

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYEE RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

Master File No. 09 MD 2058 (PKC)

ECF CASE

This Document Relates To:

Consolidated Securities Action

**DECLARATION OF STEPHEN J. CIRAMI IN SUPPORT OF
LEAD PLAINTIFFS' MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

STEPHEN J. CIRAMI declares as follows:

1. I am the Senior Vice President of Operations for Garden City Group, LLC (“GCG”).¹ After the Class in the above-captioned action (the “Action”) was certified, pursuant to the Order Approving Notice and Summary Notice of Pendency of Class Action entered March 1, 2012 (ECF No. 531) (the “Notice Order”), the Court approved the retention of GCG as the Notice Administrator. Pursuant to its December 4, 2012 Order Preliminarily Approving Proposed Settlement and Providing for Notice (ECF No. 771) (the “Preliminary Approval Order”), the Court also approved the appointment of GCG as the Claims Administrator for the Settlement in the Action.² I make this declaration in support of Lead Plaintiffs’ Motion for Approval of Distribution Plan. The following statements are based on my personal knowledge as well as information provided by other experienced GCG employees working under my

¹ GCG was formerly known as The Garden City Group, Inc.

² All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 30, 2012 (ECF No. 767-1) (the “Stipulation”).

supervision.

I. NOTIFICATION OF PENDENCY OF ACTION AND CERTIFICATION OF CLASS (“Phase I”)

A. Dissemination of Notice of Pendency of Class Action

2. As Notice Administrator for the Action, GCG was responsible for disseminating the Notice of Pendency of Class Action (the “Class Notice”) to persons and entities identified as potential Class Members (the “Class Notice Mailing”). As more fully described in the Affidavit of Jason Zuena Regarding (A) Mailing of the Notice and (B) Publication of the Summary Notice, filed with the Court on April 12, 2012 (ECF No. 539) (“April 2012 Zuena Affidavit [or] Aff.”) and the Supplemental Affidavit of Jason Zuena filed with the Court on May 29, 2012 (ECF No. 573) (“May 2012 Zuena Supplemental Affidavit [or] Aff.”), GCG, pursuant to the Notice Order, conducted a mailing campaign in which it mailed the Class Notice to over 3.1 million potential Class Members.

3. In this Action, the transfer agent’s records contained the names of a significant number of potential Class Members – 538,696. However, as in all securities class actions, transfer agent records identify only a portion of the class. GCG spent significant time and resources over the course of several months working with banks, brokers, and other nominee firms (“Nominees”) across the country, and in some instances, globally, to identify as many members of the Class as possible. The details of that outreach program are contained in the April 2012 Zuena Affidavit. Through that program GCG identified an additional 2.6 million potential Class Members. Thus, in total, GCG mailed over 3.1 million Class Notices to potential Class Members in connection with the Class Notice Mailing.

4. As set forth in the Class Notice, Class Members had the right to request exclusion from the Class. In connection with the Class Notice Mailing, GCG received 864 requests for exclusion.

B. Publication of Summary Notice of Pendency of Class Action

5. Pursuant to the Notice Order, GCG Communications, the media division of GCG, caused the Summary Notice of Pendency of Class Action (the “Summary Class Notice”) to be published once each in the *Financial Times*, *The New York Times* and *The Wall Street Journal* on March 29, 2012. See April 2012 Zuena Aff. at ¶ 9. GCG also caused the Summary Class Notice to be issued over the *PR Newswire* on March 29, 2012. *Id.*

C. Toll-Free Helpline

6. In connection with notifying the Class of the pendency of the Action as a class action, GCG established a toll-free telephone helpline ((855) 733-8308) dedicated to the Action to assist potential Class Members. The telephone helpline enabled potential Class Members to obtain additional information about the Action.

7. In connection with establishing and maintaining the telephone helpline, GCG, among other things, formulated a system to assure that proper responses were provided to all telephone inquiries. That work included developing and modifying, as needed, an Interactive Voice Response system, or “IVR”; training telephone agents to respond to inquiries specific to the Action; and developing a series of common questions and the answers thereto, known as Frequently Asked Questions, or “FAQs.”

8. During this phase of GCG’s engagement, GCG received 7,239 calls to the telephone helpline, which is maintained by GCG’s contact center located in Dublin, Ohio. Of these calls, 2,730 were handled by operators. The calls handled by GCG operators included

questions regarding the Class Notice, the process for submitting requests for exclusion, address updates, and requests for copies of the Class Notice. If the operator required additional assistance in responding to an inquiry, the project team would be contacted for assistance in responding to the inquiry.

II. NOTIFICATION OF SETTLEMENT (“Phase II”)

9. On December 4, 2012, GCG was also retained as the Claims Administrator pursuant to the Court’s Preliminary Approval Order entered in connection with the Settlement of the Action.

A. Dissemination of Claim Packet

10. As more fully described in the Affidavit of Stephen J. Cirami Regarding (A) Mailing of the Settlement Notice and Proof of Claim Form; (B) Publication of Summary Notice; and (C) Report on Opt-Ins Received to Date dated February 14, 2013 (ECF No. 829-7) (the “February 2013 Cirami Affidavit [or] Aff.”), and the Affidavit of Jason Zuena Regarding (A) Mailing of the Settlement Notice and Proof of Claim Form; (B) Report on Opt-Ins Received; and (C) Report on Late Exclusions Received dated March 29, 2013 (ECF No. 854) (the “March 2013 Zuena Affidavit [or] Aff.”), on December 24, 2012, GCG began mailing the Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Settlement Notice”) and the Proof of Claim and Release Form (the “Proof of Claim”) (collectively, the “Claim Packet”) to over 3.3 million potential Class Members.

11. In addition to mailing Claim Packets to the 3.1 million potential Class Members identified in Phase I of its engagement, as part of its Phase II efforts, GCG again reached out to Nominees in a further effort to identify additional Class Members in order to assure that as many

potential Class Members as possible were reached. In response to this additional outreach, Nominees that had previously provided names and addresses of potential Class Members provided GCG with the names and addresses of additional potential Class Members, Nominees that had not requested Class Notices now requested Claim Packets, and Nominees that had requested Class Notices now requested a greater number of notices for them to mail directly to their customers. GCG mailed approximately 178,000 additional Claim Packets as a result of these additional outreach efforts.

12. As of the March 2013 Zuena Affidavit, GCG had printed and mailed more than 3.3 million copies of the Claim Packet. Since that date, GCG has mailed approximately 40,000 additional Claim Packets to potential Class Members in response to requests received. In total, GCG has mailed approximately 3.4 million Claim Packets to potential Class Members or their Nominees.³

B. Publication of Summary Settlement Notice

13. Pursuant to the Preliminary Approval Order, GCG Communications caused the Summary Notice of (I) Proposed Settlement and Plan of Allocation; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Settlement Notice") to be published once each in the *Financial Times*, *The New York Times* and *The Wall Street Journal* on January 3, 2013. See February 2013 Cirami Aff. at ¶ 7. GCG also caused the Summary Settlement Notice to be issued over the *PR Newswire* on January 3, 2013. *Id.* Among other things, the Summary Settlement Notice advised potential Class Members of how they could obtain Claim Packets and the deadline for the submission of Proofs of Claim. See *id.*, Exhibits C-F.

³ Each Claim Packet consists of the 28-page Settlement Notice and the 13-page Proof of Claim.

