counsel fees to

encourage the pursuit of these claims, the public policy to induce compliance with the law would be disserved.").

C. Under *Camden* I, the Court Should Not Undertake a Lodestar Analysis.

Some objectors contend that it would be unreasonable for the Court to award Class Counsel a fee without first considering and checking their lodestar. *See* Shanker Objection at pp. 5-7 (DE # 3693); Sweeney Objection at p. 2 (DE # 3698). Their position is at odds with the law of this Circuit and this Court's established practice in prior MDL 2036 settlements.

In *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768 (11th Cir. 1991), the Eleventh Circuit held that district courts should award fees in class actions using the percentage-of-the-fund method, rather than the lodestar method. Although some district courts in the Eleventh Circuit "crosscheck" these fee percentages with class counsel's lodestar, many others do not (including this Court in the previously approved MDL 2036 settlements). *See, e.g., David v. Am. Suzuki Motor Corp.*, 2010 WL 1628362 (S.D. Fla., Apr. 15, 2010); *Noell v. Suncruz Casinos*, 2009 WL 541329 (M.D. Fla., Mar. 4, 2009); *Stahl v. MasTec, Inc.*, 2008 WL 2267469 (M.D. Fla., May 20, 2008); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185 (S.D. Fla. 2006); *In re: Managed Care Litig., Class Plaintiffs v. Aetna Inc., and Aetna – US*, 2003 WL 22850070 (S.D. Fla., Oct. 24, 2003); *Fabricant v. Sears Roebuck & Co.*, 2002 WL 34477904 (S.D. Fla., Sept. 18, 2002).

The Eleventh Circuit has never held that district courts abuse their discretion by choosing not to employ a "lodestar crosscheck." As Professor Fitzpatrick and other scholars have explained, the lodestar crosscheck can effectively cap the amount of compensation class counsel can receive from a settlement and thereby blunt their incentives to achieve the largest possible award for the class. *See* Fitzpatrick Supplemental Decl. ¶ 6 (DE # 3074-1); Myriam Gilles &

Gary Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. Pa. L. Rev. 103, 140-45 (2006). As such, employing the "lodestar crosscheck" can reintroduce the very same undesirable consequences of the lodestar method that the percentage-of-the-fund method was designed to correct in the first place. *See Camden I*, 946 F.2d at 771-74 (citing the difficulty of administering the lodestar method and its failure to align class counsel's interests with the class's interests).

III. CONCLUSION

Based on the foregoing, as well as the facts and authorities set forth in the Motion and supporting declarations, the Court should overrule the objections and grant Final Approval to the Settlement, approve Service Awards for the Plaintiffs, approve Class Counsel's application for attorneys' fees and expenses, and enter Final Judgment dismissing the Action with prejudice.

Dated: December 4, 2013.

Respectfully submitted,

/s/ Aaron S. Podhurst
Aaron S. Podhurst, Esquire
Florida Bar No. 063606
apodhurst@podhurst.com
Robert C. Josefsberg, Esquire
Florida Bar No. 40856
rjosefsberg@podhurst.com
Steven C. Marks, Esquire
Florida Bar No. 516414
smarks@podhurst.com
Peter Prieto, Esquire
Florida Bar No. 501492
pprieto@podhurst.com
Stephen F. Rosenthal, Esquire
Florida Bar No. 0131458
srosenthal@podhurst.com
John Gravante, III, Esquire
Florida Bar No. 617113
jgravante@podhurst.com
PODHURST ORSECK, P.A.
City National Bank Building
25 W. Flagler Street, Suite 800
Miami, FL 33130-1780
Tel: 305-358-2800
Fax: 305-358-2382

/s/ Bruce S. Rogow
Bruce S. Rogow, Esquire
Florida Bar No. 067999
brogow@rogowlaw.com
Bruce S. Rogow, P.A.
Broward Financial Center
500 East Broward Boulevard
Suite 1930
Fort Lauderdale, FL 33394
Tel: 954-767-8909
Fax: 954-764-1530

Co-Lead Counsel for Plaintiffs

/s/ Robert C. Gilbert
Robert C. Gilbert, Esquire
Florida Bar No. 561861
rcg@grossmanroth.com
Stuart Z. Grossman, Esquire
Florida Bar No. 156113
szg@grossmanroth.com
David M. Buckner, Esquire
Florida Bar No. 60550
dbu@grossmanroth.com
Seth E. Miles, Esquire
Florida Bar No. 385530
sem@grossmanroth.com
GROSSMAN ROTH, P.A.
2525 Ponce de Leon Boulevard
Eleventh Floor
Coral Gables, FL 33134
Tel: 305-442-8666
Fax: 305-779-9596

Coordinating Counsel for Plaintiffs

/s/ E. Adam Webb
E. Adam Webb, Esquire
Georgia Bar No. 743910
Adam@WebbLLC.com
Matthew C. Klase, Esquire
Georgia Bar No. 141903
Matt@WebbLLC.com
G. Franklin Lemond, Jr., Esquire
Georgia Bar No. 141315
FLemond@WebbLLC.com
WEBB, KLASE & LEMOND, L.L.C.
1900 The Exchange, S.E.
Suite 480
Atlanta, GA 30339
Tel: 770-444-9325
Fax: 770-444-0271

/s/ Michael W. Sobol
Michael W. Sobol, Esquire
California Bar No. 194857
msobol@lchb.com
Roger N. Heller, Esquire
California Bar No. 215348
rheller@lchb.com
Jordan Elias, Esquire
California Bar No. 228731
jelias@lchb.com
LIEFF CABRASER HEIMANN & BERNSTEIN L.L.P.
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, CA 94111
Tel: 415-956-1000
Fax: 415-956-1008

/s/ Russell W. Budd
Russell W. Budd, Esquire
Texas Bar No. 03312400
rbudd@baronbudd.com
BARON & BUDD, P.C.
3102 Oak Lawn Avenue
Suite 1100
Dallas, TX 75219
Tel: 214-521-3605
Fax: 214-520-1181

/s/ David S. Stellings
David S. Stellings, Esquire
New York Bar No. 2635282
dstellings@lchb.com
LIEFF CABRASER HEIMANN & BERNSTEIN L.L.P.
250 Hudson Street
8th Floor
New York, NY 10013
Tel: 212-355-9500
Fax: 212-355-9592

/s/ Ruben Honik
Ruben Honik, Esquire
Pennsylvania Bar No. 33109
rhonik@golombhonik.com
Kenneth J. Grunfeld, Esquire
Pennsylvania Bar No. 84121
kgrunfeld@golombhonik.com
GOLOMB & HONIK, P.C.
1515 Market Street
Suite 1100
Philadelphia, PA 19102
Tel: 215-985-9177
Fax: 215-985-4169

/s/ Ted E. Trief
Ted E. Trief, Esquire
New York Bar No. 1476662
ttrief@triefandolk.com
Barbara E. Olk, Esquire
New York Bar No. 1459643
bolk@triefandolk.com
TRIEF & OLK
150 E. 58th Street
34th Floor
New York, NY 10155
Tel: 212-486-6060
Fax: 212-317-2946

Plaintiffs' Executive Committee

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-MD-02036-JLK

IN RE: CHECKING ACCOUNT OVERDRAFT LITIGATION

MDL No. 2036

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties in the manner specified, including all objectors, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Robert C. Gilbert
Robert C. Gilbert, Esquire
Florida Bar No. 561861
GROSSMAN ROTH, P.A.
2525 Ponce de Leon Boulevard
Eleventh Floor
Coral Gables, FL 33134
Tel: 305-442-8666
Fax: 305-779-9596