C. Settlement Website and Toll-Free Telephone Helpline

14. In Phase II of GCG's engagement, GCG assumed control of the web domain initially established by Co-Lead Counsel (www.boasecuritieslitigation.com). Upon assuming control, GCG rebuilt the website on its platform with the same look and feel of the website as it existed when under counsel's control, preserved the relevant content of the website, and updated the website with information about the Settlement. Among the documents that GCG loaded onto the website to permit their continued viewing and downloading were, the Consolidated Amended Class Action Complaint (the "Amended Complaint"), the briefing on Defendants' motions to dismiss the Amended Complaint, the briefing on the Bank Defendants' Motion to Certify a Question of Law to the Delaware Supreme Court, the Consolidated Second Amended Class Action Complaint (the "Second Amended Complaint"), the briefing on Defendants' Motion to Dismiss Claims, and New Plaintiff Classes, Asserted in the Second Amended Complaint, briefing on Lead Plaintiffs' and Defendants' respective motions for summary judgment, as well as the filings in support of preliminary and final approval of the Settlement (including the Stipulation, the motions for preliminary and final approval of the Settlement, the Settlement Notice, and the Proof of Claim), as well as the Court Orders relating to the various motions. Additionally, the briefing in the Court of Appeals with respect to the appeals taken from the approval of the Settlement and the award of fees and expenses was also posted.

15. The website and telephone helpline enabled Class Members to obtain information about the Settlement, including the "opt-in", objection and Claim filing deadlines. GCG continues to maintain the website and the toll-free telephone helpline which are dedicated to the Settlement.

16. In connection with Phase II of its engagement, GCG had to modify the IVR put in place in connection with Phase I of its engagement; train telephone agents to respond to inquiries specific to the Settlement; and update the FAQs to address Settlement issues.

17. During Phase II of its engagement, GCG received 154,709 calls to the telephone helpline. Of these calls, approximately 75,000 were handled by operators. The calls handled by GCG operators included questions regarding eligibility to participate, the terms of the Settlement, when payment would be received and how much payments would be. If the operator required additional assistance, the project team would be contacted to provide further assistance to the Class Member.

18. The email address, info@boasecuritieslitigation.com, which GCG assumed control of during Phase II, enabled potential Class Members to obtain information about the Settlement, request a Claim Packet, and/or seek assistance with their Claim via email. GCG received approximately 5,100 emails to this email address and has responded to all in a timely manner.

D. Requests for Exclusion from and Requests to Opt-Back Into the Class

19. Persons and entities that had requested exclusion from the Class pursuant to the Court's Order certifying the Class and as set forth in the Class Notice had an opportunity, as explained on page 17 of the Settlement Notice, to opt-back into the Class. In connection with the mailing of the Settlement Notice, GCG received 15 requests to opt-back into the Class and 19 new requests for exclusion from the Class. The Court's Preliminary Approval Order did not provide for a second "opt-out" period. GCG worked with Co-Lead Counsel to notify those persons and entities who or which submitted these invalid requests for exclusion that the time to request exclusion had passed and, that, if their Bank of America securities were eligible to

participate in the Settlement, they could still submit a Proof of Claim in order for these securities to potentially participate in the Settlement.

III. JUDGMENT APPROVING CLASS ACTION SETTLEMENT AND APPEALS

20. On April 9, 2013, the Court entered the Judgment Approving Class Action Settlement (ECF No. 871), which granted final approval of the Settlement. Various appeals followed. On November 5, 2014, the United States Court of Appeals for the Second Circuit affirmed this Court's Order approving the Settlement. The time for seeking review of the Court of Appeals' decision has expired. As no further appeal was taken, the Effective Date of the Settlement has occurred and the Net Settlement Fund may be distributed to Authorized Claimants pursuant to Order of this Court. *See* Stipulation ¶ 28.

21. GCG has completed the processing of all Proofs of Claim received through November 5, 2014 in accordance with the terms of the Stipulation and the Court-approved Plan of Allocation and hereby submits its administrative determinations accepting and rejecting those Proofs of Claim in preparation for a distribution of the Net Settlement Fund to Authorized Claimants.⁴ GCG presents this declaration in support of Lead Plaintiffs' Motion for Approval of Distribution Plan.

IV. PROCEDURES FOLLOWED IN PROCESSING PROOFS OF CLAIM

22. Pursuant to the Preliminary Approval Order and as set forth in the Settlement Notice, each Class Member who wished to be eligible to receive a distribution from the Net Settlement Fund was required to complete and submit to GCG a properly executed Proof of Claim postmarked no later than April 25, 2013, together with adequate supporting

⁴ GCG was instructed by Co-Lead Counsel to defer processing any Claims received after November 5, 2014.

documentation for the transactions and holdings reported therein. Through November 5, 2014, GCG received 719,771 Proofs of Claim, all of which have been processed.

23. Before Claims processing commenced, GCG created a database dedicated to this Settlement by customizing its proprietary database management software to accommodate the specifics of this Settlement. This included developing various computer programs and screens for entry of Class Members' identifying and transactional information and developing a proprietary "calculation module" that would calculate Recognized Claims pursuant to the Court-approved Plan of Allocation set forth in the Settlement Notice. In addition, GCG trained its staff in the specifics of the Settlement so that Proofs of Claim would be properly processed and formulated a system so that telephone inquiries would be properly handled.

24. Class Members seeking to share in the Net Settlement Fund were directed in the Settlement Notice to submit their Proofs of Claim to a Post Office box address specifically designated for the Settlement. GCG sorted incoming mail into Proofs of Claim and administrative mail.

25. Administrative mail includes all mail other than Proofs of Claim and supporting documentation and responses to notices of partial or complete rejection of Claims. Examples include requests for Proof of Claim Forms, notifications of address changes, and questions regarding the administration process or status of the administration. To date, GCG has received and handled approximately 10,000 pieces of administrative mail, each requiring review and specific handling, with many requiring a response by telephone or mail.

A. Processing Paper Proofs of Claim

26. Of the 719,771 Proofs of Claim received through November 5, 2014, 362,026 were paper Claims. Once received at GCG's Dublin, Ohio mail facility, paper Proofs of Claim

were opened and prepared for scanning. This process included unfolding documents, removing staples, copying non-conforming sized documents, sorting documents, and, where Claimant identification information was not provided on the Proof of Claim, copying and attaching the envelope with the return address to the file. This manual task of preparing paper Proofs of Claim is very laborious and time-intensive. Once prepared, paper Proofs of Claim were scanned into a database together with all submitted documentation. Subsequently, each Proof of Claim was assigned a unique Proof of Claim number if it did not already have a pre-assigned number. Once scanned, the personal information from each Proof of Claim, including the name, address, and the last four digits of the taxpayer identification number or the social security number of the Claimant was entered into the database. In addition, the Claimant's purchase/acquisition transactions, sale transactions, and holdings listed on the Proof of Claim, were entered into a database developed by GCG to process Proofs of Claim submitted for the Settlement. Next, the information provided by each Claimant in support of his, her or its Proof of Claim was reviewed to determine whether the Claimant purchased/acquired Bank of America common stock ("BOA Common Stock") or Bank of America January 2011 Call Options ("BOA Call Options") (together "BOA Eligible Securities") during the Class Period or held BOA Common Stock as of October 10, 2008 and was entitled to vote on Bank of America's Merger with Merrill Lynch.

27. In order to process the transactions detailed in the Proofs of Claim, GCG utilized dozens of internal Proof of Claim codes (also known as "message codes") to identify and classify Proofs of Claim and any deficiency or ineligibility conditions that existed within those Proofs of Claim. The appropriate message codes were assigned to the Proofs of Claim as they were processed. For example, where a Proof of Claim was submitted by a Claimant who did not have *any* eligible shareholdings or purchases/acquisitions of BOA Eligible Securities (*e.g.*, the

Claimant only purchased Bank of America bonds or notes), that Proof of Claim received a “Proof of Claim-level” message code that denoted ineligibility. Similar “Proof of Claim-level” ineligible message codes were used to denote other ineligible conditions, such as duplicate Proofs of Claim. These message codes indicated to GCG that the Claimant was not eligible to receive any payment from the Net Settlement Fund with respect to that Claim unless the deficiency was cured.

28. Because a Proof of Claim may be deficient only in part, but otherwise be acceptable, GCG also utilized message codes that were only applied to specific transactions within a Proof of Claim. For example, if a Claimant submitted a Proof of Claim with supporting documentation for all but one purchase transaction, that one transaction received a “transaction-level” message code. That message code indicated that the one transaction was deficient, but that the Claim was otherwise eligible for payment if other transactions in the Proof of Claim calculated to a Recognized Claim according to the Court-approved Plan of Allocation. Thus, even if the transaction-level deficiency was never cured, the Claim would still be paid in part.

B. Processing Electronically Filed Proofs of Claim

29. Of the 719,771 Proofs of Claim received through November 5, 2014, 357,745 were filed electronically (“Electronic Claims”). Electronic Claims are typically submitted by institutional investors who may have hundreds or thousands of transactions during the Class Period. The Electronic Claims in this Action contained more than 55,000,000 transactions. Rather than provide reams of paper requiring data entry of each separate transaction, the institutional investors filing Electronic Claims either mail a computer disc or email a file to GCG so that GCG may electronically upload all transactions to its proprietary database developed for the Settlement.

30. GCG maintains an electronic filing operations team (the “Electronic Filing Team”) located in Dublin, Ohio, which coordinates and supervises the receipt and handling of all Electronic Claims. The Electronic Filing Team reviewed and analyzed each electronic file to ensure that it was formatted in accordance with GCG’s required format, and to identify any potential data issues or inconsistencies within the file. If any issues or inconsistencies were found, GCG immediately notified the filer. If the electronic file was deemed to be in an acceptable format, it was then forwarded to GCG’s programming staff with detailed loading instructions including the number of Claims and transaction totals that the institution provided when it sent the electronic file.

31. Once the electronic file was loaded, GCG’s Quality Assurance personnel reviewed the electronic file to confirm that the number of Claims and transactions matched the information provided by the filer. The Electronic Filing Team then sent an email notification to the filer that included a spreadsheet with the Claim numbers and respective account information for each Claim. In this email, the filer was also notified of any discrepancies in the data. Notification was also provided online through GCG’s web-based filing platform GCG ICE™ to those institutions which submitted files via this method.

32. Once all counts were confirmed, the Electronic Claims were coded just like manually processed Proofs of Claim with messages to identify and classify any deficiency or ineligibility conditions that existed within them. These message codes are the same as those applied to manually filed Proofs of Claim; however, the process in applying codes to Electronic Claims differs from the process used for paper Proofs of Claim. Rather than manually applying message codes, the Electronic Filing Team performed programmatic reviews on Electronic Claims to identify deficient and ineligible conditions. These include, but are not limited to, price

per share validation issues, out of balance conditions, and transactions outside the Class Period. The appropriate message codes were then assigned programmatically once the output of the reviews was thoroughly analyzed and confirmed as accurate.

33. The review process also included flagging any Electronic Claims that were not accompanied by the following: (i) a signed Proof of Claim and Release Form, which serves as a “Master Proof of Claim Form” for all accounts referenced on the electronic file submitted; (ii) an electronic filing summary sheet; (iii) supporting documentation, such as a signed or notarized letter on company letterhead attesting to the truth and accuracy of the data on the electronic file, trade confirmations, and/or brokerage account statements; (iv) a notarized affidavit, corporate resolution or corporate by-laws verifying that the individual who executed the Proof of Claim and submitted the electronic file is an authorized signatory of his or her company with the authority to file such information; and (v) documentation to demonstrate the authority to file on behalf of the Claimant. This portion of the review process was also reviewed by GCG’s Quality Assurance personnel, who worked in conjunction with the Electronic Filing Team to contact the institutional filers whose electronic files were missing information. This process ensures that only fully completed Proofs of Claim, submitted by properly authorized representatives of the Claimants, are considered eligible for payment from the Net Settlement Fund.

34. GCG performed various audits specific to Electronic Claims. Thus, GCG reached out to a number of electronic filers who, in lieu of providing specific trade confirmations, provided another form of supporting documentation as set forth in ¶ 33(iii) above. GCG selected a number of transactions from these Claims and requested that the filer provide confirmation slips or other transaction-specific supporting documentation to support them. This random sampling helps to ensure that electronic data supplied does not contain inaccurate information.

GCG performed this audit on a sampling of randomly selected electronic files, as well as on the electronic files with the largest Recognized Claims.

C. Excluded Persons and Entities

35. GCG also reviewed all Proofs of Claim to ensure that they were not submitted by, or on behalf of, persons or entities excluded from the Class by definition. To do this, GCG referenced the list of Defendants and other excluded persons and entities set forth in the Stipulation and the Settlement Notice and compared the list to the Claimants' certifications on the Proofs of Claim. GCG also reviewed all Proofs of Claim against the list of persons and entities who or which had requested exclusion from the Class.

36. As indicated in ¶ 19 above, persons or entities who had excluded themselves from the Class in connection with the Class Notice Mailing were permitted to opt-back into the Class by submitting a written request no later than March 5, 2013. Of the 864 persons or entities who previously opted-out, 15 requested to opt-back in. GCG performed additional audits to ensure that any Claimant that had requested exclusion in connection with the Class Notice Mailing that filed a Claim had, in fact, timely opted-back into the Class.

D. Additional Complexities Encountered in Claims Processing

37. Whether measured by settlement value, the number of notices mailed or Claims received, this is one of the largest securities settlement administrations in history. GCG has handled over 500 securities settlement administrations during its 30-plus year history, and with over 719,000 Claims received, this Settlement ranks among the top five in terms of claim volume. Accordingly, in addition to the complexities which are noted herein that were encountered because of the nature of the claims asserted in the Action, a one-off issue in a

typical administration was magnified by the sheer volume of Claims and transactions that had to be processed.

i. Plan of Allocation

38. Because the Action involved claims under both Section 10(b) and Section 14(a) of the Securities Exchange Act of 1934, the Court-approved Plan of Allocation in this matter was more complex than many securities administrations. The Plan of Allocation included distinct loss calculations under Section 10(b) and Section 14(a), with each calculation requiring a different analysis. The Section 10(b) calculation involved the analysis of Class Period purchases/acquisitions matched on a First In, First Out (“FIFO”) basis to sales and ending holdings. The Section 14(a) calculation involved the analysis of beginning holdings and Class Period purchases/acquisitions prior to a specific intra-Class Period date, and held through a different intra-Class Period date. Additionally, since as to some shares of BOA Common Stock, the same share could have both a Section 10(b) and a Section 14(a) Recognized Loss Amount, it was necessary to assure that the Recognized Loss Amount for any shares that satisfied the requirements for the Section 14(a) calculation under the Plan of Allocation was calculated pursuant to that provision and only pursuant to that provision.⁵ Moreover, the calculation under this Plan of Allocation entailed both market loss and recognized gain components in addition to the distinct Recognized Loss Amount calculations. This multi-faceted plan involving the interplay of the various calculations necessitated additional development, testing and auditing throughout the process in order to ensure the correct calculation of Recognized Claims.

⁵ The Plan of Allocation provides that, because the Recognized Loss Amount for a share that had claims pursuant to both Section 10(b) and Section 14(a) was always greater under the Section 14(a) calculation, that would be the provision to apply to such share. *See* Settlement Notice ¶ 75.

ii. Intra-Class Period Holding Dates

39. In order for a Claimant to have a claim under Section 14(a), the Claimant was required to have held BOA Common Stock as of October 10, 2008, and to have maintained that holding through the opening of trading on January 12, 2009. This complicated the review of Proofs of Claim in several ways. While the first prong of the requirement for demonstrating that a share qualified under Section 14(a) could have been supported by documentation demonstrating holdings of BOA Common Stock as of October 10, 2008, it also could be supported by documentation reflecting the purchase of such shares made years earlier or documentation reflecting the purchase of shares of banks which subsequently merged with Bank of America. Many Claimants provided documentation reflecting the original purchases of the shares. Because the original purchases of shares that were held as of October 10, 2008, even if they were of BOA Common Stock, were often made years earlier, the documentation related to those purchases was sometimes very old and atypical of the type of documentation customarily used to support purchase transactions. Additionally, since the documentation submitted in support of a Claim could be stock certificates for any of the multiple entities that merged with Bank of America, it was necessary to confirm that the institution was, in fact, one that merged with Bank of America and, it was also necessary to confirm and, in some instances, perform original calculations of the conversion ratio on the merger to assure the accuracy of the number of eligible shares claimed. The review of these Claims, therefore, required a significant amount of research relating to the confirmation of the institutions as ones that actually merged with Bank of America as well as the determination of the number of shares of BOA Common Stock acquired with respect to each such merger. Also, the “holding date” requirements under the Section 14(a) calculation which differed from the “holding date” for losses calculated under

Section 10(b) added another layer of complexity to be tracked and accounted for. GCG developed and implemented specific audits and reviews to address the complexities introduced into the process by this specific component of the Plan of Allocation.

iii. Merger Shares

40. Shares of BOA Common Stock received as the result of the merger between Bank of America and Merrill Lynch which occurred during the Class Period (the “Merger”) were not eligible to be included in the calculation of Recognized Claims under the Plan of Allocation. If a Claimant, however, acquired shares through the Merger, those shares had to be reported on the Proof of Claim so that the Claim would be “in balance.” A Claimant’s beginning holdings plus purchases and acquisitions during the Class Period should equal their sales during the Class Period plus ending holdings; if they do, the Claim is said to be “in balance.” When they do not, this evidences missing information on the Proof of Claim. As the Merger took place in January 2009, a date *during* the Class Period, Claimants were required to provide the number of shares of BOA Common Stock acquired as a result of the Merger in order for their Claims to be “in balance.” GCG developed and implemented additional audits and reviews to ensure that these shares were identified and not included in the loss calculation. In addition, GCG received a significant number of inquiries from Claimants related to these shares, many of which resulted in disputes that required additional time and effort on the part of GCG to resolve, as Claimants often did not understand that or why these shares were not included in the Recognized Claim calculation.

iv. ERISA Plans

41. As in many plans of allocation, the Plan of Allocation here provides that participants and beneficiaries in a retirement plan covered by Section 3(3) of ERISA, 29 U.S.C.

§ 1002(3) should not include any information relating to their transactions in BOA Common Stock held through the ERISA Plans (which included the Bank of America 401(k) Plan, the Bank of America 401(k) Plan for Legacy Companies, the Merrill Lynch & Co., Inc. 401(k) Savings & Investment Plan, and the Merrill Lynch & Co., Inc. Retirement Accumulation Plan) in any Proof of Claim that they submitted. As set forth in ¶ 66 of the Settlement Notice, Claims based on an ERISA Plan's purchases were to be made by the plan's trustees. Despite this provision, Claimants often included shares they owned through the ERISA Plans in their Claims. Again, because of the size of this administration, including the number of ERISA Plans, this issue was greater than what is regularly experienced in other administrations. In order to assure that all ERISA Plan shares would be properly flagged and processed, GCG had to develop specialized audits and reviews designed to confirm that any shares claimed through the ERISA Plans were marked as ineligible. This issue also led to additional inquiries from and disputes by Claimants related to these shares, as Claimants often did not understand that or why these shares were not included in the Recognized Claim calculation.

v. **Restricted Shares**

42. Although shares acquired through the ERISA Plans were not to be included in Claims submitted by individual Claimants, Claims submitted by Bank of America employees for restricted shares acquired outside of the ERISA Plans were to be included in individual Claimants' Claims. However, the documentation provided often made it difficult to distinguish between these restricted shares and ERISA Plan shares. This necessitated the detailed review of these Claims, and additional Claimant communication and outreach to either explain this difference to the Claimant or to acquire clarification or further documentation.

vi. Inclusion of Non-Eligible Securities

43. Bank of America is an issuer of a large number of securities, however, only two securities are covered by the Settlement and the Plan of Allocation, *i.e.*, BOA Common Stock (subject to specified restrictions) and January 2011 call options on BOA Common Stock. Notwithstanding this fact, Claimants included multiple other securities in their Proofs of Claim. A significant amount of additional review and auditing was required to address this issue.

vii. Other Non-Conforming Claims

44. During the processing of Proofs of Claim, GCG encountered other types of “non-conforming” Proofs of Claim, which, in general, require significantly more work than what is required to process standard Proofs of Claim because of the information contained in or missing from the Proof of Claim, or because of the manner in which the Proof of Claim was completed. Examples of these other types of non-conforming Claims include those that are missing pages, have no name or address, are blank but submitted with documentation for GCG to complete, and are so materially deficient as to make what is being claimed unrecognizable. Again, because of the sheer number of Claims submitted, a significant amount of time and resources were required to review these “non-conforming” Proofs of Claim.

V. THE DEFICIENCY PROCESS

45. Approximately 265,000, or over 36%, of the 719,771 Proofs of Claim received through November 5, 2014 were partially or wholly deficient for one or more reasons, and, therefore, required additional processing, correspondence and telephonic communications. Many of these Proofs of Claim were incomplete, not signed, not properly documented, or were otherwise deficient. Much of GCG’s efforts in handling an administration involve Claimant communications so that all Claimants have sufficient opportunity to cure any deficiencies and

file a complete Proof of Claim. The “Deficiency Process,” which involved letters and emails to Claimants, along with inbound and outbound calls to Claimants, was intended to assist Claimants in properly completing their otherwise deficient submissions so that they would be eligible to participate in the Settlement. The process also was designed to advise Claimants of their right to request this Court’s review of their Proofs of Claim if they disputed GCG’s final determination. As a result of this process, a significant number of Claimants who had curable deficiencies that subjected their Claims to partial or complete rejection were able to cure those deficiencies and their Claims are now in good standing and are eligible to participate in the Settlement.

A. Wholly Rejected Claims

46. As described above (*see* ¶¶ 27–28, 32), GCG utilized internal Proof of Claim codes to identify and classify Proofs of Claim and conditions that existed within them. The process of identifying deficiencies included, among other things, determining which Proofs of Claim were partially deficient and which were wholly deficient. If a Proof of Claim was determined to be wholly deficient, GCG mailed the Claimant a notice entitled “Notice of Rejection of Your Entire Claim.” Examples of conditions that rendered a Claim wholly deficient include, but are not limited to: (i) Proof of Claim missing documentation for entire Proof of Claim; (ii) Claimant not signing the Proof of Claim; (iii) Claimant not providing enough information to calculate the Claim; or (iv) Proof of Claim having no Recognized Claim when calculated under the Court-approved Plan of Allocation. The notice described for the Claimant the defect(s) in his, her or its Proof of Claim and what, if the defect was curable, was necessary to cure the defect(s). The notice also advised the Claimant that submission of the appropriate information and/or documentary evidence to complete the Proof of Claim was required within 20 days from the date of the notice, or the Claim would be recommended for rejection in its entirety.

To date, GCG has mailed (or e-mailed in the case of Electronic Claims) a “Notice of Rejection of Your Entire Claim” in connection with approximately 220,000 Proofs of Claim.

B. Partially Rejected Claims

47. If a Proof of Claim was determined to be partially deficient, GCG mailed the Claimant a notice entitled “Notice of Rejection of Part of Your Claim.” Examples of such conditions include, but are not limited to: (i) Proof of Claim missing documentation for some but not all transactions; (ii) Claimant not supplying some transactional information thereby causing the Claim to not balance; or (iii) Claimant including some securities that were not BOA Eligible Securities. The notice described for the Claimant the defect(s) in his, her or its Proof of Claim and what, if the defect was curable, was necessary to cure the defect(s). This notice also advised the Claimant that he, she or it had a 20-day period in which to submit the necessary additional information. To date, GCG has mailed (or e-mailed in the case of Electronic Claims) a “Notice of Rejection of Part of Your Claim” in connection with approximately 45,000 Proofs of Claim.

48. Attached hereto as Exhibit A are examples of the types of notices sent to inform Claimants of the deficiencies in, or the ineligibility of, their Proofs of Claim. Each such notice explained that this deficiency process was the Claimant’s only opportunity to cure the deficiencies in his, her or its Claim (to the extent that the deficiencies could be cured), and that the Claimant had the right to contest GCG’s administrative determination and ask that the Court review such determination but, if Court review was desired, the Claimant was required to submit a written statement to GCG requesting such review and setting forth the basis for the request within 20 days of the date of the notice.

49. Claimants’ responses to these complete or partial rejection notices were scanned into GCG’s database and associated with the related Proofs of Claim. Those responses were then

reviewed and evaluated by GCG's team of processors. If a Claimant's response corrected the defect(s), GCG updated the database manually to reflect the change in the status of the Claim.

C. Additional Outreach to Claimants Who or Which Did Not Cure Deficiencies

50. After responses to the "deficiency" notices were received and evaluated, and the Proofs of Claim updated, GCG called Claimants with still-deficient Proofs of Claim to provide them with a final opportunity to cure the deficiencies in their Claims. This outreach campaign was two-fold. First, GCG representatives made multiple telephone attempts and/or sent emails to contact all still-deficient Claimants, or the Nominees that filed on their behalf, with potential payments of approximately \$60,000 or greater. This equated to 115 Claims. GCG also coordinated an automated calling campaign to contact other still-deficient Claimants who provided phone numbers and/or sent emails to those Claimants.

51. During the calling campaign with respect to Claims that could have a potential payment of \$60,000 or more, when a GCG agent spoke with a Claimant or Nominee, he or she explained that the Proof of Claim was still deficient and advised the Claimant or Nominee of the steps required to cure the deficiency. GCG provided assistance where possible which depended on the nature of the deficiency. For example, GCG explained what kind of documentation was required to cure the deficiencies and how such documentation could be obtained. GCG agents also provided the individuals with whom they spoke direct phone numbers, e-mail addresses and fax numbers so that Claimants could receive continued personalized attention and assistance. If GCG could not reach a Claimant or Nominee to speak one-on-one, when possible GCG left a detailed voice message requesting a return call.

52. The automated calling campaign advised Claimants or Nominees that their Claims were still deficient, and that they should call the toll-free telephone helpline for further

information as to how to complete their Claim(s). This automated outreach included calls to over 46,700 Claimants or Nominees.

53. In response to these telephone calls or emails, additional Claimants did cure the deficiency(ies) in their Claims by providing the appropriate information and/or supporting documentation, and GCG updated the database to reflect the change in the status of the Claims.

54. In sum, GCG contacted over 46,800 Claimants or their Nominees during this follow-up outreach program to alert them to the still existing deficiencies in their Claims, and did significant work with those who responded to help them cure the deficiencies in the Claims.

VI. CLAIMANTS SEEKING JUDICIAL REVIEW OF THEIR PROOFS OF CLAIM

55. As set forth above, both the Notice of Rejection of Your Entire Claim and the Notice of Rejection of Part of Your Claim advised Claimants that, if they did not agree with GCG's administrative determination, they had the right to request judicial review of their Proofs of Claim. GCG received letters from 2,352 Claimants contesting GCG's administrative determination.

56. A significant number of those Claimants simultaneously provided GCG with documentation and/or information that cured the deficiencies in their Proofs of Claim. As a result, the letters requesting further review submitted by those Claimants are now moot and their Claims are being recommended for payment. Indeed, one of the main purposes of providing Claimants with the opportunity to challenge GCG's administrative determinations rejecting their Claims is to give those Claimants another opportunity to provide the information and/or material needed to cure the deficiencies in their Proofs of Claim. GCG attempted to contact by telephone and/or letter each contesting Claimant who cured his, her or its deficient Claim in connection with the submission of the request for Court review to explain that the Claim was now complete

and would be recommended for payment. Of the 2,352 Claimants that requested judicial review, approximately 55% provided GCG together with their request for judicial review the necessary documentation and/or information to cure the deficiencies in their Claims.

57. With respect to the remaining 45% of Claimants with Claims with uncured deficiencies or who were otherwise ineligible and had requested judicial review, GCG attempted to contact by telephone and/or letter each such Claimant to advise the Claimant of the status of his, her or its Claim, and to explain the basis of GCG's continuing administrative determination to reject the Claim. As a result of GCG's communications further explaining the reason for the rejection of the Claim, certain other contesting Claimants affirmatively withdrew their requests for Court review, and their Proofs of Claim are being recommended for rejection. Additionally, in response to these additional communications from GCG, certain Claimants cured the deficiency(ies) in their Claims and their Proofs of Claim are being recommended for approval.

58. Of the 2,352 Claimants that had contested GCG's determination to reject their Claims, only 15 Claimants (each a "Disputing Claimant") have outstanding requests for Court review (each a "Disputed Claim"). GCG's efforts to work through the issues presented by the Claimants requesting judicial review resulted in the resolution of 99.4% of the original requests without the need for judicial intervention. Resolution of these issues involved significant back and forth contact with Claimants via telephone, mail and email, and often the review of additional documentation as well as further processing of the Claims. In each case where the Claim remained rejected but the Claimant agreed to withdraw the request for judicial review, GCG had worked through the various issues with the Claimant explaining in detail why the Claim was rejected, referencing Settlement documents and walking the Claimant through the particular issues with the Claim.

59. Exhibit B attached hereto (the “Disputed Claim Chart”) contains copies of the Claims and supporting documentation submitted by the 15 Disputing Claimants, and other documents related to each Disputed Claim.⁶ The Claims are labeled Disputed Claim 1-15 and are categorized as follows:

<u>Disputed Claims Category</u>	<u>Number of Claims</u>
Claims determined not to calculate to a Recognized Claim under the Plan of Allocation	10
Claims found to have no eligible shareholdings or transactions	4
Claims with no supporting documentation	1
TOTAL	15

60. **Category A: Claims determined not to calculate to a Recognized Claim under the Plan of Allocation.** As set forth in the Disputed Claim Chart, GCG recommends Disputed Claim Nos. 1 to 10 for rejection because these Claims do not calculate to a Recognized Claim under the Court-approved Plan of Allocation.

61. Disputed Claim Nos. 1 to 5 are recommended for rejection because all shares of BOA Common Stock purchased during the Class Period and/or held as of October 10, 2008 by these Disputing Claimants were sold prior to January 12, 2009.⁷ Under the Plan of Allocation, the Recognized Loss Amount for both Section 10(b) and 14(a) Claims for shares that were sold before the opening of trading on January 12, 2009 is zero. *See* Settlement Notice ¶¶ 78(A)(i), 82 n.14.

⁶ For privacy reasons, the documents included in Exhibit B have been redacted to remove all personal information such as street addresses, email addresses, telephone numbers, account numbers, Taxpayer ID, Social Security or Social Insurance Numbers, and all transaction information not related to the Claimant’s transactions in Bank of America securities or Merrill Lynch securities involved in the Merger.

⁷ None of these Disputing Claimants purchased or acquired BOA Call Options.

62. Disputed Claim Nos. 6 to 8 are recommended for rejection because each of these Disputing Claimants' transactions in BOA Common Stock were only eligible for consideration under the Section 10(b) Claims calculation and these transactions calculated to an overall Recognized Gain Amount under the Plan of Allocation.⁸ See Settlement Notice ¶¶ 78(A), 78(B), 88(a), 89. As such, these Disputing Claimants are not eligible to receive any distribution from the Settlement proceeds.

63. Disputed Claim Nos. 9 and 10 are recommended for rejection because each of these Disputing Claimants' transactions in BOA Common Stock were only eligible for consideration under the Section 10(b) Claims calculation and their transactions resulted in an overall Market Gain. Thus, under the Plan of Allocation, these Disputing Claimants are not eligible to receive any distribution from the proceeds of the Settlement. See Settlement Notice ¶¶ 88(b), 89.

64. **Category B: Claims found to have no Eligible Shareholdings or Transactions.** As set forth in more detail in the Disputed Claim Chart, GCG recommends Disputed Claim Nos. 11 to 14 for rejection because none of these Disputed Claims have documented eligible holdings, purchases or acquisitions of BOA Eligible Securities during the relevant periods.

- a. Disputed Claim No. 11: This Disputing Claimant provided documentation only reflecting ownership of units in the Bank of America Common Stock Fund which were held in the Bank of America 401(k) Plan which is an ERISA Plan. The Settlement Notice provides that participants in an ERISA Plan should not include shares held through the ERISA Plan in their individual Proof of Claim. See Settlement Notice ¶ 66.

⁸ None of these Disputing Claimants purchased or acquired BOA Call Options.

- b. Disputed Claim Nos. 12 and 13: These Disputing Claimants' Claims only included shares of BOA Common Stock that were acquired in Bank of America's merger with Merrill Lynch. The Plan of Allocation specifically provides that such shares will not be included in the calculation of a Claimant's Recognized Loss or Gain Amounts. *See* Settlement Notice ¶ 77 n.11.⁹
- c. Disputed Claim No. 14: This Disputed Claim only reflects shares of BOA Common Stock that were purchased prior to the start of the Class Period and were sold prior to October 10, 2008. Thus, the shares do not satisfy the criteria for a recovery under the Section 10(b) Claim which requires that purchases be made during the Class Period, or the Section 14(a) Claim which requires that owned shares be held as of October 10, 2008 and still held as of the opening of trading on January 12, 2009. *See* Settlement Notice ¶¶ 78, 82.

65. **Category C: Claims with No Supporting Documentation.** As set forth in the Disputed Claims Chart, GCG rejected Disputed Claim No. 15 because this Claimant's Proof of Claim did not reflect any transactions in either of the eligible Bank of America securities nor was any documentation to support the Claim ever provided.

⁹ Such shares were explicitly excluded from the securities covered by the definition of the certified Class in the Action. *See, e.g.*, Settlement Notice ¶ 1(ii).

VII. LATE BUT OTHERWISE ELIGIBLE CLAIMS

66. Through November 5, 2014¹⁰, GCG completed the processing of 43,464 Proofs of Claim that were postmarked or received after the April 25, 2013 Proof of Claim postmark deadline established by the Court, and 26,665 of those Claims have been found to be otherwise eligible in whole or in part (the “Late But Otherwise Eligible Claims”). The Recognized Claims for the Late But Otherwise Eligible Claims represent approximately 2% of the total Recognized Claims of all Claims that GCG is recommending for acceptance. GCG has not rejected any Claim received through November 5, 2014 solely based on its late submission, and GCG believes no delay has resulted from the provisional acceptance of these Late But Otherwise Eligible Claims. To the extent these Claims are eligible but for the fact that they were late, they are recommended herein for payment.

VIII. QUALITY ASSURANCE, FRAUD PREVENTION AND REGULATORY COMPLIANCE

67. An integral part of all of GCG’s settlement administration projects is its Quality Assurance review. GCG’s Quality Assurance personnel worked throughout the entire administration process to ensure that Proofs of Claim were processed properly; that deficiency and ineligibility message codes were properly applied to Proofs of Claim; that deficiency letters were mailed to the appropriate Claimants; and that GCG’s computer programs were operating properly.

¹⁰ As noted above, Co-Lead Counsel instructed GCG to process all Claims received on or before November 5, 2014, the date the Court of Appeals issued its decision with respect to the appeals that had been taken from the Court’s approval of the Settlement and award of fees and expenses. Since that date, GCG has received 1,136 additional Proofs of Claim. The proposed Distribution Plan provides for deferring the processing of these Claims (as well as any additional Claims that may be received up through and including five (5) business days after entry of the Order approving a distribution plan (the “Distribution Order”). See ¶ 81(d) below.

68. In support of the work described above, GCG's computer staff designed and implemented and the Quality Assurance team tested the following programs for this administration: (i) data entry screens that store Proof of Claim information (including all transactional data included on each Proof of Claim) and attach message codes and, where necessary, text to denote conditions existing within the Proof of Claim; (ii) programs to load and analyze transactional data submitted electronically for all Electronic Claims (the load program converts the data submitted into the format required by the calculation program, and the analysis program determines if the data is consistent and complete and triggers a response to the electronic filer where appropriate); (iii) a program to compare the claimed transaction prices against the reported market prices to confirm that the claimed transactions were within an acceptable range of the reported market prices; (iv) a calculation program to analyze the holding and transactional data for all Proofs of Claim, and calculate each Recognized Claim based on the Plan of Allocation; (v) programs to generate various reports throughout and at the conclusion of the administration, including lists of all eligible and ineligible Proofs of Claim; and (vi) programs that calculate each Authorized Claimant's distribution amount by determining the proration factor for the Settlement, and applying it to the Recognized Claim as calculated.

69. GCG's Quality Assurance team performed a final project wrap-up on all of the Claims that are included in this motion. For example, the Quality Assurance team conducted a review of the deficiency letters mailed along with the resulting deficiency responses to ensure proper processing. The team also reviewed the Claims filed to ensure the correctness and completeness of all of the Proofs of Claim before GCG prepared its final reports to Co-Lead Counsel. In connection with this Quality Assurance wrap-up, GCG (i) confirmed that Proofs of Claim designated as valid have no messages denoting ineligibility; (ii) confirmed that Proofs of

Claim designated as ineligible have messages denoting ineligibility; (iii) confirmed that Proofs of Claim that contained purchases/acquisitions that occurred before or after the Class Period contain appropriate ineligibility messages;¹¹ (iv) confirmed that Proof of Claim detail (transaction) messages appear only on Proof of Claim detail records; (v) confirmed that all Claimants requiring “deficiency” letters had been sent such letters; (vi) performed a sample review of deficient Proofs of Claim; (vii) reviewed Proofs of Claim with large dollar losses; (viii) sampled Proofs of Claim that had been determined to be ineligible, including those with no calculated Recognized Claim under the Plan of Allocation, in order to verify that all transactions had been captured correctly; and (ix) re-tested the accuracy of the calculation program.

70. GCG also used a variety of fraud protection controls throughout the administration process to identify potential fraudulent Proofs of Claim. Duplicate Claim searches (by beneficial owner name, tax identification number, account number and Recognized Claim amounts), duplicate transaction searches (which compared duplicate transactions within the same Proof of Claim and other Proofs of Claim), high value reviews, spot reviews and other standard audit reports that examined the information in a variety of ways, were used during the Proof of Claim review.

71. GCG reviewed and compared the entire database for the Settlement against the “watch list” of known potential fraudulent filers that GCG developed throughout its 30-plus years of experience as a claims administrator. GCG works closely with the FBI to update that watch list with the latest information available.

¹¹ As noted above, this process was more complicated than usual since purchases of BOA Common Stock prior to the Class Period, if those shares satisfied the requirements for recovery as Section 14(a) shares, were eligible under that provision of the Plan of Allocation while they could not be included for purposes of the Section 10(b) calculation.

72. In accordance with the regulations of the Office of Foreign Asset Control regulations and guidelines, known as OFAC, GCG will perform searches on certain payments that it will issue to identify potential payees whose names appear on the federal government’s restricted persons list or who reside in countries to which payments are prohibited. GCG regularly monitors changes to OFAC regulations and guidelines.

IX. DISPOSITION OF PROOFS OF CLAIM

73. GCG has completed the processing of 719,771 Proofs of Claim that were received through November 5, 2014, and has determined that 519,644 are acceptable in whole or in part and 200,127 (including the 15 Disputed Claims discussed above) should be rejected because they are either ineligible, wholly deficient, or have no Recognized Claim when calculated in accordance with the Court-approved Plan of Allocation. The following are the reasons for the rejection of the 200,127 wholly rejected Proofs of Claim:

<u>Summary of Rejected Proofs of Claim</u>	
<u>Reason for Rejection</u>	<u>Number of Proofs of Claim</u>
Claim Did Not Fit Definition of Class	69,424
Withdrawn or Duplicate Claim	6,888
Deficient Claim Never Cured	59,873
Claim Did Not Result in a Recognized Claim	<u>63,942</u>
TOTAL	<u>200,127</u>

74. A list of the Claims submitted and their ultimate disposition is contained in the Administrator’s Report (the “Report”) attached hereto as Exhibit C. Exhibit C-1, entitled “Timely Eligible Claims,” lists all timely-filed provisionally accepted Claims and states each Claim’s Recognized Claim. Exhibit C-2, entitled “Late But Otherwise Eligible Claims,” lists all late-filed provisionally accepted Claims and states each Claim’s Recognized Claim. Exhibit C-3,

entitled “Ineligible Claims,” lists all wholly rejected Claims and states the reason for each Claim’s ineligibility. For privacy reasons, Exhibit C provides only the Claimant’s Claim number, and Recognized Claim or Reason for Ineligibility (no names, addresses, or social security or other taxpayer identification numbers are disclosed).

75. The provisionally accepted Claims represent a total of \$15,063,714,892.81 in Recognized Claims calculated in accordance with the Court-approved Plan of Allocation. This includes 492,979 Timely Eligible Claims and 26,665 Late But Otherwise Eligible Claims. According to the Plan of Allocation, each Authorized Claimant shall receive a *pro rata* share of the Net Settlement Fund, which shall be the Authorized Claimant’s Recognized Claim divided by the sum total of the Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund. However, as set forth in the Court-approved Plan of Allocation, if an Authorized Claimant’s *pro rata* share calculates to less than \$20.00, it will not be included in the calculation and the Claimant will not receive any distribution.

X. FEES AND DISBURSEMENTS

76. As noted above, GCG was retained pursuant to the Court’s Notice Order to, among other thing, disseminate the Class Notice (Phase I of its engagement) and was appointed Claims Administrator pursuant to the Court’s Preliminary Approval Order to, among other things, disseminate the Settlement Notice and administer the Settlement (Phase II of its engagement).

77. GCG agreed to the retentions in exchange for payment of its fees and expenses. Co-Lead Counsel were billed on a regular basis and received regular reports of all of the work GCG performed with respect to the provision of the Class Notice and the

administration of the Settlement (including the dissemination of the Settlement Notice and Proof of Claim), and authorized all of the work performed herein.

78. Attached hereto as Exhibit D are copies of GCG's invoices, which total \$18,059,370.22. Of this amount approximately \$2,494,853.66 relates to Phase I of GCG's engagement,¹² and approximately \$15,564,516.56 relates to Phase II of GCG's engagement.¹³

79. GCG's invoices cover all fees and expenses for its work performed through January 31, 2015 (\$16,317,267.91) as well as GCG's estimate of fees and expenses to conduct the Initial Distribution of the Net Settlement Fund in accordance with the "Distribution Plan" described below (\$1,742,102.31). GCG's invoices are separated into two sections: a "Fees" section and a "Project Expenses" section, which lists those items for which GCG is seeking to recoup its costs, including postage and Nominee fees. To date, GCG has received payment of its fees and out-of-pocket expenses in the amount of \$5,000,000.00. Accordingly, there is an outstanding balance of \$13,059,370.22 payable to GCG, which amount includes GCG's anticipated fees and expenses for the Initial Distribution.¹⁴

80. As set forth herein, this was an extremely large and complicated notice and administration process. Additionally, the amount of the recovery on behalf of the Class, *i.e.*, \$2,425,000,000.00, was also extraordinary. GCG necessarily spent a considerable amount of time to assure that as many potential Class Members as possible were notified of the Settlement

¹² Of this amount, \$2,168,794.18 relates to printing and mailing the Class Notice, publication of the Summary Class Notice and Nominee fees.

¹³ Of this amount, \$4,803,110.16 relates to printing and mailing the Claim Packet, publication of the Summary Settlement Notice and Nominee fees.

¹⁴ Should the estimate to conduct the Initial Distribution exceed the actual cost to conduct the distribution, the excess shall be returned to the Settlement Fund and will be available for subsequent distribution to Authorized Claimants. Conversely, if the estimate to conduct the Initial Distribution is less than the actual cost, GCG shall seek to recoup the overage prior to the Second Distribution contemplated in the Distribution Plan.

and also necessarily spent a considerable amount of time on Claims processing itself, responding to inquiries, and working with Claimants to assist them in completing and curing their Claims. Nevertheless, at Co-Lead Counsel's request, GCG has agreed to defer payment on 30% of the outstanding balance on its invoices (the "Deferred Payment Amount") until after the Second Distribution (as defined in ¶ 81(b) below) and all follow-up activity on that distribution (as set forth in ¶ 81(a)(6) n.15 below) has been completed. At that time, to the extent of availability of funds in the Net Settlement Fund, GCG will be paid, prior to any further distributions to Claimants, the Deferred Payment Amount.

XI. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND

81. Should the Court concur with GCG's determinations concerning the provisionally accepted and rejected Claims, including the Disputed Claims and Late But Otherwise Eligible Claims, GCG recommends the following distribution plan (the "Distribution Plan"):

(a) GCG will conduct an initial distribution (the "Initial Distribution") of the Net Settlement Fund, after deducting the payments previously allowed and requested herein, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, as follows:

(1) GCG will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. Pursuant to the Court-approved Plan of Allocation, GCG will calculate each Authorized Claimant's *pro rata* share of the Net Settlement Fund based on the amount of the Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants.

(2) GCG will, pursuant to the terms of the Court-approved Plan of Allocation, eliminate from the distribution any Authorized Claimant whose *pro rata* share of the Net Settlement Fund as calculated under subparagraph (a)(1) above is less than \$20.00. Such Claimants will not receive any payment from the Net Settlement Fund and they will be so notified by mail. The notice to be sent to Authorized Claimants whose Claims do not meet the minimum payment threshold shall be a postcard substantially in the form attached hereto as Exhibit E. Any Claimant to whom such notice is sent who does not submit his, her or its objection in the manner and by the date set forth in the postcard notice shall have waived all objections to the calculation of his, her or its Claim.

(3) After eliminating Claimants who would have received less than \$20.00, GCG will calculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would have received \$20.00 or more pursuant to the calculations described in subparagraph (a)(1) above (“Distribution Amount”).

(4) Authorized Claimants whose Distribution Amount calculates to less than \$200.00 pursuant to subparagraph (a)(3) above will be paid their full Distribution Amount in the Initial Distribution (“Claims Paid in Full”). These Authorized Claimants will get no additional funds in subsequent distributions.

(5) After deducting the payments to the Claims Paid in Full, 90% of the remaining balance of the Net Settlement Fund will be distributed to Authorized Claimants whose Distribution Amount calculates to \$200.00 or more pursuant to subparagraph (a)(3) above, on a *pro rata* basis based on their Distribution Amounts. The remaining 10% of the Net Settlement Fund will be

held in reserve (the “Reserve”) to address any contingencies that may arise. To the extent the Reserve is not depleted, the remainder will be distributed in the “Second Distribution” described in subparagraph (b) below.

(6) In order to encourage Authorized Claimants to cash their checks promptly, and to avoid or reduce future expenses relating to unpaid checks, all Initial Distribution checks will bear the notation: “CASH PROMPTLY. VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED BY [DATE 120 DAYS AFTER ISSUE DATE].”¹⁵

(7) Each Authorized Claimant who receives a distribution from the Net Settlement Fund in the Initial Distribution shall simultaneously receive notice

¹⁵ In an effort to have as many Authorized Claimants as possible cash their checks, GCG will perform extensive follow-up with those Authorized Claimants whose checks are initially uncashed, either because they are returned to GCG as undeliverable or because the Authorized Claimant simply did not cash the check after a period of time elapses (the “Outreach Program”). For Authorized Claimants whose checks are returned as undeliverable, GCG will endeavor to locate new addresses by running the undeliverable addresses through the USPS National Change of Address database and, where appropriate, via Internet search techniques and by calling the Authorized Claimants. Where a new address is located, GCG will update the database accordingly and re-issue a distribution check to the Authorized Claimant at the new address. For any Authorized Claimants whose distributions are not returned but who simply do not cash their checks, GCG will use a mix of automated and personalized telephone calls to urge such Authorized Claimants to cash their distribution checks. In the event an Authorized Claimant loses or damages his, her or its check, or otherwise requires a new check, GCG will issue replacements. Distribution re-issues will be undertaken only upon written instructions from the Authorized Claimant, and provided that the Authorized Claimant returns the first check where appropriate. If a check is deemed lost, GCG will void the initial payment check prior to re-issuing a payment. In order not to delay further distributions to Authorized Claimants who have timely cashed their checks, GCG’s Outreach Program shall end 120 days after the initial void date. Authorized Claimants will be informed that, if they do not cash their Initial Distribution checks within the 120 days from the mail date, or they do not cash check reissues within 60 days of the mailing of such reissued check, their check will lapse, their entitlement to recovery will be irrevocably forfeited, and the funds will be re-allocated to other Authorized Claimants. Reissue requests for lost or damaged checks will be granted after GCG ends its Outreach Program, however, void dates on such reissues will be adjusted so that all such checks go stale 60 days after the end of the Outreach Program. Requests for reissued checks in connection with the Second Distribution and any subsequent distributions will be handled in the same manner, except that, in connection with such distributions, checks will be void if not cashed within 90 days after issue, GCG’s follow-up efforts shall end 30 days after the initial void date, and reissued checks must be cashed within 30 days of mailing.

informing the Authorized Claimant that should he, she or it disagree with the calculation of his, her or its Recognized Claim or the amount of the Initial Distribution check, the Authorized Claimant must send a written statement detailing the disagreement to GCG, postmarked no later than 30 days from the date of such notice. The notice will also inform the Claimants that if they do not make and send their objection in the manner provided they shall have forever waived all objections to the calculation of their Claim or the amount of their distribution(s) from the Net Settlement Fund. The notice to be sent to Claims Paid in Full shall be substantially in the form attached hereto as Exhibit F, and the notice to be sent to all other Authorized Claimants receiving a payment in the Initial Distribution shall be substantially in the form attached hereto as Exhibit G.

(8) Co-Lead Counsel shall cause to be published notice to the Class of the Initial Distribution once in the national editions of *The Wall Street Journal* and *The New York Times* and once in the *Financial Times*, and to be transmitted once over the *PR Newswire*, substantially in the form set forth in Exhibit H hereto, within three weeks after the date the Initial Distribution checks are mailed. The amount necessary to pay the cost of such notice shall come from the Settlement Fund, the estimate for which is included in GCG's last invoice as part of the estimate to conduct the Initial Distribution.

(9) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions set forth in footnote 15 or pursuant to the terms set forth in subparagraphs (a)(7) and (a)(8) above, will irrevocably forfeit all recovery from the Net Settlement Fund. The funds

allocated to all such checks will be available to be redistributed to other Authorized Claimants in the Second Distribution as described below. Similarly, Authorized Claimants who do not cash subsequent distributions within the time allotted or on the conditions set forth in footnote 15 will irrevocably forfeit any further recovery from the Net Settlement Fund.

(b) After GCG has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, which efforts shall consist of the extensive follow-up efforts described in footnote 15 and after any disputes that may be brought to GCG's attention pursuant to the terms of subparagraphs (a)(2), (a)(7) and (a)(8) above have been resolved, but no earlier than one year after the Initial Distribution, GCG will conduct a second distribution (the "Second Distribution") of the Net Settlement Fund. Any amount remaining in the Net Settlement Fund after the Initial Distribution (including from the Reserve and the funds for all void stale-dated checks), after deducting GCG's estimated costs of such Second Distribution¹⁶, and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants from the Initial Distribution who (1) were not Claims Paid in Full; (2) cashed their Initial Distribution check; and (3) who would receive at least \$20.00 from such distribution.

(c) After the Second Distribution and after the follow-up efforts described in footnote 15 above have been completed, but not less than six (6) months after the Second Distribution is conducted, to the extent funds remain in the Net Settlement Fund, GCG

¹⁶ To the extent such estimated costs exceed the actual cost to conduct the Second Distribution, the excess shall be returned to the Net Settlement Fund. Conversely, if the estimate to conduct the Second Distribution is less than the actual cost, GCG shall seek to recoup the overage prior to any subsequent distributions.

shall be paid any unpaid costs incurred in conducting the Second Distribution as well as the Deferred Payment Amount.

(d) To the extent funds remain in the Net Settlement Fund after the payments referred to in subparagraph (c) above are made, Claimants who or which submitted Proofs of Claim received after November 5, 2014 up through and including five (5) business days after the date of entry of the Distribution Order that would have been eligible for payment under the Plan of Allocation if timely received, at the discretion of Co-Lead Counsel, may be paid their distribution amounts on a *pro rata* basis that would bring them into parity with other Authorized Claimants who have cashed all their prior distribution checks to the extent possible.

(e) In order to allow a final distribution of any funds remaining in the Net Settlement Fund after completion of the Second Distribution and the payments referred to in subparagraphs (c) and (d) above are made, whether by reason of uncashed checks, returned funds, tax refunds, or otherwise:

(1) If cost effective, not less than six (6) months after the payments referred to in subparagraph (d) above are made, GCG will conduct a further distribution of the Net Settlement Fund, pursuant to which the funds remaining in the Net Settlement Fund, after deducting GCG's costs incurred in connection with administering the Settlement for which it has not yet been paid (including the costs incurred in connection with the payments made pursuant to subparagraph (d) above and the estimated costs of such distribution), and after deducting payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to Authorized Claimants who cashed their

most recent distribution checks and who would receive at least \$20.00 from such redistribution. Additional redistributions, after deduction of costs as described above and subject to the same conditions, may occur thereafter in six-month intervals until Co-Lead Counsel, in consultation with GCG, determine that further redistribution is not cost-effective; and

(2) At such time as Co-Lead Counsel, in consultation with GCG, determine that further redistribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance of the Net Settlement Fund, after payment of any unpaid costs incurred in connection with administering the Net Settlement Fund and after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s) recommended by Co-Lead Counsel and approved by the Court.

(f) Proofs of Claim received after November 5, 2014 up through and including five (5) business days after entry of the Distribution Order, shall be eligible for payment on the terms set forth in subparagraph (d) above. No further Proofs of Claim may be accepted after five (5) business days after entry of the Distribution Order.

(g) Unless otherwise ordered by the Court, one year after the Second Distribution, GCG will destroy the paper copies of the Proofs of Claim and all supporting documentation, and one year after all funds in the Net Settlement Fund have been distributed, GCG will destroy electronic copies of the same.

XII. CONCLUSION

82. GCG respectfully requests that the Court enter an Order approving its administrative determinations accepting and rejecting the Proofs of Claim received on or before November 5, 2014 and approving the proposed Distribution Plan. GCG further respectfully submits that the balance of its fees and expenses, as reflected on the invoices attached hereto as Exhibit D should be approved for payment from the Settlement Fund as set forth in this declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed in Lake Success, New York on April 13, 2015.



STEPHEN J. CIRAMI